

WBT CIVIL SOCIETY IN THE NEW GEOPOLITICAL REALITY: A CRISIS AS AN OPPORTUNITY FOR RESTORING EU ENLARGEMENT CREDIBILITY?

ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT & ENLARGEMENT PACKAGE 2022

BACKGROUND ANALYSIS

by the Balkan Civil Society Development Network

October 2022

With its annual Enlargement Package, the European Commission (EC) provides a detailed assessment of the state of play and the progress made by the Western Balkans and Türkiye (WBT) on their respective paths towards the European Union (EU). The reports focus particularly on implementing fundamental reforms, and aim to give guidance on the reform priorities ahead.

This is BCSDN's 13th analysis of the European Commission's annual reports assessing the progress made in the area of civil society development and dialogue with public institutions. Since 2013, this analysis has been set against the **Monitoring Matrix on Enabling Environment for Civil Society Development**, a monitoring framework developed by BCSDN members and partners, which provides a set of principles and standards that need to be in place to have an enabling environment for civil society. The methodology underpins the annual monitoring led by BCSDN and its members in all Enlargement countries and is also reflected in this policy brief by highlighting key issues left out of the EC reports. The Monitoring Matrix has been recognized by the European Commission and has inspired the development of the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020.



BALKAN
CIVIL
SOCIETY
DEVELOPMENT
NETWORK

Balkan Civil Society Development Network

Ul. Makedonija 43-1/9

Tel: +389(0)2 614 42

ExecutiveOffice@balkancsd.net

www.balkancsd.net



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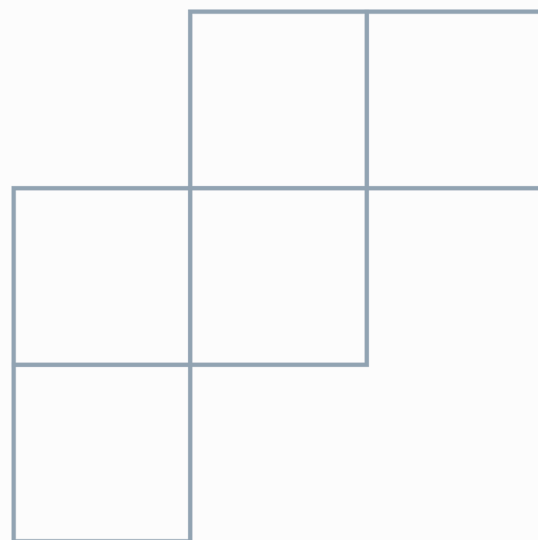
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The 2022 Enlargement Package comes in the wake of a **radical geo-political and economic developments** in Europe but brings a few novelties. Following a quick decision to grant a candidate status to Ukraine and Moldova, the European Commission has finally recommended "conditional" candidate status to Bosnia and Herzegovina, six years after submitting its application for membership. North Macedonia and Albania, after years of blockade, held the first intergovernmental conferences marking the start of their **negotiation process**. Kosovo, on the other hand was not granted the long-awaited visa liberalisation, despite the political stability and the national authorities' commitment to Kosovo's European path. The package has highlighted Serbia's lack of alignment with EU's common foreign and security policy due to their reluctance to impose restrictions on Russia in response to the Russian aggression towards Ukraine.

Out of the seven countries, **North Macedonia** has received the most positive assessment, followed by **Albania**, where a moderate progress is noted in several areas. Although steady progress is recorded in **Kosovo**, democracy, public administration, the rule of law, and the fight against corruption remain to be improved. The report points to a limited or no

progress, again, in **Bosnia and Herzegovina** in most of the screened areas, and further democratic backsliding in **Türkiye** moving the country "further away from the EU".

A worrying language has been used in regards to Türkiye in several areas including democracy, the rule of law and fundamental rights. The package notes "the underlying facts leading to the assessment that Türkiye's accession negotiations have effectively come to a standstill, still hold." Although the reports suggest **Montenegro** and Serbia are to have an overall balance in the progress, a "limited" progress is noted in several essential areas including the freedom of expression and media freedom. Continuation of verbal attacks and smear campaigns against civil society organizations is noted in **Serbia**.



