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Civic
Initiatives

MONITORING MATRIX
ON ENABLING ENVIROMENT
FOR CIVIL SOCIETY DEVELOPMENT

SERBIA COUNTRY REPORT 2015



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Balkan Civil Society Acquis
Strengthening the Advocacy and
Monitoring Potential and Capacities of CSOs

**MONITORING MATRIX
ON ENABLING ENVIROMENT
FOR CIVIL SOCIETY DEVELOPMENT**

- COUNTRY REPORT FOR SERBIA 2015 -



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| EXECUTIVE SUMMARY

1. Civil Society and Civil Society Development in Serbia

Taking into consideration political context, 2015 was very dynamic which reflected also on civil society. The year was marked by the opening of first negotiation chapters in the process of the European integrations. As almost all Western Balkan countries, Serbia was in the focus of the European Union and its member states and in the center of the refugees' crisis. This position contributes to further strengthening the position of the Government in internal matters. Even the legislation framework for human rights and basic freedoms in most of cases is in accordance with international standards, in the practice, there are a lot of cases of their violation. Increasing influence of the conservative, radical and religious movements is visible in media as well as in everyday activities of the state officials. From the direct and indirect power centers with strong

support of the pro-government regime, media and campaigns against anybody who criticizes Government activities have been launched. This relativized basic principles of a democratic society, civic participation, anti-discrimination etc. Alongside civil society organizations (CSOs), the Ombudsman was the subject of such campaign. It is very important to note that until end of 2015, the new director of Government office for cooperation with civil society has not been appointed. This directly reflected on postponing adoption of the National Strategy on Enabling Environment for Civil Society Development in the Republic of Serbia.

When it comes to transparent state funding, there is by-law change that obliges state authorities to publish information on public calls on the E-Government portal. However, the legal framework still does not provide funding for the implementation of public policies, identified in policy

documents, for which CSOs are identified as key actors in implementation. The most important budget line- 481 still is not diversified and still includes grants for CSOs as well as for sport and religious associations from the same source. Compared to 2014, there are no changes in the quality of legal environment as it still does not stimulate or facilitate volunteering. The only progress made in 2015 is the establishment of working group coordinated by the Ministry of Labour, Employment, Veteran and Social Policy which will analyze impacts of the existing Law. 10 representatives of CSOs participate in it

Key challenges for the future of civil society development are connected with the general Government course. There is a growing trend of right-wing and pro-Russian structures in all segments of society. The image of civil society again is in the context of foreign mercenaries.

Although the Government has declarative attitude that cooperation is necessary, the officials do nothing to prevent the atmosphere in society that is not stimulated for further development of the civil society. The adoption of the Strategy in 2016 and its full implementation will be the significant factor, but also, strengthening awareness of all other relevant actors, such political parties, MPs, educational system and media needed.

2. Key Findings

In sum, key findings in the area of the enabling environment for civil society development for 2015 in Serbia and as measured against the Monitoring Matrix for Enabling Environment for Civil Society Development are as follows:

NO	TOP 6 FINDINGS FROM THE REPORT.	Reference to the Monitoring Matrix	Reference to EU CS Guidelines
1	Public authorities do not consistently protect the basic rights and freedoms (association, assembly and expression) guaranteed by national and international regulations. Violations of rights are most common in the area of freedom of expression.	Area 1 Subarea 1.2	Area 1 Result 1.1.a
2	The status of public interest is not clearly defined and the tax system is not favorable for CSOs.	Area 2 Subarea 2.1	Area 2 Result 2.3. a
3	The support of the state is not transparent enough and CSOs are not included in making priorities and developing programs.	Area 2 Subarea 2.2	Area 2 Result 2.4.a, 2.4.b
4	Civic education is still not a mandatory class for all students in elementary and secondary schools and informal education is not standardized and is not adequately valuable.	Area 2 Subarea 2.3	Area 1 Result -
5	There is no obligation for including CSOs in all phases of policy-creation and decision-making. CSOs do not receive feedback on their suggestions/comments.	Area 3 Subarea 3.1	Area 3 Result 3.1. a
6	CSOs are not in equal position when competing for social service provisions.	Area 3 Subarea 3.3	Area 1 Result -

3. Key Policy Recommendations

Key recommendations for the advancement of an enabling environment for the development of civil society in Serbia for 2015, whose realization Civic Initiatives will advocate in the future are as in the following table:

NO	TOP 6 RECOMMENDATIONS FOR REFORM	Reference to the Monitoring Matrix	Reference to EU CS Guidelines
1	Consistent implementation of independent institutions' recommendations regarding freedom of association, assembly, expression and informing by the public administration on national and local level	Area 1 Subarea 1.2	Area 1 Result 1.1.a, 1.1.b
2	Adoption of the changes for the Corporate Income Tax Law, Personal Income Tax Law and Property Tax Law aimed at harmonization of definition of the public interest with legal framework for civil society, enabling possibilities for deductions for institutional grants and introduction of incentives for individual giving.	Area 2 Subarea 2.1	Area 2 Result 2.2.a, 2.2.b
3	A consistent and full implementation of Regulation on funds for existing programs of public interest on national and local level with possibility of further changes or adoption additional documents aimed to ensure full transparency of public funding.	Area 2 Subarea 2.2	Area 2 Result 2.4.b
4	Introducing Civic education as a mandatory course in primary and secondary education.	Area 2 Subarea 2.3	Area 1 Result -
5	Advocate establishing the Council for the cooperation with civil society as well as developing a mechanism for direct, meaningful and timely inclusion of CSOs in policy-shaping and decision-making processes based on sectorial principles.	Area 3 Subarea 3.1	Area 3 Result 3.1. b
6	Further promotion of equalizing status of CSOs as social services providers on local level and introduction of social agreements for acquiring and providing social protection (social contracting) through advocating changes of Law on Public-Private Partnerships and Concessions, Law on Social Protection and its additional by-laws.	Area 3 Subarea 3.3	Area 1 Result -

¹ Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality

4. About the project and the Matrix

This Monitoring Report is part of the activities of the “Balkan Civil Society Acquis-Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs” project funded by the EU and the Balkan Trust for Democracy (BTD). This Monitoring Report is the first of this kind to be published on a yearly basis for at least the 48-month duration of the project. The monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDDev) developed by BCSDN and ECNL. It is part of a series of country reports covering 7 countries in the Western Balkans and Turkey². A region Monitoring Report is also available summarizing findings and recommendations for all

countries and a web platform offering access to monitoring data per country and sub-area at www.monitoringmatrix.net.

The Monitoring Matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSOs. The Matrix is organized around three 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 have been formulated with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey. They rely on the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define an optimum situation desired for civil society to function and develop effectively and at the same time it aims to set a realistic framework which can be followed and implemented by public authorities. Having in mind that the main challenges lay in implementation, the indicators are defined to monitor the situation on level of legal framework and its practical application.

² Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.

II INTRODUCTION

1. About the Monitoring Report

The Civic Initiatives Project team coordinates and prepares monitoring report for Serbia. The current report assesses the enabling environment for the development of civil society in Serbia during 2015. The report is based on activities and experiences of CSOs, state and local institutions, independent bodies and media, and offers information about the conditions in legislation and practice for key areas and indicators according to Monitoring Matrix. The report on monitoring for Serbia is based on the assessment of the situation in the sector, obtained by implementing an extensive desk research and comparative analysis to the previous findings, including representative data of the CSO's informal groups and public institutions provided in consultation and through experience in regular cooperation and communication with them. The report relates to CSOs registered in the Agency for Business Registers of the Republic of Serbia (SBRA)

in accordance with the Law on Associations (2009) and the Law on Endowments and Foundations (2010), as well as informal groups that have not been formally registered, but exist in a large number and are important especially in small local communities.

2. The Monitoring Matrix on Enabling Environment for Civil Society Development

This Monitoring Report is part of the activities of the “Balkan Civil Society Acquis - Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs” project funded by the EU and the Balkan Trust for Democracy (BTD). This Monitoring Report is the first of this kind to be published on a yearly basis for at least the 48-month duration of the project. The monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDev). It is part of a series of country reports covering 7 countries in the Western

Balkans and Turkey². A regional Monitoring Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country and sub-area at www.monitoringmatrix.net.

The overall objective of the project is to strengthen the foundations for monitoring and advocacy on issues related to enabling environment and sustainability of civil society at regional and country level and to strengthen structures for CSO integration and participation in EU policy and accession process on European and country level.

² Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.

The Monitoring Matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSOs. It underscores the fact that enabling environment is a complex concept, which includes various areas and depends on several factors and phases of development of the society and the civil society sector.

The Matrix is organized around three areas, each divided by sub-areas:

1. *Basic Legal Guarantees of Freedoms;*
2. *Framework for CSOs' Financial Viability and Sustainability;*
3. *Government - CSO Relationship.*

This Matrix does not aim to embrace all enabling environment issues, rather it highlights those that the experts have found to be most important for the countries which they operate in. Therefore, the standards and indicators have been formulated with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey. They have been drawn from the experiences of the CSOs in the countries in terms of the legal environment as well as the practice and challenges with its implementation. The development of the principles, standards and indicators have been done with consideration of the internationally guaranteed freedoms and rights and best regulatory practices at the

European Union level and in European countries.

The areas are defined by key principles which are further elaborated by specific standards. In order to enable local CSOs, donors or other interested parties to review and monitor the legal environment and practices of its application, the standards are further explained through indicators. The full Matrix is available at www.monitoringmatrix.net.

The development of the Monitoring Matrix on enabling environment for CSDev was part of a collective effort of CSO experts and practitioners from the BCSDN network of members and partners and with expert and strategic support by ECNL. The 11-member expert team spanned a variety of non-profit and CSO specific knowledge and experience, both legal and practical, and included experts from 10 Balkan countries. The work on the Matrix included working meetings and on-line work by experts, which was then scrutinized via stakeholder focus group and public consultations. The work on the development of the Matrix was supported by USAID, Pact. Inc, and ICNL within the Legal Enabling Environment Program (LEEP)/ Legal Innovation Grant and Balkan Trust for Democracy (BTD).

3. Civil Society and Civil Society Development (CSDev) in Serbia

In Serbia, there are three common not-for-profit organizational forms that include associations, foundations and Endowments (Legacies). Other not-for-profit legal forms, which are outside the scope, include political parties, trade unions, chambers of commerce, cooperatives, and private institutions (faculties and universities).

According to the SBRA data, there are over 26.500 associations and 650 foundations & endowments registered by the end of 2015, which is around 5.000 CSOs more than two years ago. In terms of active CSOs, according to SBRA preliminary report⁴, 17,780 associations and 523 foundations/endowments submitted financial reports for 2014. Data for 2015 still are not available. CSO sector in Serbia is relatively young, because most of the organizations were established in 2000s, while only a quarter of organizations were founded before 1990.

As presented in the national baseline survey by the Office for Cooperation with Civil Society "COOPERATION OF STATE ADMINISTRATION AND CIVIL SOCIETY ORGANISATIONS"⁵, the majority of associations is located in Vojvodina, followed by Belgrade, while the others are equally distributed across the regions. Just over 25% of associations registered a business activity, leaders among them being the newly-established associations, and the associations located in Vojvodina. Less than 20% of associations, most of which in Vojvodina, are members of a network. Most of the longest-standing associations are members of some network. Most foundations and endowments are located in Belgrade - twice as many than in Vojvodina, while their number in other parts of the country is negligible. Of 626 foundations & endowments, foundations are the most frequent form of organisation - 75% in total. Endowments engaged in public benefit activities represent some 20% of the total

⁴ <http://www.apr.gov.rs/LinkClick.aspx?fileticket=Mnfm93FVvBI%3d&tabid=286&portalid=0&mid=2015>

⁵ <http://www.civilnodrustvo.gov.rs/upload/documents/Publikacije/2015/Istra%C5%BEiavanje%20o%20saradnji%20dr%C5%BEavne%20uprave%20i%20OCD.pdf>

number of foundations and endowments. The majority of legal representatives of CSOs are men - 72% in associations and 64% in foundations and endowments.

CSOs established before 1990 (13%) encompass organizations not usually perceived as CSOs (by the public, themselves, or the other part of the sector); such as the Red Cross, Hunter associations, Voluntary Fire-brigades, Auto-moto clubs, professional associations, pensioners' associations, cultural and sports clubs and hobby groups. Most often, these CSOs are more traditional and mostly politically passive in terms of advocacy initiatives. These organizations are spread out all over Serbia, and they have branch offices in almost every town and municipality.

Further, smaller group of more or less professionalized CSOs has emerged from the so-called "traditional" associations above during nineties and later. These associations retain their member-based service-orientation, but have been transformed - in most cases through inclusion in internationally sponsored capacity building programmes - into modern, active CSOs which apply a rights-based and capacity-building approach to their activities with their membership, leading them into areas such as advocacy, policy dialogue and the provision of services to members which aim to empower by increasing their knowledge, skills and access to resources.

Within organizations established during the 90's and later there are three 'subgroups':

1) About 9% are those created in the 90's focusing on combating human rights violations, disbursing humanitarian aid for refugees and displaced persons, promoting peace and reconciliation, fighting poverty,

and promoting democratic values and principles.

2) The other 'subgroup' (27%) emerged as a new wave after political and social changes in October 2000, joining the previous group.

3) Special case are recently registered CSOs - over 13.000 since 2010, 52% of the total number.

The majority of surveyed CSOs stated that their primary activity is "other" (18%). Those who specified, stated that they primarily deal with youth (15%), human rights and ecology (11% each), education and social inclusion (6% each). CSOs are least involved in human trafficking (0,7%) and anticorruption (2,1%).

Legal framework for the existence and functioning of CSOs in Serbia is organized in detail. The Law on Associations (2009) and the Law on Endowments and Foundations (2010) are considered to be the most up-to-date laws which offer a frame for non-profit organizations, and have not been changed during the past year. The allocation of public funds is regulated by a special regulation, which details the way, steps, deadlines and procedures of transparent allocation of public funds on all levels. However, although the Office for Cooperation with Civil Society has prepared a Guide for transparent financing of associations and other CSOs form the budget of local self-governments,⁶ a complete and consistent application of this regulation, which, first of all, relates to the obligation of having a public competition for funds allocation and calls for public procurement.

⁶ <http://civilnodrustvo.gov.rs/media/2012/10/Vodic-za-transparentno-finansiranje-OCD-iz-budzeta.pdf>

The Office for Cooperation with Civil Society of the Government of the Republic of Serbia is still the main institutional mechanism for offering support for the development of dialogue between the Government of the Republic of Serbia and CSOs. The Office offers support to Government institutions in understanding and recognizing the roles of CSOs in decision-making processes. This often creates situations in which other state institutions use it as the only channel of communication and cooperation with CSOs, instead of developing and advancing direct relations with CSOs. Strategic document for cooperation between state and civil society still does not adopted.

The image of civil society is improving, even though it's still negative in many respects. This is the result of many factors, including the key lack of public understanding of the term "nongovernmental organization", "civil society organization", a lack of public acknowledgement of diversity/differences of CSOs and their activities, including a lack of acknowledgement of CSO contributions to changes in the society in Serbia by the government, and poor reporting from the media. CSOs have not been able to increase direct contact with citizens, and weak skills of CSOs in the field of public relations contribute to the overall bad image of the civil society. In the last couple of years, new leaders of CSOs have stood out by participating in debates on national television, leading websites and social networks, trying to encourage the public to better understand the work and the role of civil society in Serbia. It is important to mention that the trend of establishing organizations which can be directly linked with political parties, especially those participating with leading coalitions, has intensely continued both on the national

and local level in 2015. The right of freedom of association is being violated in favor of political parties that have the power of decision-making, mostly in the allocation of financial funds from the budget line 481. Also, there were reports about cases of newly-found organizations close to the political majority, as legitimate representatives of the public to participate in bylaw-making processes, at the expense of other organizations, with long-term experience or expertise in certain areas (for instance during the creation of the Strategy for the reform of the legal system). Even the legislation framework for human rights and basic freedoms in most of cases is in accordance with international standards, in the practice, there are a lot of cases of their violation which is directly reflected on CSOs work. Increasing influence of the conservative, radical and religious movements is visible in media as well as in everyday activities of the state officials. From the direct and indirect power centers with strong support of the pro-government regime, media and campaigns against anybody who criticizes Government activities have been launched. This relativized basic principles of a democratic society, civic participation, anti-discrimination etc. Alongside civil society organizations (CSOs), the Ombudsman was the subject of such campaign. It is very important to note that until end of 2015, the new director of Government office for cooperation with civil society has not been appointed. This directly reflected on postponing adoption of the National Strategy on Enabling Environment for Civil Society Development in the Republic of Serbia.

4. Specific features and challenges in applying the Matrix in Serbia

Since it's establishing 2013, the Matrix represents a complex

instrument that requires a diverse professionalism and engagement of various actors. With limited funds established, and limited timeline it was difficult to organize a universal consultation process which would reflect the opinions of the entire civil society and a more intense advocating campaign towards implementing key recommendations as well as the. Also, real state in which Serbia's civil sector has found itself during 2015 was additional challenge (strong campaign aimed to discredit the credibility, numerous cases of violence basic rights, and limited capacities of the Government Office for cooperation with civil society). This back the focus of the whole sector on the level of basic rights exercising. Also, during the year, numerous organisations were faced with urgent need for reaction during refugees' crises, changed their priorities and re-located human and other resource. Information on problems and difficulties in implementing regulations was received through direct contact from numerous civil society organizations active at the national and local level through regular activities of Civic Initiatives and thanks to the role of the TACSO Resource center. Additionally, online survey based on the questionnaire was conducted. The specific feature regarding this was the complexity of the questionnaire, and the time needed for filling out. Although, the questioners were distributed to more than 600 CSOs, only 104 responded the survey but without relevant stratification based on geographical or thematic area.

Existing data on the state of the civil society from other reports and polls were used, data from the Government Office for cooperation with civil society reports, annual reports of the independent bodies, Serbian Business Register Agency reports as well as data for Serbia from the Report on the Economic

Value of the Non-Profit Sector in the Countries of the Western Balkans & Turkey. But, in most of these reports, there is no available data for 2015, although they were published during 2015. This is the second key challenge during monitoring process and it is very important finding for further advocacy actions in the area of the enabling environment for civil society development in Serbia. A lack of official data or delay with it's publishing is recognized in different areas and will be a challenge in all further monitoring processes. Thus, findings for certain indicators are based on the data from 2013 and 2014, but, taking in to consideration that the report for 2014 did not include these data, it is important to be monitored and compared with the report for 2016.

5. Acknowledgement

We are immensely grateful to the Office for cooperation with civil society of the Government of the Republic of Serbia, the Business Registers Agency, the Republic Institute for Social Protection, the Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Protection of Equality, Technical Assistance to Civil Society Organizations - TACSO Serbia, the Association of Independent Electronic Media, the Independent Association of Journalists of Serbia, Catalyst Balkans, Trag Foundation, whose reports and analysis we used for monitoring. Also, we would like to thank all other representatives and experts from numerous civil society organizations who have contributed to the development of this report through offering experiences about the way that certain regulations are being implemented in practice.

III METHODOLOGY

1. Overview of the methodological approach

The process of the development of the monitoring Report was based on the analysis of existing legal and strategic documents regulating CSOs work, on one side, and analysis of numerous CSOs or independent institutions' surveys and reports, as well as questionnaires and interviews, on the other. Relevant documents (laws, by-laws, strategies, action plans, reports) were collected through desktop research; all were available on the state institutions', independent institutions', numerous CSOs' web sites and on-line legal date base Paragraf Lex (www.paragraf.rs). Data on implementation of current legal and strategic framework were collected during different public events organized throughout the entire year (both by the state authorities and CSOs), as well as in daily communication with numerous CSOs, institutions,

representatives of donor community, independent experts and consultants. Information was often gathered during discussions at different press conferences and presentations of reports and previous work done both by institutions and CSOs.

Data on civil society overview and cooperation between state and civil society based on the Government Office for cooperation with civil society' reports: Consolidated Annual Report on Public Funding for CSOs, in 2013 (last available data, published in 2015) and Baseline Study on cooperation of state administration and CSOs for the purpose for the Development of the first National Strategy for Creating an Enabling Environment for Civil Society Development in the Republic of Serbia 2015–2019. Baseline study was carried out during 2015 to collect data from 2014. This is the first study about the status of civil society

organizations (CSOs) and cooperation between the CSOs and public administration, based solely on data collected by the state institutions. The study is of crucial importance for providing reliable and accurate data on CSO sector in Serbia, in order to monitor to-be-adopted National strategy and to be able to assess the level of development and scope of work of CSO sector in Serbia, including also regional and international comparisons.

Also, the important sources were publications published within the project Balkan Civil Society Acquis - Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs¹. The Report on the Economic Value of the Non-Profit Sector in the Countries of the Western Balkans & Turkey, "Towards efficient budget policies on local level - budget line 481 donation to NGOs" by The Centre for Development of Non-Profit Sector & Centar

and Public Policy Research Centre and “Line 481 - to improve the processes of monitoring and evaluation” by Center for Democratic Development “Europolis” Novi Sad.

Certain data were used from the CI’ study on effective budget allocation to CSOs providing social services. The research focused on all 167 local self-governments during the period of three years, 2012, 2013 and 2014.

2. Participation of the CSO community

Once the Monitoring Matrix on Enabling Environment for Civil Society Development in Serbia has been presented and published on Civic Initiatives’ website, the opportunity for CSOs participation and commenting was opened. CSOs were invited to send comments, findings and recommendations. Online questionnaires were sent to civil society community with the aim to collect different experiences regarding laws’ implementation and cooperation with Government and total of 104 CSOs participated during October and November 2015. Consultations events with CSOs have been organized in Novi Pazar (South Western Serbia), Bujanovac (South Serbia with mixed ethnic structure), Obrenovac (Belgrade Region), Sabac (North Western Serbia), Cacak (Western Serbia), Aleksinac (South Serbia) Sombor and Kovacica (Vojvodina-Northern Serbia), Palic (thematic consultations with

CSOs-social service providers) and Kragujevac (thematic consultations with CSOs related to children issues). In addition, one consultative meeting held with TACSO Serbia LAG members during July. Collected data are relevant for all MM areas. More than 220 CSOs and other stakeholders participated in these consultations. Also, during 2015, representatives of Civic initiatives participated in relevant events organized by other CSOs and state authorities where we collected very useful information regarding participation in decision making processes and transparent state funding (Public debate on the Draft of National Strategy for Creating an Enabling Environment for Civil Society, presentation of the Baseline research for the purpose of creation the Draft Strategy in the area CSOs-state relations etc.).

On November 20th National workshop with all relevant stakeholders held for the purpose of collecting inputs for CMR 2015 preparation (representatives of the Government Office for cooperation with civil society, SEIO, TACSO Serbia LAG members, Province authorities, key CSOs with strong advocating potential on national level etc).

As mentioned above, being a resource type of organization for CSDev, CI were in daily communication with different CSOs who approached with questions and their experiences on different issues which also were taking in to consideration.

3. Lessons-learned

- Matrix as a tool is a comprehensive tool that has established a baseline of the CSDev in Serbia, using well developed indicators, which provide comparison from year to year, monitoring of CSDev progress and role of different actors in that process. Regional approach and exchange of information among peers is very useful in this process.

- Consider timeframe for the process of the report’s preparation and harmonized with the timeframe for the publishing official state statistics in relevant areas.

- Survey questionnaires have to be simplified and harmonized with the MM indicators.

- Stronger inter-sector cooperation for analysis of environment for CSDev and advocacy for improvement is needed to introduce a diverse expertise (by legal, tax and constitutional law experts, economists).