Civil society continues to be screened within the **Political criteria** as one of the four pillars of Democracy, yet again, incoherently and in varying detail across countries with an **absence of a direct or systematic reference to the Guidelines** for EU Support to Civil Society in Enlargement Countries.

EC acknowledges civil society as a strong partner in advancing the priority areas of the fundamentals agenda. It again highlights that "***an empowered civil society is a crucial component of any democratic system and should be recognised and treated as such by public institutions***". North Macedonia, Kosovo, and – for the first time - Albania are the countries that have put this recommendation into practice – recognizing and treating civil society as a key aspect of the democratic reforms. This paramount sentence, by now well recognizable in EC's reports, has a more stringent tone in the case of Türkiye, as the EC stresses that civil society "should not be targeted and restricted in its functioning by the government and state institutions" pointing out to the increased pressures towards CSOs and the shrinking civic space.

The reports recognise that civil society in Kosovo and North Macedonia continue to operate in an enabling environment, and positively assess the state of civil society in Albania, but point to a lack of progress in implementing the Roadmap for an enabling environment for civil society in Albania. BiH public institutions are again asked to ensure an enabling environment for civil society, including freedom of association and assembly. In Montenegro, the role of civil society is recognised and promoted, although the current legal and institutional framework needs to be further improved to strengthen the consultation and cooperation mechanisms between state institutions and civil society. For the third year in a row, the Serbian report underlines that an enabling environment for civil society "still needs to be established on the ground". Finally, the backsliding on the civil society environment persists due to continuing smear campaigns, and various attacks restricting CSOs' freedom of association and assembly and their fundraising activities.

OVERVIEW: CIVIL SOCIETY

The following is the reports' assessment of the enabling environment for civil society development set against the Monitoring Matrix.

BASIC GUARANTEES TO FREEDOMS OF ASSOCIATION, ASSEMBLY & EXPRESSION

FREEDOM OF ASSOCIATION is legally guaranteed in all countries except in Türkiye, where it continues to be obstructed and is not in line with the Constitution, European standards, or international conventions. **No major legislative changes** have taken place in the region in this reporting period, aside from the Law on Registration of Non-Profit Organisations in Albania, which is yet to start its implementation. The new law, requiring the establishment of an electronic NPOs register, was followed by a heated debate and a strong criticism over the consultation process, transparency and the content of the law. Positively, after strong public pressure, 32 NPOs proposals on the draft law were accepted, but the law still presents challenges for the free operations of CSOs, and yet this has not been noted in the country report.

In practice, the operational environment has been assessed most hostile in Türkiye, Serbia and Bosnia and Herzegovina (esp. Republika Srpska), where **intense pressures against civil society** are noted. Verbal attacks and smear campaigns by high-level officials against several CSOs, and in particular regarding their financing, resumed and intensified in Serbia. The environment for civil society has been **particularly threatening in Türkiye** following cases of attacks, detentions, and restrictions on the activities of human rights defenders and civil society activists. The **harassment and discriminatory discourse** targeting LGBTIQ CSOs in the country, as well as those working on sensitive and grassroot issues (women's

Sub-area 1.1.: Freedom of association

Freedom of association is guaranteed and exercised freely by everybody	All individual and legal entities can freely establish and participate in informal and/or registered organizations offline and online
	CSOs operate freely without unwarranted state interference in their internal governance and activities
	CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities

Sub-area 1.2.: Related freedoms

Freedoms of assembly and expression are guaranteed to everybody	CSO representatives, individually or through their organization, enjoy freedom of peaceful assembly
	CSO representatives, individually or through their organizations enjoy freedom of expression
	Civil society representatives, individually and through their organizations, have the rights to safely receive and impart information through any media

rights, migrants, environment, etc.) are evident. Despite constant alarms of civil society, the EC reports again do not include the issue of **GONGOs and PONGOs**, their increased registration and activity in Serbia and Bosnia and Herzegovina and their harmful activities towards the independent CSOs (e.g. public smears, fake representation etc.) and the overall civic space.

This is especially relevant because the state funding for CSOs in Serbia, as well as in BiH, is one of the main reasons for increasing GONGO activities and involvement in misused funds and non-transparent open calls in 2021.