IV FINDINGS AND RECOMMENDATIONS

Area 1: Basic Legal Guarantees of Freedoms

Sub-area 1.1: Freedom of Association

The legal framework which regulates the freedom of association in Serbia has not been modified in 2015. The Constitution of the Republic of Serbia (2006), the Law on Associations (2009) and the Law on Endowments and Foundations (2010) guarantee the freedom of political, syndical and any other association and the right to remain outside any association and define three kinds of associations, regulate their establishment and legal status, registration and removal from the registry, membership and organs, status changes, cessation, status and activities of foreign associations/endowments and foundations, as well as other questions relevant for their work. Even though the Law on Official Use of Language and Alphabets, (2010)⁷ allows an organ, organization and other subjects to use their name, company or other public title in Latin as well as Cyrillic (Article 4), the Law on Associations⁸ explicitly states that the name of the association

must be in Serbian and written in Cyrillic (Article 13). However, in June 2015, Ministry of Justice started public debate of the Draft of the Civil Code which also includes more restrictive framework for associations, foundations and endowments. Public debate opened numerous issues regarding further activities of civil society and will late until July 2016. The Draft prescribes restrictions in terms of membership, does not allow the economic activities, does not recognize differences between foundations and endowments etc.

According to existing Law, an association may be established by at least 3 founders with at least 1 of the founders being required to have a permanent place of residence or seat on the territory of the Republic of Serbia. Any natural person or legal entity holding legal capacity may be the association's founders. Registration process is voluntary, with clear, simple and decentralized procedure and possibilities for a CSO to register in only few days.

The Law on Associations guarantees that every association may be established and organized freely and shall be independent in pursuit of its goal as well as securing the transparency of activities, which shall be regulated by the statute

of association. The association's goals and operations may not be aimed at violent overthrow of the constitutional order, breach of territorial integrity, violation of the guaranteed human or minority rights or incitement and instigation of inequalities, hatred and intolerance based on racial, national, religious or other affiliation or commitment as well as on gender, race, physical, mental or other characteristics and abilities. This provision also applies to the associations not holding the status of a legal entity. There is no discrimination of CSOs or their representatives in the legal framework in terms of guarantees of protection from the interference by third parties, compared with other individual or legal entities. Financial, including tax, rules are clear, understandable and proportionate to CSOs' turn-over. Since 2015, there are 3 different formats available for CSOs according to their annual turn-over as for other legal entities. Financial regulations applied by banks (money laundering and counter-terrorism regulations) do not recognize specific nature of non-profit entities. All sanctions to which CSOs are subject are the same as for all other legal entities. Also, there are no legal exemptions for CSOs in terms of applying provisions that impose higher fines for responsible individuals than for legal entities.

⁷ http://www.paragraf.rs/propisi/zakon_o_sluzbenoj_upotrebi_jezika_i_pisama.html

⁸ http://www.paragraf.rs/propisi/zakon_o_udruzenjima.html

If the association is deleted from the Register, it shall lose the status of a legal entity. An association shall only be deleted from the Register if: the number of members declines below the number of founders required for its establishment and the association's competent body fails to take a decision to admit new members within 30 days; the term for which the association has been established expires, when an association has been established for a definite period; the association's competent body takes the decision to terminate activities; a status change has been made, which in accordance with the law, results in the termination of the association; it is established that the association had not been pursuing the activities to achieve its statutory goals or had not been organized in line with its statute for over two years without any interruption or if the time that has elapsed has been double than the time specified by the statute for holding the assembly session and the session had not taken place; the association's activities have been banned; there was the case of bankruptcy. Anyone may inform the Register about reasons to delete the association from the Register. Referred to this, the prohibition of the association's activities as well as on activities of the association whose goals or operations are contrary to the provisions of Article 3 of the Law shall be decided upon by the Constitutional Court.

According to the Law on Registration of Business Entities (2004, changed 2009 and 2011), there is an option to have a part of registration process online, but the official registration act can be submitted only in hard copy version. Networking is allowed by the Law and supported through a variety of policies and programs. Networking is supported through a variety of policies and programs. CSOs are obliged to inform SBRA about membership in domestic or

foreign network (an application includes proof of payment reimbursement), but in the practice, there are no sanctions for breaching. 66,7% of respondents stated that they did not report any state structure about membership in some network.

Associations, foundations and endowments pursuing public interest objectives may engage directly in economic activities insofar the prescribed conditions are met. There are no restrictions in the framework regarding receiving foreign funding. Same as other legal entities, CSO are allowed to receive funding from individuals, corporations and other source activities insofar the prescribed conditions regarding purpose of the payment are met.

Although, there is an increase the number of new-founded CSOs, certain visible flaws in the implementation of these umbrella laws are still present. The possibility given to every legal person to establish an association, in practice creates a situation of a potential undiscovered conflict of interest in cases when the CSO is financed by some political party. Activities of informal groups are recognized by the state, in terms of including in the processes of policy changes as well as financial support (e.g. Ministry for Youth and Sport). The application for legal registration must be submitted to Serbian Business Registration Agency - SBRA, registration needs 5 days, costs of registration still are app. 50 EUR (average). 55,26% of respondents in Civic initiatives research perceive the registration process as simple, and 39,74% as very simple. The next level within full process for starting with work considers the application to the Tax Service. Their practice is different and there are some cases when the process takes a long time, in some cases 10-15 days, because the process is depending on the voluntary of the Tax service employee. Sometimes, CSOs are

not informed about all documents needed for The Tax Service and they have to visit them for few times. CSOs are required to have contracts with authorized accountants (which means additional costs at the beginning of their work), even though Law on Accounting does not recognize this obligation.

During 2015, there were announcements from conservative parties representatives (Dveri, DSS) that a register of CSOs, which receive funding from abroad with strong state control of internal matters, similarly to Russian model would be established.⁹

Also, in the interview for weekly magazine Nedeljnik, Minister of Interior tried to discredit the whole civil society and explained that all of them are in support of opposition. 23,68% of respondents perceive occasional pressure from the state (phone calls or messages when they criticized some state activities, conditionality of financial state support etc). There are recorded cases of state interference in internal matters of CSOs such as imposing on purpose, target groups, activities of nonprofit entity. This is particularly visible when it comes to CSOs for persons with disabilities. There are cases when officials of the local self-governments are members of Boards in these CSOs. Also, there is an initiative for adopting new Law on associations of person with disabilities which will formally allow the Ministry to determine their purpose and activities if they want to be financed by the state. The Ministry for Labor, Employment, Veteran and Social Rights formed the working group with representatives of these CSOs, but still there is no available the Draft of the law.

⁹ <http://www.teleprompter.rs/dveri-zah-te-vaju-registar-stranih-placenika-ceas-ka-ko-stize-novac-proruskim-nvo.html>

5,26 % respondents state that during 2015 there have received unannounced visits by inspection. 18,42% have been visited on a regular basis and with the announcement. 10,53% of them have been faced with unjustified and disproportionate sanctions, while 2,63% of them stated they have been faced with unjustified and disproportionate. Range of fines based on a voluntary of individual state officials in charge of these cases Around 25% CSOs registered economic activity. Associations, foundations and endowments pursuing public interest objectives may engage directly in economic activities insofar the prescribed condition are met. Only CSO mission relevant activity is allowed. In the practice, this means that member based CSO working with people with disabilities cannot open the restaurant or café for it's members or other citizens and register this activity under the Law on association, because, it's mission is strengthening position of the persons with disabilities

After receiving funds, before using it, sending prior notification to the Central Bank about the purpose of the payment is needed as well as for other legal entities in Serbia. There are no restrictions regarding using purpose for which the grant is given. More than 60% CSOs stated that they have never been faced with some restrictions or complications regarding procedures for receiving domestic or foreign funding. The procedure for VAT exemption is provided, not complicated, but centralized which is issue for CSOs outside the capital. CSOs can freely receive funding from different private sources, and do not face complicated procedures to access the funding. However, 65,79% recipients have never received funds from corporations, and 73,68% of them have never received funds from the individuals. This is direct impact of the weak framework for development of the philanthropy what is further elaborated under sub-area 2.1.

Financial (including tax) rules in generally are proportionate to CSOs turn-over. There are 3 different forms of financial reporting, according to CSOs' turn-over implemented from the beginning of 2015 after adoption of a bylaw act for Law on Accounting Implementation. Most CSOs are categorized as small legal entities and according to the new criteria of categorization they will be categorized as micro legal entities and thus are not subject to the statutory audit of financial statements, as stipulated by the Law on Auditing adopted in July 2013. There is a moderate support system for implementation of the financial (including tax) rules. A certain level of support is provided by officials in Tax service and Serbian Business Registries Agency as for other legal entities. According to legal framework, they are not obliged to provide support and they are very restrictive in providing additional information. Most of CSOs get efficient support through engagement of professional accountants or consultants on commercial basis.

Main recommendations for the sub-area 1.1:

Legislative:

- Bearing in mind specificities of CSOs and their networks, compared with business sector, consider exemptions in the process of implementation the regulations on money laundering and counter-terrorism in terms of excluding providing data on CSOs founders who are not active members
- Consider lower sanctions compared to the business or public sector for similar breaches.
- Consider legal possibility of introduction economic activity non-relevant for CSO mission.
- Adopted changes of the current Draft of the Civil Code with restrictive framework for CSOs and endowments.

Practice:

- Standardization and harmonization of the practice in different departments of Tax Service, including trainings for their employees in charge of CSOs registration process
- Encourage stronger monitoring, analysis of reporting by CSOs regarding state interferences and publishing data is needed.
- Build capacity of CSOs who should be more aware of the opportunity in the area of the economic activities
- Decentralization of the VAT exemption procedure
- Raising awareness among CSOs, corporations and individuals about the importance and opportunities of philanthropy

EU Guidelines indicators

1.1.a. Quality assessment of existing legislation and policy framework

The quality of existing legislation regarding freedom of association (The Law on Associations and The Law on Endowments and Foundations) is satisfactory and there were no changes during 2015. However, in June 2015, Ministry of Justice started public debate of the Draft of the Civil Code which also includes more restrictive framework for associations, foundations and endowments. Public debate opened numerous issues regarding further activities of civil society and will last until July 2016. The Draft prescribes restrictions in terms of membership, does not allow the economic activities, does not recognize differences between foundations and endowments etc.

Constitutional, primary and secondary level legislation explicitly guarantees that all individuals and legal entities can participate in formal and non-formal organizations. Maximum number of days needed for registration of CSOs is 5. The registration costs in capital city still are up to 50 EUR which still is below targeted 20 EUR. The legal framework allows any individual to establish nonprofit entities - associations, foundations and endowments defined in law without discrimination (age, nationality, legal capacity, gender etc.) and for any purpose with restrictions such as limitations related to public health, imposed by legislation are clearly prescribed and in line with international law and standards. At the end, the legal framework provides guarantees against state interference in internal

matters such as imposing on purpose, scope of work, target group, activities of non-profit entity, influencing decisions of non-profit entity and imposing on internal governance structures.

1.1.b. Progress with the adoption and implementation of relevant legislation

In comparison to one year ago, gaps in implementation of legislation and policy framework regarding CSOs freedom of association have increased. There is a legal framework according to which any person can establish non-profit entity defined in the law. Thus, it allows for potential undiscovered conflict of interest in cases when an association is funded by a political party. There is an option in undertaking a part of registration process online, but the official registration act must be submitted only in hard

copy version. There are recorded cases of state interference in internal matters of CSOs such as imposing on purpose, target groups, activities of nonprofit entity. There has been large campaign against civil society and its purpose launched by pro regime media and some state officials.

2.1.a. CSOs' perception of the ease and effectiveness of financial rules and reporting requirements (disaggregated by type / size of CSO)

Financial (including tax) rules in generally are proportionate to CSOs turn-over. There are 3 different forms of financial reporting, according to CSOs' turn-over implemented from the beginning of 2015 after adoption of a bylaw act for Law on Accounting Implementation.

2.1.b. Quality assessment of financial rules (with the focus on built-in mechanisms that financial rules and obligations change as the turn-over and non-commercial activities change).

There is a moderate support system for implementation of the financial (including tax) rules. A certain level of support is provided by officials in Tax service and Serbian Business Registries Agency as for other legal entities. According to legal framework, they are not obliged to provide support and they are very restrictive in providing additional information. Most of CSOs get efficient support through engagement of professional accountants or consultants on commercial basis.

Sub-area 1.2: Related Freedoms

Legal framework for freedom of assembly suffered significant changes in 2015, although peaceful assembly is guaranteed by the Constitution. In April 2015, The Constitutional Court

declared the Public Assembly Act as unconstitutional, but postponed the implementation of this decision for 6 months. The deadline passed in October 2015. In the time of writing of this report, new Law is still in parliamentary procedure as well as new Law on Public Peace and Order. Both laws were the subject to short but wide public debate with numerous negative comments given by leading CSOs. According to current Law (not in accordance with the Constitution), there are no restrictions of the simultaneous and counter-assemblies, but spontaneous gatherings (without prior notifications) are prohibited. Only prior notification (at least 48 hours before gathering) to the Ministry of Interior is needed. The authorized body shall inform the organizer on the temporary ban of the public assembly not later than 12 hours before the scheduled beginning. Within the 24 hours upon receiving the claim, the County Court shall hold a hearing to which both the claimant and the organizer are to be summoned, and make the decision. Either party may lodge a complaint against the first-instance decision within 24 hours after receiving the decision. The complaint is not submitted to the reply. The complaint is decided upon by the panel of three judges of the Supreme Court, within 24 hours of receiving the complaint. In the procedure upon the claim to ban the public assembly, relevant provisions of the Criminal Procedure Act are applied accordingly, if not otherwise stipulated by the Law.

More than 25% respondents in CI¹ research faced with prohibition of public assembly while 60,53% of them stated they have never organized public gathering. In July 2015, public assembly commemorating genocide in Srebrenica was organized. However, organizers-several human rights CSOs relocated the venue and held commemorating

assembly by lighting candles a block away from initially planned location. At the same time, also spontaneous gathering of very radical conservative group led by Vojislav Seselj organized very close to this place, with strong protection of police.

Regarding public assembly commemorating genocide in Srebrenica, all public gatherings were banned, including gathering of supporters of Vojislav Seselj. Explanation for this was safety due to announced counter-assembly by far-right activists. Assembly of the City of Zajecar voted for ban on public assemblies in the city center in order to stop gathering of opposition whose gatherings have been organized every day during January. Using authorizations prescribed by the Law proclaimed unconstitutional, they also adopted decision on deposit for organizing public assemblies. The amount of the deposit is around 300 EURs which is very high for any CSO in Serbia.

Another case of violation of the freedom of assembly happened after counter-assembly was organized at the time of initiation of construction of 'Belgrade Waterfront' in April 2015. Police did not allow non-members of Serbian Progressive Party beyond certain points around construction perimeter, while eye-witness reports and videos show party members issuing orders to the police. Regarding this, in July 2015, activists of initiative "Don't down Belgrade" also were stopped to organize the gathering in front of "SavaNova" Café, the symbol of the whole project. Organizers were summoned to court based on allegations based on the Law which was declared unconstitutional.

Belgrade Pride Parade 2015 was successfully held with strong police forces, without incidents and with strong support from

representatives of foreign embassies and Delegation of the European Union.

The Constitution guarantees freedom of opinion and expression, and freedom of speech, writing, painting, or to otherwise seek, receive and impart information and ideas, but includes limitations of those rights as well. The Anti-discrimination Law forbids expression of ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their personal characteristics, in the media and other publications, papers and places accessible to the public, by printing and displaying messages or symbols, or otherwise. Defamation/Libel since 2012 is not prescribed by Criminal Code any longer, following decision of the UN Committee on Human Rights that this act limits freedom of expression. Action plan for Chapter 23 within the EI process, prescribes some activities and measures in the area of freedom of expression, and responsibility of certain state authorities and it is very important to be implemented in a proper manner. It's implementation will be the subject of deeper analyses during 2016.

39,47% CSOs state that freedom of expression was sometimes violated. Physical attackers on members of CSOs (BIRN, CRTA, KRIK), which are dealing with investigative journalism, watchdog and research are not being investigated and p Criminal charges and final convictions are rare. In the Action Plan for the Chapter 23 of EU negotiations, the authorities obliged themselves to create a mechanism for the fast protection of the journalists by the end of March 2016. There is an on-going government initiative to define "the journalists" as those who work in

the registered media or even to introduce licensing of journalists. If introduced, these proposals could further shrink the space for the freedom of expression. Significant deterioration of the space for freedom of association would be the consequence due to the fact that some of the most important investigations are lead not by media but by CSOs working in the areas of transparency and anti-corruption.

Reports of journalists and associations also show increasing number of physical attacks, defamation and smear campaigns against journalists and CSOs working. Additionally, encroachment of the freedom of expression strongly reflected in the Annual Ombudsman Report for 2015. Register formed on the site of the Independent Journalists' Association of Serbia (NUNS) shows that in 2015 there were total of 38 such attacks, while in 2014 there were 23. According to this register, there were a total of 11 psychical attacks, 3 attacks on the property of journalists, 21 verbal threat, and 3 cases characterized as pressure on journalists¹⁰.

MP Sasa Mirkovic from ruling Serbian Progressive Party announced he will press charges against daily papers Danas and portal Pescanik.net because of texts on himself as MP and Mayor of the City of Zajecar¹¹. During second half of the year, new larger campaign of the biggest government-owned media Politika has been launched against CSO activists who are characterized as "traitors" paid from USA. Additionally, during 2015, some pro-regime media started strong campaign aimed at demolition of the credibility of the civil society

in Serbia in terms of the structure of its foreign financing. Together with some other state actions in the area of basic human rights and individual attacks of some Government officials and MPs from the parliamentary majority this may be the indicator of the Government attitude toward CSOs. Stronger monitoring, analysis of reporting of CSOs and publishing findings needed in 2016 in order to collect relevant data in systematic manner.

Police in Cajetina, small town in Western Serbia filed a criminal complaint against individual for causing panic and disorder. This person published the text on his Facebook profile that indicates a failure of drinking water in Zlatibor, a significant tourist destination in this part of Serbia. Strong campaign against the Ombudsman conducted during the months, coordinated between pro-regime media and tabloids and state representatives, including the Minister of Interior. The Ombudsman was subject of repeated criminal investigations regarding case from 1993, which has been closed for 20 years. Numerous CSOs supported the Ombudsman during this campaign which stopped after his meeting with Prime Minister.

Rapid vanishing of pluralism of opinions and ideas, criticism of the government and fight for public interest are evident, as well as the elimination of television shows with direct debates on political issues. In 2015, hacking attacks on news portals that do critical reporting on a variety of topics relevant to the public continued. These attacks were committed against opozicionar.com, zajecaronline, teleprompter.rs. Communal police issued an order to Chief Editor of Aleksinac.net not to access the domain anymore, because there is no agreement of LSG Aleksinac for using. LSG in Bujanovac blocked access to the Albanian portal Titulli.com, one of the most relevant source of information for the South of Serbia for its employees.

¹⁰ <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

¹¹ <http://uns.org.rs/desk/media-news/29926/policija-istrazuje-hakerske-napade-na-sajt-danasa.html?print=true>

Based on her Facebook posts, executive director of Youth initiatives for Human Rights – Belgrade was identified as organizer of relocated gathering for commemorating genocide in Srebrenica and fined for disturbing public peace and order based Public Assembly Act, which was proclaimed unconstitutional. Her case before the Court will commence in 2016.

According to data from the Statistical Office, 63,8% households own internet connection, which is increase of 1% compared with 2014, and 8% compared with 2013. 90,3% households own mobile phones and 64,4% of them own a computer.

The Electronic Communications Law (2010, with changes in 2013

and 2014) guarantees everyone the right to be truthfully, fully and timely informed about matters of public interest and public information are obliged to respect this right and does not contain any prohibition about the way the internet or ICT. Also, the Electronic Communications Law guarantees the confidentiality of electronic communications. The monitoring of communication channels is allowed only if it is based on a court's decision. Law on Personal Data Protection sets out conditions for personal data collection and processing, rights and protection of the rights of persons whose data are collected and processed, limitations to personal data protection, proceedings before an authority responsible for data protection, data security, data filing, data transfers

outside the Republic of Serbia. The Law must be harmonized with EU standards, which is recognized in the Action plan for the Chapter 23 in the EU negotiation process.

Due to numerous claims and serious indications that Public Prosecutors during 2015 were obtaining information from fixed and mobile telephones as well as Internet providers in illegal manner, Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic sent a letter addressed to Zagorka Dolovac, the Public Prosecutor, that this practice, without appropriate decision of the court, represents an illegal act and violation and endangering the constitutional guarantees.¹²

Main recommendations for the sub-area 1.2:

Legislative:

- Parliament must urgently adopt the new Law on Public Assemblies and Law on Public Peace and Order and include joint recommendations of Venice Commission and OSCE/ODIHR and remarks given by civil society during short public debate on the new laws regarding spontaneous gathering, short deadlines for notification, the responsibility of the individuals who are organizers and the sanctions.
- Urgent adoption of new Law on personal data according to recommendations of the Commissioner for Information of Public Importance and Personal Data Protection in terms of further protection personal data and illegal manner of collecting data

Practice:

- Advocate for proper and consistent implementation of independent institutions¹³ recommendations regarding freedom of expression, by the public administration on national and local level and freedom of assembly, if any.
- Encourage stronger monitoring, analysis of reporting of CSOs and publishing findings needed.
- Local and state authorities must stop with all forms of pressure towards journalists and open, personal criticism of every journalist and CSO representative who speaks critically of government in the public.
- Police and judicial authorities must process all cases of threats and physical attacks and punish attackers accordingly.
- Advocate for proper and consistent implementation of independent institutions¹⁴ recommendations regarding freedom of information by the public administration on national and local level
- Urgent implementation measures and activities from the Action plan for Chapter 23

¹² <http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/2267-od-tuzilastva-se-ocekuje-da-stiti-ne-da-krsi-ljudska-prava.html>

¹³ Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality, Ombudsman of the Autonomous Province of Vojvodina

¹⁴ Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality, Ombudsman of the Autonomous Province of Vojvodina

1.1.a. Quality assessment of existing legislation and policy framework

Regarding freedom of assembly, constitutional level legislation explicitly guarantees that all individuals and legal entities can assemble peacefully. However, legal framework for freedom of assembly suffered significant changes. The Constitutional Court declared the Public Assembly Act as unconstitutional. Legislation requires prior notification 48 hours before gathering, but the Law does not recognize spontaneous, simultaneous and counter-assemblies. Restriction to right to freedom of assembly such as limitation for public security, imposed by legislation are not clearly prescribed and in line with international law and standards and give possibilities for numerous manipulations by Ministry of Interior and local self-governments. Until the end of 2015, new Law was still in parliamentary procedure as well as new Law on Public Peace and Order. Both laws were the subject of short but wide public debate with numerous negative comments of relevant CSOs. Freedom of speech is explicitly guaranteed in the Constitution, primary and secondary legislation. All individuals and legal entities can express themselves freely. Restrictions to right to freedom of expression, such as limitation of hate speech, imposed by legislation are clearly prescribed and in line with international law and standards.

1.1.b. Progress with the adoption and implementation of relevant legislation

Implementation of the framework for the freedom of assembly was full of gaps, bearing in mind

that the Constitutional Court during April declared the Public Assembly Act unconstitutional, but implementation of this decision was postponed for six month. It means that until the end of 2015, the unconstitutional law was being implemented. According to this Law), there are no restrictions of the simultaneous and counter-assemblies, but spontaneous gatherings (without prior notifications) are prohibited. The prior notification (at least 48 hours before gathering) to the Ministry of Interior is needed. and the state facilitates and protects groups to exercise their right against people who aim to prevent or disrupt the assembly but there are cases of juridical processes against persons who were responsible for spontaneous gatherings. Regarding right to freedom of expression, numerous cases of violations and attacks on journalists and CSOs representatives were recorded in the Ombudsman Annual Report for 2015. Additionally, the Ombudsman was the subject of criminal investigation and strong anti-campaign in tabloids and media under Government control. There has been large campaign against civil society and its purpose launched by pro regime media and some state officials.