Even though the Commission records some progress in **anti-money laundering and countering financing of terrorism** in almost all of the enlargement countries, it still recommends some legal elements to be improved. Amendments should be made to **align the regulative** with the EU directives and Financial Action Task Force (FATF) recommendations in the cases of Albania, Kosovo, and Türkiye, while in the case of Bosnia and Herzegovina adopting a new law is recommended to support the fight against terrorism and the prevention of violent extremism. Importantly, the EC notes that “it is essential that security measures are not misused” in this area. Moreover, the EC assesses that in Serbia, limited progress was made with the adoption of the national money laundering and terrorism financing **risk assessment**. Still, neither the Serbian, nor the other reports, mention the importance of CSOs’ inclusion in the implementation of national and sector risk assessments, to ensure that legislation reflects the nature of CSOs and does not overregulate or restrict legitimate CSO activities in the name of AML/CFT. New development noted are the adoption of Montenegro’s Strategy for prevention and suppression of terrorism, money laundering and financing of terrorism for 2022-2025, as well as North

Macedonia’s new Law on the fight against money laundering and financing of terrorism. Yet, the EC report for North Macedonia **omits the challenges** posed to CSOs by the new amendments regarding the requirement to register a beneficial owner and the subsequent disproportionate fines in the cases where CSOs failed to do so.

The **FREEDOM OF ASSEMBLY** is legally guaranteed in the region and mostly in line with international standards. The EC report does not include the positive development in Albania with the amendment of the Penal Code, which previously deemed assemblies without police permission as illegal. The Commission notes that the laws on freedom of assembly in Bosnia and Herzegovina have **yet to be harmonised** across the country and be aligned with European standards. The Law on freedom of assembly is still **unevenly applied** in Montenegro, including arrests and fines, depending on the political nature of the public gathering, and amendments to regulate more precisely spontaneous assemblies are still outstanding.

In practice, the freedom of assembly remains **restricted** in the Republika Srpska (BiH), while the most severe cases are identified in Türkiye. In Türkiye, there is excessive use of force, bans, interventions in peaceful demonstrations, investigations, court cases, and administrative fines against demonstrators on charges of terrorism-related activities or violating the Law on demonstrations and marches.

The EC fails to note that the practice of banning gatherings in Serbia also continued, due to the Ministry of the Interior's alleged concerns regarding the safety of protest participants. The **breaches of the digital rights** of activists and CSOs and the police harassment of individuals sharing information on protests on social networks were not assessed in the reports, either.

There was only limited or no progress noted for **FREEDOM OF EXPRESSION** throughout the region. The EC report recalls **threats, intimidation, and violence** against journalists and activists to some extent in all enlargement countries. It further specifies that these can have a **chilling effect** on the exercise of media freedom, and that the pace of investigations and prosecutions of such incidents needs to be stepped up. **Verbal attacks, smear campaigns**, and acts of intimidation are still a challenge in Albania, Kosovo, Montenegro, and North Macedonia, although Montenegro noted some progress in the legal framework on the protection of journalists and media workers with the adoption of amendments

to the Criminal Code. On the other hand, changes proposed to the **Criminal Code** in Serbia represent a serious threat to the freedom of expression, such as the potential introduction of a prison sentence for insults. Overall, the fundamental right to expression has been most under attack in Bosnia and Herzegovina (esp. Republika Srpska), Serbia, and Türkiye.

An important negative trend mentioned in several EC reports is the **rise of disinformation**, including recurrent smear campaigns, especially in online media. Regulation of this sphere must ensure the right to freedom of expression, yet address the rise of hate speech and divisive harmful rhetoric. Another worrying trend is the **rise of Strategic Litigation Against Public Participation (SLAPP) cases**. However, this has not yet caught sufficient attention of the EC. Apart from the two reported SLAPP cases in Kosovo, the EC does not assess this perilous threat to freedom of expression across the region, especially prominent during the environmental protests in Serbia in 2021.

FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY

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

CSOs and donors enjoy favorable tax treatment	Tax benefits are available on various income sources of CSOs
	Incentives are provided for individual and corporate giving.