Area 2: Framework for CSOs' Financial Viability and Sustainability

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

When it comes to quality and applicability of tax deductibles for giving, the most significant change for CSOs in 2015 was adoption of the Law on Amendments to the Law on

Corporate Income Tax Law. This law, among other things, foresees that disbursements made to social welfare institutions, but also to other providers of social services, can be considered an expense. There is a tax relief in the amount up to 5% of gross income for corporations according to Legal Entity Income Tax Law for: medical, educational, scientific, humanitarian, religious, environmental protection and sport purposes, as well as for giving to institutions of social protection established by the law governing social protection. Deductions are recognized as tax deductible only if given to legal entities which pursue the foregoing goals and purposes pursuant to law, and only if used to further those goals and purposes. Legislation for definition of public benefit causes still is not harmonized in all relevant laws.

The most significant change for CSOs in 2015 was the adoption of the Law on Amendments to the Law on Corporate Income Tax Law. This Law, among other things, foresees that disbursements made to social welfare institutions, but also to other providers of social services, can be considered an expense. Donations of legal entities made to civil society organizations – social care service providers, that are established and operate in accordance with the law regulating social care, will be recognized as tax expenditure. Based on this legal solution, new possibilities open for additional funding sources from legal entities for civil society organizations – social care service providers. Earlier legal solutions anticipated that only donations donated to social care institutions established in accordance with

the law regulating social care are recognized as expenditures in taxpayer's fiscal balance, but not donations to other subjects in social care, including donations to civil society organizations.¹⁵

Legal Entity Profit Tax Law generally exempts CSOs from taxation on grants, donations, membership dues, and non-economic sources of income. According to the Legal Entity Profit Tax Law, profit generated by a CSO is exempt from income tax, provided that: a) income from economic activities did not exceed a given threshold of 400,000 RSD (3,500 EUR); b) earnings were not distributed to the founders, employees, members of the management board, or any affiliated person thereof; c) salaries for the members of the management board and employees do not exceed double the average salary paid by organizations engaged in the same activities in the commercial sector; d) all earned profit was used to further the objectives for which the organization was created; and e) the CSO's economic activities do not give rise to unfair competition with the private business sector, as defined by the Antitrust Law.

Establishment of endowments is allowed, however no specific tax benefits exist. The founding capital for foundation is 30.000 EUR. The definition of public benefit in the Law on Endowments and Foundations largely mirrors the one in the Law on Associations and is also illustrative, rather than exhaustive. Foundations and endowments pursuing public benefit activities are eligible to apply for state, provincial and local governmental support, under the conditions set out in the Law on Associations. In addition, the Law on Endowments and Foundations provides that

a foundation and endowment is deemed for public benefit if it serves public at large or selected professional, national, cultural religious or gender group, or if it supports people living in a defined geographic area. In practice, according to data provided through TACSO Resource Center by Civic Initiatives, some difficulties exist in registering endowments related with the unsolved issue of restitution in Serbia due to lack of knowledge of the SBRA officials.

Existing benefits for CSO economic activities are not effective and supporting. Almost 75% respondents in CI' research do not use economic activities. Almost 50% of them state that their organizations have no interests for such type of activities. Passive investments used only if founders allow. Property Income Tax Law does not stipulate any exemption from property tax on the real estate for associations, foundations and similar CSOs performing activities of public interest. Only 1 respondent in CI' research states about using passive investments. This is direct impact of non-simulative legislative and lack of information and capacities among CSOs to use it.

The legal framework does not recognize anonymous individual donations, preventing development of individual philanthropy as a potential for CSOs sustainability, nor is the individual charitable giving recognized by the Personal Income Tax Law as the ground for tax deduction. In addition, the Law does not specifically recognize in-kind donations as tax deductible. Legal Entity Income Tax Law provides that legal entities-tax payers may deduct in country up to 5% of their gross income for: "medical, educational, scientific, humanitarian, religious, environmental protection and

sport purposes, as well as for giving to institutions of social protection established by the law governing social protection"¹⁶ Deductions are recognized as tax deductible only if given to legal entities which pursue foregoing goals and purposes pursuant to the law, and only if used to further those goals and purposes. Corporate tax deductions require complicated procedure. Quite often, when giving donations, corporations are subject to inspections. The definition of tax deductions for corporate giving - up to 5% does not provide equal practice in all Tax service departments.

Financial (e.g. tax or in-kind) benefits for legal entities are available, but are limited to definition of public interest status, which is not clearly defined and not harmonized in Law on Association and tax laws. As only those covered by the legal framework are relieved from paying tax, and only up to the sum of 100,000 RSD (app 800 EUR). Narrow definition of public interest does not provide deductions for donations in the area of human rights and for watch-dog organizations. The tax laws does not provide for specific rules with respect to institutional grants to CSOs and overhead expenses of the organizations. Tax authorities occasionally levy taxes on any portion of a donation used for overheads. Because the Law is silent on this issue, the controlling instrument in this respect is a donation agreement and therefore such practice is not substantiated by law - unless there is prima facie evidence of fraud involved in the transactions.

There are no available state activities regarding promotion of CSR or strategic approach in this area. The Draft of the National Strategy on Enabling Environment for Civil Society

¹⁵ www.tragfondacija.org

¹⁶ emphasis ours.

Development in the Republic of Serbia prescribes some activities aimed on the development of philanthropy. and tThere are few CSOs and companies leaders in promoting CSR. The notion of philanthropy among citizens of Serbia has not significantly changed and contributions for the public cause are usually made when it comes to actions and activities related to humanitarian assistance, poverty reduction, and support to marginalized groups and to mitigate the consequences of natural disasters.

According to the survey by the Catalyst Foundation announced in December 2015, there has been a rapid growth when it comes to donations and appropriations by socially responsible companies, and in this segment there is an

increase of 90.9%, with 41% of all recorded allocations in the last two years are just corporate giving. A quarter of the total allocations focused on supporting marginalized groups, one-fifth is allocated to support health-protection, while educationist devoted about 15%. Still a large percentage – even 55.7% of total donations¹⁷ of corporations is allocated to the state, and its institutions, not CSOs. The encouraging fact is that, compared to 2014, the number of individual donations has increased by more than 112%.¹⁸ Also, the good news is the fact that the largest number of CSOs received donations from citizens (mass individual donations), indicating that it is possible, with a clear message and trust of citizens, to attract a lot of small donations, which can contribute

to the sustainability of the organization. Compared to 2014, there has been noticed increase in the number and proportion of donations to foundations under the category of non-profit organizations, which indicates an increase of confidence in foundations as intermediaries.

Also, there is no mechanism for the comprehensive monitoring of grants and other individual and corporate giving, because, due to the negligible number of organizations that monitor this data, it is almost impossible to have a clear picture and proper analysis of the situation in this area. Tax administration still lacks the ability to collectively display this type of data, both corporate and individual giving.

Main recommendations for the sub-area 2.1:

Legislative:

- Amend set of tax related laws - Legal Entity Profit Tax Law, Personal Entity Profit Tax Law and Property Income Tax Law aimed on harmonizing definition of public interest in the laws, introduce tax benefits for individual giving and incentives for corporate giving
- Consider lowering the rate of founding capital for foundations
- Consider decrease of the amount of founding capital for foundations
- Advocate state programs for promotion of CSR, individual and corporate giving

Practice:

- Capacity building of tax administration and SBRA needed in order for them to understand the specifics of CSOs, foundations and endowments in terms of full implementation of the existing laws.
- Closer monitoring of the implementation of the legislation on CSOs engaging in economic activities is implemented and is not burdensome for CSOs.
- Look into possibilities to reduce bank fees for economic activities of the CSOs
- Establishment of a mechanism for t keeping record on individual and corporate giving

¹⁷ "Overview of Corporate Philanthropy

¹⁸ <http://www.catalystbalkans.org/sr/izvestaj/donacije-po-godinama>

2.2.a. Quality and applicability/ 'implementability' of deductibles for individual and corporate giving stipulated by legislation and regulations (including disaggregation on types of deductible donations)

When it comes to quality and applicability of tax deductibles for giving, the most significant change for CSOs in 2015 was adoption of the Law on Amendments to the Law on Corporate Income Tax Law. This law, among other things, foresees that disbursements made to social welfare institutions, but also to other providers of social services, can be considered an expense.

There is a tax relief in the amount up to 5% of gross income for corporations according to Legal Entity Income Tax Law for: medical, educational, scientific, humanitarian, religious, environmental protection and sport purposes, as well as for giving to institutions of social protection established by the law governing social protection. Deductions are recognized as tax deductible only if given to legal entities which pursue the foregoing goals and purposes pursuant to law, and only if used to further those goals and purposes. Legislation for definition of public benefit causes still is not harmonized in all relevant laws

There are no tax incentives stimulating individual giving. Regarding tax allocation for public benefit purposes still there is no harmonization of public benefit status between tax law and CSO framework regulation. There is no available official data on the number of registered individual and corporate taxpayers and the amount of their donations.

2.3.a. Quality of the system of tax benefits for the CSOs' operational and economic activities

There are no changes regarding tax benefits for the CSOs' operational and economic activities. The Law on Association recognized only mission-related economic activity, so there are no benefits for non-relevant to mission economic activities. Income from CSOs mission-related economic activity is tax free up to amount of annual income of 3278,68 EUR (approx. 400.000 RSD).

Sub-area 2.2: State support

By-law/ Regulation¹⁹ on the Means of Fostering or Missing Part of the Funding for the Program in the Public Interest prescribes allocation based on public call announced by the competent authority and announced on the official website and E-Government portal, as well as criteria, conditions, scope, method, process allocation, and the manner and process of returning funds. Legal framework does not include public funding on the basis of policy papers. Criteria are not always clear. There are no clear procedures addressing issues of conflict of interest in decision-making in By-law on criteria of financing and co-financing CSOs activities from the budget.

Although the Office for Cooperation with Civil Society during 2015 published the Handbook for Transparent State Funding and organized trainings for LSG representatives on this topic, the practice is still

very different and still there is no full implementation of the Regulation, particularly on local level. Particularly, by-laws on local level are not always full harmonized with the Regulation.

In terms of legislative progress, amendments of the By-law/ Regulation on the Means of Fostering or Missing Part of the Funding for the Program in the Public Interest implemented by associations adopted at the end of 2015 obliges all national and local authorities to announce public calls on the E-Government portal. However, The Regulation still prescribes funds only for projects/programs in the area of public interest as co-financing the missing parts of programs financed by other donors, but not for institutional development for CSOs. State support to CSOs is also mentioned by the Law on Associations and the Law on Endowments and Foundations.

Demands by CSOs for the fundamental change of articles of the Law on Games on Chances in order to consolidate it with the Law on Associations, Endowments and Foundations were not accepted, nor were the changes of the Law announced or planned by competent organs, so there is still a need for advocacy efforts. Main demands were aimed on the narrow definition of public interest when it comes to financing from this source. The Law recognize only Red Cross, associations of persons with disabilities, sport associations, social welfare institutions and local self-governments. Direct impact of mentioned above is that 73,68% respondents in CI' research state that public funding does not respond to the needs of the CSO sector.

There is no unique national body/institution with

¹⁹ The regulation on the changes and amendments of the Regulation on funds for existing programs of public interest that associations produce

mandate for distribution of public funds to CSOs. Even though there are six budget classifications (481 – Grants for civil society organizations, 472 – Compensations for social protection, 451 – Subventions to public non-financial corporations, 423 – Contract services, 424 – Specialized services, 462 – Grants for international organizations) through which funds intended for financing associations and other CSOs are allocated both on local and national level, public funds are not clearly planned or set aside within the state budget.