Sub-area 2.2.: State support

State support to CSOs is provided in a transparent way and spent in an accountable manner	Public funding is available for institutional development of CSOs, project support and co-financing of EU and other grants
	Public funding is distributed in a prescribed and transparent manner
	There is a clear system of accountability, monitoring and evaluation of public funding
	Non-financial support is available from the state

Sub-area 2.3: Human resources

State policies and the legal environment stimulate and facilitate employment, volunteering and other engagements with CSOs	CSOs are treated in an equal manner to other employers
	There are enabling volunteering policies and laws
	The educational system promotes civic engagement

The reports vary in how enlargement countries deal with the issue of CSO financial viability. Addressed in short, the reports still track several critical challenges for CSOs concerning the fiscal and legal frameworks.

The EC notes that efforts to ensure frameworks for reformed **PUBLIC FUNDING** of civil society are necessary for most countries, enhancing the availability and transparency of public funding. The public funding is still assessed **as insufficient** in Albania to sustain CSOs' activities, particularly in providing social services. Even though in Montenegro, funding rules for CSOs are in place, only a few ministries are involved in the process. The EC report once again positively highlights that Kosovo's public funding for CSOs is reported annually and made publicly accessible through an upgraded online database. Still, EC assesses that Kosovar public officials have limited capacity to implement public calls. As a novelty, the Strategy for cooperation with and development of civil society 2022-2024 in North Macedonia, adopted in December 2021 includes adequate financial framework for activities of CSOs and a sound state-funding model. Nevertheless, although not mentioned in the report, the government decided to limit the funding available under the budget line dedicated to CSOs, and made severe cuts without prior consultations with CSOs, which prompted CSOs' backlash.

Assessment of the **TAX TREATMENT OF CSOS** has again been tackled only in the reports for Albania and Türkiye. In Albania, limited progress has been made in the field of **VAT refund**, with the first cases of successful VAT reimbursement for CSO beneficiaries of EU funding and other donor grants. However, the process remains lengthy and cumbersome.

Moreover, EC notes that in Albania, there is still no progress regarding **tax incentives for corporate donations** as these do not promote company donations to CSOs, and there are no tax incentives for individual donations – which is also valid, but not reported, for Serbia, too. For Türkiye, for the third consecutive time, EC notes that the existing tax system impedes the functioning and development of CSOs and mentions that the ‘public benefit’ for associations and ‘tax exemption’ for foundations is vaguely defined and only granted by the President. The report once again notes that the **space for foreign donors** who provide financial support to civil society in Türkiye under current Turkish legislation is increasingly shrinking.

As previously, the importance of **HUMAN RESOURCES** for CSO sustainability has been assessed only in Albania, Kosovo and Montenegro, focusing only on the legal regulations of **volunteering**. To that end, the EC does not mention the progress made in North Macedonia with the adoption of the changes to the Law on Voluntarism and the new Strategy for Promotion and Development of Volunteering 2021–2025. EC, however, notes that Albania has failed to progress with its Law on Voluntarism, as part of the Roadmap for an enabling civil society environment. In Kosovo, the report refers to the need for a more enabling environment for volunteering aligned

with international standards. For Montenegro, it reflects the absence of a law on volunteering that will promote and regulate volunteer work in CSOs and hence increase their human resources.

The reports fail to present that volunteering continues to be practiced by CSOs in most of the countries in the region and is an important factor for the sustainable work of CSOs.

None of the reports discusses the issues related to **employment in the CSO sector** – especially the lack of systematic data collection and publishing as a way to support the development of policies appropriate to the sector's needs, as well as to recognise its economic value. On this issue, our assessment shows that the legislation in place does not hinder nor stimulate employment in the civil society sector, whereas in some countries a more unequal treatment of CSOs in comparison to other legal entities is noted when it comes to state incentive programs for employment.

PUBLIC INSTITUTIONS - CSOs RELATIONS

The EC recognises the importance of close cooperation with civil society and its systematic contribution to public policy development, which is vital for strengthening of democracy. This area is most profoundly assessed in the reports.