Funds from line 481 (grants for civil society organizations) and 472 (financing services of social protection) are still used for financing sport clubs, churches and religious communities, public institutions, the Red Cross, which already have their own line defined within the budget.

According to the last available data from the Annual Consolidated Report on Budget Expenditures of the Office for Cooperation with Civil Society of the Republic of Serbia Funds (2013, 26 state institution respondents, only national level) allocated to associations and other CSOs as support to program and project activities from the public funds of Republic of Serbia in 2013, were in total 14.380.941.452 billion RSD (app. 117 million EUR) from the national level which represent 0,87% of the Budget of the Republic Serbia. Compared with 2012 data, the increase reflected on the budget is 0,40%. For example, 9 national bodies or institutions approved 130 CSOs with total of 2.389 projects and amount of 5.602.521.512 billion RSD (app 45,9 million EUR). The score of the biggest state donors is as following: Ministry of Youth and Sport (2,8 billions RSD or app 22,9 million EUR), Ministry of Finance (1,14 billion RSD or 9,3 million EUR), Ministry of Health (400 millions RSD or 3,2 million

EUR). The smallest support is provided by the Government Coordination body for Presevo, Bujanovac and Medvedja (app 700.00 RSD, app 5.700 EUR). Of the total amount, 78,8 % paid from the line 481, 1,97% from the line 424 (special services), 0,21% from the line 423 and 19,0% from the budget line 472. In 94,74 % cases support was provided by public calls.

When it comes to co-financing of projects and programs, only 4 authorities co-financed total of 32 projects with the amount of 18 million RSD (app 147.500 EUR). Of the total number, Government office for cooperation with civil society co-financed 13 projects, Ministry of culture and informing – 10 projects, Ministry of youth and sport – 8 projects and Commissioner for equality protection – 1 project.

Preliminary data for 2014 of the draft Consolidated Annual Report on Public Funding for CSOs, Office for cooperation find that there is 115,72 % increase in public funding in 2014 as compared to 2013. In RSD, increase is 123,35% and in EUR it is 115,72%²⁰. There is no further information available about the increase, but it might be the case that this increase is due to the parliamentary elections in Serbia during 2014. This will be the subject of deeper analyses during 2016.

According to the report from 2013, total of 76% supported grants were CSOs while sport associations were supported in 19% of cases. These findings are not completed and do not reflected situation on the local level.

Distribution and monitoring of the state funding are under responsibility of the competent authority. In 2015 Civic initiatives

registered 7 complains of CSOs regarding public funding on local level, because they could not identified other body or mechanism. In some cases they are sending complains and information to Government Office for Cooperation with Civil Society. According to the Regulation, decision on complain, adopted by the commission within public call is final. After this, only process in Administrative Court could be started.

Only 10,52% respondents in CI¹ research stated that it is easy to identify budget allocation for CSOs. 73% respondents stated that they have never been consulted in the process of public funding cycle. For the purpose of the public calls for CSOs, during 2015, Ministry of Youth and Sport conducted consultation process with CSOs via youth umbrella organizations, but there were no feedback from the Ministry to the CSOs inputs and comments.

The call full of irregularities of Ministry of Labor, Employment, Social and Veteran which was the most important activity from 2014 in 2015 has not yet received the epilogue. Civic Initiatives and other CSOs have applied for the replacement of Minister Vulin and criminal complaint against unknown persons. The prosecution has not come forward with a case. After that there were several public calls by the same ministry, but there are not observed greater irregularities.

²⁰ Exchange raised base on the annual average National Bank of Serbia.

65,79% respondents in CI' research stated that information relating to the procedures for funding and information on funded projects is publicly available. Procedures are usually published on the website of institutions. According to last available data in Consolidated Annual Report on Public Funding for CSOs in 2013, authorities at national level have on their websites published 83% of competition/procedures for allocation of funds; in 51% of cases announcements/procedures for allocation of funds were published in daily newspapers published; while only 4% were published in the "Official Gazette".

One of the articles of the Law on Association allows for "any legal entity to found a non-governmental organization", this creates a situation of potential non-disclosed conflict of interest in cases when CSO is founded by the political party, since all CSOs can apply for funding from national or local budgets and decisions on those funds are made by people from the same parties. Only 13,6% respondents in CI research consider decisions on tenders as fair and where conflict of interest situations are declared in advance. For example, within the mentioned call of Ministry of Labor, Employment, Social and Veteran 31 CSOs (121 total) founded 1 month before the call and several during the call. There were 6 CSOs in different municipalities founded with the same name and statutes.

21,06% respondents in CI research stated that application requirements are not too burdensome for CSOs and 60,53% of them, stated that the full package of application was partially easy for them.

According to Consolidated Annual Report on Public Funding for CSOs, in 2013 (last available data), 75,76% of the

calls were assessed expert body (Commission, Sub-Commission), and in 11,11% of them were decided by person in charge of the body for cooperation with associations and other civil society organizations, while in 4,04% of cases this was the head of the organizational unit. Decision making process with expert body instead of individual is better solution, but, in some cases members of commissions are very often persons very close to political majority, both on national and local level.

From a total of 99 calls, the majority (90) had defined written criteria for the proposals received which were approved in amount of 3.88 billion RSD. 9,09% of the calls did not have clearly defined criteria, and for which an amount of 459 million RSD, or 10,57% of total funds was approved. When it comes to body/person who is designated to allocate funds, according to the Report, decision to grant associations and other CSOs in most cases involves the Minister or the appointing authority on the proposal of the professional body which considered projects and programs (50,51% of cases), the Minister/Head (34,34% of cases), while the expert body (Commission, Sub-Commission) decides in 24,24% of cases.

The achieved results of programs/projects in most cases of state-level and local organs are estimated by an overview of final reports (61,5% of the total number of responses). The basic way of overseeing the realization of projects is by submitting a financial and narrative report, while direct supervision of activities during the realization of projects, including polls for project users, is an exception rather than the rule.

State authorities as a way of informing about the decision on support commonly use announcement on the website of

the authority (68,69%), telephone notification (35,35%), or a written notice (32,32%). The Report as well as CI' research do not reflect complete situation regarding appeals of CSOs, particularly on local level and deeper analyses is needed.

The largest number of organs (96% response) used the final financial report and the final narrative report (88% response), to monitor the implementation of approved programs/projects. Interim narrative report was used in 44%, interim financial report in 42%, while the audit report required in 26% cases. Also, monitoring is carried out through field visits to CSOs in 33,33% cases. This means the lack of capacities of state officials regarding monitoring processes, but also, lack of human resources within in charge of structures. At the national level, the implementation of approved programs and projects are usually accompanied by representatives of the authority in charge of cooperation with civil society organizations - 83,17%²¹).

When it comes to evaluation of supported programs, evaluation conducted in most of cases through final reports (96,12%) and field visits in 9,3%. In 2,33% case there were no any evaluation activities. These data shows that in most of cases, state authorities do not make differences between monitoring activities and evaluation of public funding impacts

When it comes to non-financial support, there were no changes in legislative during 2015. The Constitution, the Law on Public Property, the Law on Local Self-Government, the Law on Local Self-Government Financing, towns/municipalities' regulate

²¹ Annual consolidate the last report which was published in 2013

the use of state-owned property. CSOs are treated in same manner as other legal entities. According to the Annual Consolidated Report on Budget Expenditures of the Office for Cooperation with Civil Society of the Republic of Serbia Funds for 2013, there was no non-financial support from national state level which is the same level as in 2012. Wide and traditional practice of supporting associations of persons with disabilities registered during socialism exists. This is continuation of the practices from the past and in most of cases considers using public spaces owned by local self-government.

According to direct CI' insight, during 2015 there are recorded activities in terms of non-financial support of CSOs by the Government Office for Cooperation with Civil Society and Serbian Integration Office. Parallel with the beginning of the consultation for IPA 2016 programming, Serbian Integration Office in 2015 started with strong capacity building for SEKO members in order to improve their contribution to the current and further processes while the Government Office for Cooperation with Civil Society organized trainings for CSOs on transparent state funding and implementation of the Guidelines for CSOs inclusion in adoption regulation process.

10,53% of respondents in CI' research stated they were non-financial supported through the public call which is direct impact of weakness within the legislative. 28% of them were supported after direct contact with state authorities while 21,05% respondents were refused after direct contact. 5,26% of them stated they have not been informed about such possibilities. 15,81% respondents in CI' research stated they have been faced with discrimination regarding non-financial support based on their criticism or political opinion.

Main recommendations for the sub-area 2.2:

Legislative:

- Consider diversification of the budget line 481 to exclude sport and religious associations.
- Amend the Government Regulation or adopt additional Guidelines for public funding cycle which will include obligation of state authorities for CSOs participation, public funding on the basis of local and national sectorial policy papers, clear procedures, issues of conflict of interest in decision-making, obligatory of public announcement reports of the grantees, creation of clear methodology for evaluation public funding and obligatory of public finding of the evaluation reports
- Consider introduction of legal remedy within the Regulation, that will enable an appeal on higher instance

Practice:

- Deeper analyses within the Consolidated Annual Report on Public Funding for CSOs needed, particularly case studies for certain entities.
- Consistent implementation of the Regulation on all authority levels
- Permanent monitoring by CSOs of the public funding on local and national level
- Increase CSOs awareness of existing mechanisms for appeals in the legal framework
- State Auditor, Budget inspection, an administrative dispute etc
- Promotion of Handbook for transparent state funding among state employees on local and national level
- Additional trainings for national and local level state employees.

2.4.a. Increase of public funding for CSOs

Regarding data on amount of funding for CSOs, Government office for cooperation with civil society published Consolidated Annual Report on Public Funding for CSOs in 2013. This report included only national bodies and their donations from the budget lines: 481 – Grants for civil society organizations, 472 – Compensations for social protection, 423 – Contract services and 424 – Specialized services. This means that there are no available complete data for public funding for CSOs. Until the date preparing this report, only preliminary data for 2014 available. It seems that there is more for 115,72 % increase in public funding in 2014 as compared to 2013. In RSD, increase is 123, 35% and in EUR it is 115,72% (exchange rate based on the annual average National Bank of Serbia). Percentage of the public funding in the overall CSO income still is less than 15 % (Calculation for 2013 based on the OCCS data of public funding to CSOs on national level and total income of CSOs in 2013 based on APR data (financial reports submitted by CSOs)).

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

The holistic framework regulation on public funding for CSOs only partially exist and on very general and bylaw level through the Regulation on the means of fostering or missing part of the funding for the program in the public interest. During 2015, it was amended in the area of obligatory public announcing of tenders on the portal E-government. Public funding still is partially on the basis of

policy papers or other strategic approach. Beneficiaries are very rarely included in programming of the tenders. Deadlines for decisions are prescribed, but only very general criteria published in advance. There is formal obligation of merit decision with arguments by the public institutions, but practice is very different. All grants are with prepayments and with transparently reporting on the implementation of supports. The evaluation of achieved outputs and outcomes on the project and program level does not prescribe nor possibility of multi-annual contracts.

Sub-Area 2.3.: Human Resources

There are no changes in the legal environment in 2015 which would stimulate or facilitate volunteering and employment in CSOs particularly. However, during this year cases were reported, in which CSOs were discriminated as beneficiaries of state incentive program for active employment. National employment service announced competitions for public works in the area of social and humanitarian activities, maintenance and renewal of public infrastructure and the maintenance and protection of the environment and nature, on which they were entitled to participate²², while in public call for the program for interns - “professional practice” it is clearly stated that the right to participate in the realization of this program can be accomplish by an employer belonging to the private sector²³.

²² http://www.smederevo.org.rs/Print-Smederevo_2479_lat

²³ http://www.nsz.gov.rs/live/digitalAssets/3/3378_javni_poziv_zadigitalizaciju_programa_stru_na_praksa_-sticanje_prakti_nih_znanja.pdf

50% respondents state that they are not satisfied with state support in this area, but this is the reflection of general state employment policies. According to last available (2014) data provided by SBRA, 6.651 employees worked in CSOs. Compared with 2013, there is increase of 405. Increase in comparison between 2013 and 2012 was 1.283.