The report assesses drawbacks in the **FRAMEWORKS AND PRACTICES FOR COOPERATION** between civil society and the government across the region. Governments across the region are recommended to **ensure the conditions for meaningful and inclusive participation** of CSOs in policymaking processes. The institutionalised cooperation between civil society and the Government still needs to be strengthened in Albania, which has notably lacked in the implementation of the Roadmap on Enabling Environment for CSDev, as well as in Bosnia and Herzegovina and Montenegro. The report recommends that cooperation with the government should improve further through a higher level of engagement and transparency in Kosovo, specifying that **limited progress** has been achieved in implementing the Strategy for cooperation with civil society 2019-2023. Furthermore, it notes that new members of the Council for Cooperation of State Bodies and NGOs need to be appointed for the body to continue its work.

A positive development is identified in North Macedonia with the **adoption of the Strategy** for cooperation with and development of civil society 2022-2024. On the other hand, EC also reports about the CSO representatives' boycott of the work of the Council for Cooperation since March 2022, after the government cut the funding

Sub-area 3.1.: Framework and practices for cooperation

There is a strategic approach to furthering state-CSO cooperation and CSO development	The State recognizes, through policies and strategies, the importance of the development of and cooperation with CSOs
	The State recognizes, through the operation of its institutions, the importance of the development of and cooperation with CSOs

Sub-area 3.2: Involvement in policy- and decision-making

CSOs are effectively included in the policy and decision-making process	There are standards enabling CSO involvement in decision-making, which allow for CSO input in a timely manner.
	All draft policies and laws are easily accessible to the public in a timely manner
	CSO representatives are equal partners in discussions in cross-sector bodies and are selected through clearly defined criteria and processes

Sub-area 3.3: Collaboration in service provision

There is a supportive environment for CSO involvement in service provision	CSOs are engaged in different services and compete for state contracts on an equal basis to others
	The state has committed to funding services and the funding is predictable and available over a longer-term period
	The state has clearly defined procedures for contracting services which allow for transparent selection of service providers. There is a clear system of accountability, monitoring & evaluation of service provision

dedicated for the annual programme for cooperation with civil society in the 2022 state budget. Serbia is also taken as a positive example after finally adopting a Strategy for creating a stimulating environment for the development of civil society for 2022-2030, after many years of CSOs advocating on this issue.

While the EC points out that further efforts are still needed to guarantee systematic cooperation between the government and civil society, it fails to acknowledge that the strategy creation process was boycotted by a significant part of civil society, which represents worsening in the inter-sectoral cooperation. Finally, in Türkiye, there still is a lack of comprehensive government strategy and mechanisms for cooperation with civil society and improving the legal framework.

Limited progress has been noted across the region in the CSOs' **INVOLVEMENT IN POLICY AND DECISION-MAKING PROCESSES**. Although institutionally aligned with European standards, transparency and public participation in decision-making are **often formal rather than meaningful exercises** in all of the countries. Even though the EU acknowledges the civil society watchdog role and its involvement in policy-making in North Macedonia, it still points out that further efforts are needed for the country to involve civil society in policy and structural policy-making more inclusively and transparently. In Bosnia and Herzegovina, the legislation on public consultations is uneven across the country, and meaningful and systematic consultations need to be implemented. The public participation of civil society in Kosovo in the legislative process is limited and not systematically considered. Many laws in Montenegro were also adopted without prior consultation of civil society. It is also noted that in Türkiye, CSOs are largely excluded from the consultations

that are part of policy-making processes and monitoring. The report informs that **e-consultations** were used in some countries but with contrasting success and effectiveness. While the online consultation platform in Kosovo has been used for its purposes and improved to visualise key statistics, in the case of Economic Reform Programme 2022-2024 in Albania, the platform has reduced effective consultation.

When it comes to **INVOLVEMENT OF CIVIL SOCIETY IN THE EU ACCESSION PROCESS**, the EC notes that in Montenegro, the institutionalized consultation and cooperation mechanisms between state institutions and civil society **need to be further improved** in this context, and the similar is noted for Albania too. In Serbia, on the other hand, the Commission does not directly assess the overall CSOs involvement in the accession process. Few comments note that, within Chapter 23, "a broad and inclusive consultation and the active participation of all relevant institutional stakeholders and civil society are needed", and for Chapter 24, that no meetings were held between the Negotiating Group and CSOs under the Working Group for Chapter 24 of the National Convention on the European Union for almost two years. As regards North Macedonia, the EC notes smooth proceeding of the screening process with high level of commitment, stressing the **importance of an inclusive approach** by working with all stakeholders, including the civil society.