At the same time, the preparation of the baseline study Economic value of the non-profit sector in WBT has revealed that some data are being collected on a regular basis however they are not being processed and disseminated to the public. For example, the Pension Fund of Serbia collects vital information on the persons engaged in CSOs (regardless of the type of contract), social benefits, and years of engagement in the CSOs. However, these data were never presented before the baseline study.

The Law on Volunteering is still over-codified and makes it difficult for CSOs to engage volunteers in their work; for example the law prescribes obligatory agreements between a volunteer and an organization that engages him/her. Spontaneous volunteering practices are not recognized by the Law. The Law is putting additional administrative burden on CSOs and CSOs are trying to avoid these demands by creative implementation. In that sense, most of CSOs, engage volunteers using gaps in existing legislative and without official registration at the Ministry of Labour. According to the state record, 1166 volunteers were registered in 2014 which almost the same level is in 2013. This information differs from the last available data on the number of volunteers in Serbia – 2011

Survey that mentioned some 150.000 volunteers. This is the direct impact of the non-simulative legislative. Legislation enables reimbursement for travel expenses, accommodation and food (other things as well), it is tax free (CSO treated as other legal entities). There is an obligation of the contractual relationships for types of volunteering recognized by the Law. The contract elements taken from the Labour Law and treated volunteering as a free labour.

State support programs available only within Ministry of Youth in amount of 32.000.000 RSD (app 262.000 EUR) is given for organizing and promotion volunteer camps in 2015 which will be continued in 2016.

Applications for programs in Ministry of Youth are available during regular annual public calls. The procedure regarding M&E is the same as for other types of programs and project supported by this Ministry.

On certain other points, the Law remains unclear; for example, it introduces the division into long-term, short-term and ad hoc volunteering, but without a clear distinction between them (or clear obligations that would arise from the selection of a given form of voluntary engagement). Additionally, the Law on Volunteering allows a corporation to be a host of volunteer activities, provided they are carried outside its business premises and are approved by the Ministry of Labor and Social Affairs. 81,58% respondents in CI research stated they have never been faced

restrictions on volunteering (bearing in mind that most of CSOs do not register their volunteer activities).

After years of pressure and advocacy by the civil sector, the Ministry of Labor, Employment, and Social Affairs at the end of October 2015 finally formed a special working group²⁴ to deal with effects of the existing framework for volunteering, and in which there are 10 representatives of CSOs. CSOs are proposed by 2 umbrella youth organizations (KOMS and NAPOR) through very consultative internal processes. It should be noted that for the forming of this working group and its structure the merits reap the Ministry of Youth and Sports and State Secretary Mr. Nenad Borovcanin, who have recognized the initiative and interest of youth organizations to change the framework for volunteering and promote volunteering among young people. Requirements of CSOs in connection with changing this law continue to apply to encourage volunteering, precisely defining the terms of short-term and long-term volunteering, volunteer costs, record keeping method of organizers of volunteering and submitting reports.

As for the support and promotion of non-formal education through legal framework and strategic documents, there are positive examples from 2015. In the Strategy of Education by 2020²⁵ one of strategic measures refers to the establishment of a certification system of the previous learning/recognition of

non-formal and informal learning. On the other hand, production of proposals of the national framework of qualifications (NOK) in Serbia runs very slow and its adoption would contribute to the recognition of non-formal and informal education as a means of gaining qualifications and for the first time in the catalogue of national qualifications could be found occupations that are unique to the civilian sector. Serbia is the only European country which has not established national framework of qualifications. In the draft of the National Strategy for the Enabling Environment for Civil Society Development in the Republic of Serbia, a special chapter is devoted to the role of civil society in non-formal education, and key action measures which the Strategy foresees include changes and additions to the law on education of adults which would allow the introduction of more flexible requirements for organizations to gain public recognized organizer of activities, the establishment of a formal management educational statistics on non-formal education which involves CSOs as actors in this area., the establishment of a national system of recognition of qualifications acquired through non-formal education, which would treat equally the qualification acquired through non-formal education which the CSOs programs provide. The forming of special unit for non-formal education within the Ministry still is in progress.

Civic education still is an elective subject, so that the choice of listening to this subject still depends on the preference of parents and possible initiatives of younger adolescents (15-18 yrs.). Continued is the presence of the same problem at the organizations of teacher lessons, teaching competencies and rating method.²⁶ The greatest responsibility still lies in the hands of teachers (most often

²⁴ The decision on the establishment of the Special Working Group to analyze the effects of the Law on Volunteering and the situation in the area of volunteering in the Republic of Serbia (Ministry of Labor, Employment, and Social Issues. The approval number 021-01-34 / 3-2 / 2014-05, 1. April 2015)

²⁵ http://www.mpn.gov.rs/wp-content/uploads/2015/08/strategija_obrazovanja_do_2020.pdf

sociology teachers or school psychologists), who ought to motivate students with their teaching methods and class organization to attend this class. A big problem is the descriptive evaluation (active/not active/very active), which negatively influences the relation of the students toward the subject in the sense of obligation to attend class.²⁷ There is no social science covers civic initiatives (specifically asking questions, launching and initiating campaigns and resolving issues) within the university level, so this kind of knowledge can only be obtained through the role of a practitioner in some CSOs or by studying foreign literature on the topic, which also is a form of informal education. Thus, the educational system does not have the possibilities for civic engagement in CSOs and the advancement of their development, especially when it comes to competing for accession

funds and the implementation of projects and knowledge needed in these areas..

Civic education teachers came in to central focus after the release of the list for a rationalization of the number of employees in education by the Ministry of Education, Science and Technological Development. On that list are found 409 teachers in high school and 586 teachers of the subject of civil education in primary schools. More than fifth of the total number of teachers who are teachers of civic education are accounted as redundant. The proposed method of realization has again actualized an already existing problem that teachers who do not have enough hours (full quota) get assigned to teach civic education course, and for that they have no qualifications provided by the existing regulation or have never taught civic education course²⁸.

During 2015, the opportunity has been missed for the civil society sector to more strongly connect with the scientific and academic community. The draft of the Strategy of Scientific and Technological Development for the period 2016-2020²⁹ has completely dropped this link, as generally it did not put the development of science in the function of social development of Serbia. Public debate on the draft of this Strategy did not include CSOs, and the draft text did not recognize the connection of science with the public or with the civil society sector, as the necessary synergy that will enable the progress of the whole society. Joint research of the academic, civil and public sectors will contribute to better public policies, strategies and laws, better practice in the field and a better theoretical research which could be used just as both by the Government and civil society.

Main recommendations for the sub-area 2.3:

Legislative:

- Urgent adoption of Law on Volunteering in order to provide appropriate framework simulative for volunteering, with non burdensome procedures both for volunteers and organisers and unique and relevant evidence of volunteer's number
- Change and amend on the Law on Education of Adults, which would allow more flexible demands for CSOs in acquiring the status of publicly acknowledged organizers of activities and establishing official statistics on non-formal education, which includes CSOs as stakeholders in the field
- Introduction of policies that include standards and criteria for evaluation of non-formal education
- Civic education as a subject to become obligatory in primary and elementary schools

Practice:

- Encouraging CSOs reporting on the practice in the area of employment in CSOs
- Increase number of incentives and state supported programs for the development and promotion of volunteering in CSOs
- Make public existing and introduce additional regular statistical analysis of the non profit sector, to be comparative with other sectors throughout the world
- Among CSOs encourage for establishing system for monitoring evaluation and record of volunteer work as well as introduction of Ethic code of volunteers as self-regulatory tool on rights and responsibilities of volunteers.
- Introduction evaluation and record of volunteer work
- Introduction possibilities for civic engagement in CSOs to the educational system.

²⁶ http://www.mpn.gov.rs/wp-content/uploads/2015/08/EVALUACIJA_IJBORNOG_PREDMETA_GRADJANSKO_VASPITANJE.pdf

²⁷ www.etssd.edu.rs/dl_poslovnici/pravilnik%20o%20ocenjivanju.pdf

²⁸ <http://www.gradjanske.org/najbolji-nastavnici-da-zadrze-posao/>

²⁹ <http://www.mpn.gov.rs/wp-content/uploads/2015/08/PREDLOG-STRATEGIJE-2016-do-2020-poslat-na-misljenje-28-decembra-2015.pdf>

1.2. a. Number of employees in CSO (permanent and part-time)

In terms of data availability, still there is no official statistics for 2015. There are accurate data on the number of permanent employees in CSOs collected by SBRA based on financial reports of CSOs, public available on the annual level. Data on the number of part time employees in CSOs collected by Fund for Pension and Disability Insurance according to different methodology and are not public available on the annual level. According to last available consolidated data from the both sources (2013) total number of all types of employees in CSOs was 6.170 which is 20% drop relative to 2012 when there were 7.700 persons. According to last available data from SBRA, the number of the permanent employees in CSOs in 2014 was 6.651 which is 0,36% of the total employment in Serbia in 2014.

1.2.b. Number of volunteer projects offered to citizens

According to the Law on volunteering, the Ministry of Labour, Employment, Veteran and Social Policy keeps records on organizers of volunteering activities. Since coming into effect of the Law, the Ministry received 212 registrations. In accordance with the Law, the organizers are to submit to the Ministry a report on volunteering by 31 March of the current year for the previous year. Thus, in 2014, 52 organizers of volunteering submitted their reports. According to the reports, 1166 volunteers were registered in 2014. This information differs from the last available data on the number of volunteers in Serbia – 2011 Survey that mentioned some 150.000 volunteers. This is the direct impact of the not

stimulative legislative. Most of CSOs using legislation gaps, do not register their volunteering activities in the Ministry. The progress in 2015 is forming of working group coordinated the Ministry of Labour, Employment, Veteran and Social Policy which will analyze impacts of the existing Law. 10 representatives of CSOs participate in it.

1.2.c. Quality of legislative framework

No changes in the legislative framework in 2015. There are no discriminative articles for CSOs in labour legislation.(including active employment policy), but egislative framework still is not stimulative towards promotion of volunteering The framework has marked volunteering to a free job and completely edited it in a way which is characteristic to labor-law regulations which is not stimulatory towards promotion of volunteering. The Law does not distinctively explain terms of volunteering in non-profit organizations, public and private sectors also included. There ir reimbursement for food/ refreshment as well as travel expenses for volunteers but with tax limitation prescribed by tax law and same as for employees in CSOs.

Area 3: Government - CSO relationship

Sub-area 3.1: Framework and practices for cooperation

The Office for Cooperation with Civil Society (hereinafter: the Office) was established in 2011. with the purpose of systematic inclusion of civil society organizations into a permanent dialogue with government institutions, which should be based on a transparent and structured communication and

regular exchange of experiences, information and opinions. The Office is the main institutional mechanism to support the development of a dialogue between the Serbian Government and CSO's. Office is supporting the governmental institutions to understand and recognize the role of CSOs in decision making processes. At the same time, the Office facilitates communication between two sectors in the process of defining and implementing legislative procedures and public policies.

Office already contributed to establishing clear criteria for transparent budgetary funding of CSO's on the national and local level, through adoption and recent changes of the Regulations on Transparent funding for CSOs, but also through issuing three Annual Consolidated Reports on public funding in 2011,2012 and 2013 (2014 Report underway). Office became a focal point for the EU program "Europe for Citizens" and also introducing a mechanism for co-funding, for CSO projects approved by the European Union. Office has been very active in promoting within public administration the further understanding and recognition of the importance of civil society as a great resource of human and social capital, whose active participation in public life and advocacy of democratic value is aimed to create a better society for all. This is especially visible recently with the Office intensive work on engaging CSOs in the EU negotiation process. The Office also provides training, capacity building and information sharing, not only to public administration, but also to CSO sector, on relevant issues. As stated in the 2014 Office Annual Report "an important part of the mandate of the Office is convening round

tables, meetings and conferences aimed at strengthening capacities and enhancing sustainability of civil society organizations as well as cooperation and sharing of experiences with similar governmental institutions in the region, in the countries of European Union and in the world. In order to fulfil its mandate, the Office initiated and partnered in organizing numerous national, regional and European meetings³⁰. The total number of meetings initiated by the Office or the meetings in which the representatives thereof took part in, in the period 2011 – 2014 was 184. Of this number, more than a half of them (54%) were organised in 2014 which implies that the number of meetings increased as the Office developed. The Office Annual Report for 2015 is underway.