ACCESS TO PUBLIC INFORMATION is assessed as problematic **in several countries**, but some key developments in this are noted as well. In Montenegro, information classified by public institutions and withheld from the public is still considered an issue of high priority, as it restricts the access of CSOs and the public to key policy decisions. Similarly, the **lack of an effective follow-up mechanism** overseeing the implementation of the Law on the Right to Information limits the actual public accessibility to state information. Same as the previous year, in Bosnia and Herzegovina, legal provisions are still interpreted to protect private rather than public interests. In Kosovo, too, implementation of existing legislation continues to be insufficient. The report brings new developments in this area in Albania and Serbia. In Albania, public consultation was launched to amend the Law on the right to information, while in

Serbia, Amendments to the Law on free access to information were adopted in November 2021, which should improve the enforcement of the decisions taken by the Commissioner for Information of Public Importance.

Finally, with regard to **SERVICE PROVISION**, EC acknowledges that "civil society continues to supplement or even replace government action in providing services to disadvantaged groups". In the country reports, the provision of CSO services is solely addressed in Montenegro and Bosnia and Herzegovina, disregarding the efforts of CSOs' in other countries on the matter. However, despite the reporting on CSOs' practices in providing services, the report **fails to assess the relevant legislation** in each of the countries, as well as give more details on how service provision is contracted and implemented, which gives lack of clarity on what needs to be addressed to ensure progress in this area.

CONCLUSIONS AND RECOMMENDATIONS

This year's package comes after some long-awaited progress for few of the Western Balkans and Türkiye countries on their enlargement path, but is also set in a new geopolitical reality. While the countries need to show clear commitment in fulfilling serious reforms, the EU should also deliver on its commitments, based on a merit-based process. A clear conditionality framework should be set, focusing unequivocally on democracy, rule of law and fundamental rights. Moreover, in light of the new geo-strategic considerations, the EU should make sure progress in these areas is not compromised by “stabilocracy” and prioritization of security and stability over democracy and human rights.

The Commission clearly acknowledges the importance of civil society in the overall accession and reform processes in the Western Balkans and Türkiye, and for the first time includes a separate section on civil society in its Communication on EU Enlargement Policy. Yet, the country reports do not present a consistent and comprehensive assessment of how civil society is treated in the enlargement countries. Once again, the EC missed a chance to operationalize the EU Guidelines for Support to Civil Society in the Enlargement Countries and measure the progress systematically.

The country reports recognize the institutional set-up of regulations concerning freedom of association, assembly, and expression, noting some positive examples and some breaches of their implementation in practice. Nevertheless, the EC fails to address some essential trends such as SLAPPs, existence of GONGOs and PONGOs, or the “side effects” of the AML/CFT regulations on

civil society. Even though the reports screen several challenges for the civil society fiscal and legal frameworks, valuable information is missing regarding the CSOs' tax treatment, state support and human resources which contribute greatly to the overall sustainability of the sector. Finally, the right of CSOs to take part in public life and serve as backbones of a democratic society is a fundamental right. The EC rightfully notes, however, that enlargement countries need to invest much more effort in ensuring meaningful and systematic consultations and cooperation as part of an inclusive policy dialogue and transparency in policymaking.

In the Enlargement Package 2021, the Commission assures that “the Western Balkans are part of the European family and that the future of these countries, and their citizens lies within the European Union”. To this end, WBT civil society should closely follow the new developments at the EU-level for a more enabling civil society environment – the new European Civil Society Strategy and the initiative for an EU single market for associations and minimum standards for CSOs – as a way to revive EU's commitment to strengthen civil society equally in the enlargement countries. Joining these efforts by bringing in the enlargement countries' perspective, as well as lessons learned, will demonstrate the intrinsic connection and indivisibility of the needs and challenges of civil society in the Union and in the WBT region, regardless of the pace and stage of the accession process. As these countries would eventually join the EU, civil society from the Western Balkans and Türkiye must already take on a bolder role in the EU's future policy-making processes.