Regardless of slowing down some of the Office's activities in 2015, it is worth mentioning that two baseline studies were carried out during 2015 to collect data from 2014. First one was the "COOPERATION OF STATE ADMINISTRATION AND CIVIL SOCIETY ORGANISATIONS; Baseline Study for the Development of the first National Strategy for Creating an Enabling Environment for Civil Society Development in the Republic of Serbia 2015-2019. This is the first study about the status of civil society organizations (CSOs) and cooperation between the CSOs and public administration, based solely on data collected by the state institutions. The second study is dealing with same data, but on the level of local self governments and is about to be printed. Both studies are of crucial importance for providing reliable and accurate data on CSO sector in Serbia, in order to monitor to-be-adopted National strategy and to be able to assess the level of development and scope of work of CSO sector in Serbia, including also regional and international comparisons.

At the end of 2015, the Government still did not appoint new director of the Government Office for the Cooperation with Civil Society of the Government which reflected on the impact and activities of the Office, particularly the postponing the adoption of the of draft Strategy.

Draft of the first National Strategy for an Enabling Environment for Civil Society Development in the Republic of Serbia 2015-2019 (hereinafter: the draft Strategy) for the first time recognized the strategic approach in the state-CSOs relationship. Unfortunately, adoption of the document is still in progress. The draft of the Strategy was developed through wide consultation process which lasted for more than 1 year with representatives of CSOs. About 600 CSOs participated making the most participatory process of adoption of a strategic document in Serbia thus far. Public debate officially closed during the summer 2015. Parallel to the development of the draft Strategy, an Action Plan and Monitoring and Evaluation Plan were created and were also a subject to a public debate. Development of the draft Strategy also was based on regular official statistical data as well as on specific baseline study about the status of CSOs and cooperation between the CSOs and public administration, based solely on data collected by the state institutions. The study was conducted in the first half of 2015 and the data collected refer to the period 2013-2014, depending on availability. This is a unique undertaking based on official records and statistics, which provide an overview of the operation and functioning of CSOs in Serbia. When implementation starts, regular annual reports on Strategy implementation will be developed and submitted to the Government for adoption. Also, public announcement of these reports is planned.

The draft Strategy covers 5 main areas of cooperation between the state and civil society, reflected on it's needs and mapped during 1st phase of consultative process with CSOs: Framework for cooperation, Financial sustainability of civil society organizations (includes Tax laws changes), Role of civil society organisations in socio-economic development, Role of CSOs in non-formal education and Role of CSOs in European integration processes. Within each chapter, specific objectives defined as well as expected results and activities proposed. The narrative section of the Strategy gives situation in detailed manner at the level of the framework and practice within each area. An Action plan prescribes concrete activities, in charge of structure, partners during implementation, indicators, deadlines and financial sources, while Monitoring and Evaluation Plan gives detailed indicators, description of the monitoring methods and means of verification. Scope of proposed measures consider various activities: laws and by - laws changes, adoption other non-binding documents, introduction and publishing official state statistics, development recommendations of central level authorities for implementation on other state levels, forming Government Council for cooperation with civil society, capacity building of state officials, both on national and local level, promotion good practices etc.³⁰ In charge of structures are both, on national and local level (ministries and local self-governments units), and include responsibility of Office for cooperation, but also some other state structures (State statistic office etc). CSOs are recognized as partners in implementation what is very important.

³⁰ <http://strategija.civilnodrustvo.gov.rs/izrada-strategije/nacrti>

This approach, that included development of the strategic document, parallel with the development of the Action plan and M&E plan, marked as holistic and efficient, because, it enabled analyses of proposed activities in terms of its' sustainability, impact and possibilities for checking progress. Main problems in cooperation between state and civil society identified in the situation analyses. However, some proposed activities in the Action plan will not close all issues. Within each chapter, most proposed activities are included in other strategic documents (e.g. Strategy and Action plan for public administration reform) and cover problems only partially. Regardless of the all mentioned above, general conclusion is that Strategy (when adopted) will provide good framework for development cooperation in a systematic manner. Monitoring plan and Annual reports on Strategy's implementation will also provide good insight in the progress and potential changes in the Action plan.

Council for cooperation with civil society still does not exist. It's forming is proposed in the the draft Strategy, but still there is no consensus within civil sector on

the it's structure and jurisdiction.

In order to enable more inclusive and transparent dialog, consultation and communication with all relevant stakeholders in the field of planning and programming of EU funds and international development assistance, SEIO established in 2011 a consultation mechanism with the civil society organisations (CSOs) - SECO mechanism. This mechanism is based on the consultative process with Sectorial Civil Society Organisations (SECOs) and serves as a platform that enables exchange of information and contribution of CSOs in relation to planning development assistance, particularly planning and programming of the Instrument for Pre-Accession Assistance (IPA). Eight SECO consortia gather over 400 CSOs. Government and representatives of donor community perceive SECO as relevant collocutors and involve them in different consultation processes. However, according to recommendation from internal assessment process conducted during 2015. there are challenges that need to be overcome. Firstly, SECOs do not represent the wider CSO community; there is not

sufficiently developed structure for efficient consultations. Taking in to consideration the complexity of the IPA programming process, smaller/weaker CSOs do not have capacity to participate and to contribute. The awareness of ministry representatives needs to be raised regarding the importance of participation of civil society organizations in the programming and monitoring of international development assistance. Another challenges is the limited capacity of CSO sector. Due to lack of funding, consultations are mostly organized via e-mail and rarely through direct contacts. Therefore, SECO mechanism is currently under reconstruction and Within this process, during 2015 and 2016 several workshops were held in order to improve internal communication and visibility, strategic planning, common understanding of the purpose of the mechanism, equalizing of the reporting and monitoring of the achievements according to defined indicators. Communication and coordination among SECO consortia were in special focus and therefore, new approach established through development of the communication strategy and new web site.

Main recommendations for the sub-area 3.1:

Legislative:

- Urgent Adoption of the first National Strategy for an Enabling Environment for Civil Society Development in the Republic of Serbia, it's Action Plan for the Implementation and Monitoring and Evaluation Plan
- Forming of the Government Council for Cooperation with Civil Society

Practice:

- Establishing regular and public annual reports of the state authorities, according to the methodology of the Baseline study for the purpose of the first National Strategy for an Enabling Environment for Civil Society Development in the Republic of Serbia 2015-2019
- Further strengthening capacities of the Office (Increasing number of employees)
- Urgent appointment of the Director of the Office for Cooperation with Civil Society
- Ensuring CSOs participation in the monitoring process of the Strategy Implementation
- Starting debate among CSOs on forming of the Government Council for Cooperation with Civil Society

EU Guidelines findings reflected in the sub-area 3.1

3.1.b Quality of structures and mechanisms in place for dialogue and cooperation between CSOs and public institutions

The Government Office for Cooperation with Civil Society is the main contact point for dialogue between the Government and CSOs. At the end of 2015, the Government still did not appoint a new director which reflected on the impact and activities of the Office, particularly the postponing adoption of the of the National Strategy for an Enabling Environment for Civil Society Development in the Republic of Serbia. The National Convention on the European Union is a specific body for the dialogue between Parliament and CSOs in the process of accession to the European Union. Taking into account the nature

of the accession process, most of activities of the National Convention during 2015 were aimed at the Government and the Negotiation team of the Republic of Serbia.

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

Guidelines for participation of interested public in the decision making processes, adopted by the Government in 2014 through a consultative process led by the Office, direct the work of the public administration bodies regarding the inclusion of CSOs in procedures of preparing, adopting and monitoring the implementation of regulations with the aim of ensuring their effective and efficient application. Guidelines are one of the key documents for public participation, that introduced

new practice as described in the EU and Council of Europe documents. However, the Guide-lines are a non-binding documents, so problems are still noticeable in: adequate access to information, sufficient time to comment, selection and representativeness/ diversity of working groups acknowledgement of input, degree to which input is taken into account, feedback and publication of consultation results, which is confirmed by the National Baseline survey data. The National Assembly's Rules of Procedures, Government's Rules of Procedures, Law on Public Administration, Law on Local Self Government all prescribe publicity of policy and law drafting processes, but with different level of obligation. All key gaps are identified in the draft Strategy. The framework provides: legal obligation to publish draft laws on the Internet

and drafts are regularly published (expect in cases of urgent adoption), minimum 15 working days for comments, with different practice between national and and local level

The Government Rules of Procedure prescribes mandatory public hearing; proponent is required to conduct a public hearing in preparation of a law that significantly modifies certain issues or issues of special interest to public. A certain level of cooperation has also been established with the Serbian Parliament and there are examples of CSOs' Access to Plenary and Committee Sessions and Parliamentary Hearings, but still there are no formal requirements/obligations for CSOs participation in different decision-making and/or advisory bodies created, nor clear guidelines on how to ensure it.

There is no available consolidate data on the draft laws/bylaws consulted with CSOs in accordance to national legislation.. There is no obligatory of official feedback or degree to which input is taken into account. Not existing as unique information regarding total number of laws/bylaws, strategies and policy reforms passed by the legislative. Data are available in different reports and difficult to obtain. For example, during 2014, there were over 11000 documents adopted on local level. According to the preliminary data for the local level, out of total number established working groups, local self-governments formed 233 working groups/bodies/committees that included CSOs in their work, which is 75% of all working groups formed by local self-governments in 2014.

Although, the number of laws adopted in urgent procedure in National Assembly compared with 2014 decreased for 35%, some very important laws were adopted without public debate.

(80 of 182 which represents 44% in 2015). Lex specialis which enabled the very suspicious foreign investments within the project Belgrade Waterfront is the most important example. Other example that shows gaps in existing framework refers to Ministry for labour, employment, veteran and social affairs. The Ministry published the draft of the Law on financial support to the families (very important law which prescribed social benefits) at the end of December. Public debate lasted during Christmas and New Year Seasons which decreased the number of participants. 50% of our interviews stated that they were informed about public debates from other CSOs. 57,89% of them stated that they use electronic communication which indicate the availability the drafts

The perception (scale 1-5 where 1 is the the lowest level of cooperation and 5 is the highest) of CSOs, interviewed during CI's research shows following: 5,26% of them marked with 5 this indicator, 10,53% of them with 4, 39,47% of them with 3, 31,58% with 2 and 13,16% with 1. In terms of providing adequate information on the content of the draft documents, perception of the CSOs (scale 1-5 where 1 is the the lowest level of access and 5 is the highest): 1-15,79%, 2-31,58%, 3-36,84%, 4-15,79%. It is important to note that perception consider both national and local level.

Although, the feedback on results of conducted public debate is recommended in the Guidelines, taking in to consideration that there is no legal obligation, the practice is very different. Reporting on the conducting of public hearings is most often in the form of publication of the reports on public hearings on the web pages of proponents, publication of integrated comments on the web pages of the proponents, submission of reports to the Government,

publication of reports on e-administration portal. On the scale 1-5 (where 1 is the the lowest level of perception of the feedback and 5 is the highest), most of interviewed CSOs (36,84%) marked this indicator with 3. 23,68% of them with 1, 28,95% with 2 and only 10,53% with 4. Good practice example was the process of the Action plan for Chapter 23 (coordinated by Ministry of justice). This is very different compared to other reports on public debate, prepared by this and other ministries where this practice does not exist.

Seven trainings for civil servants were organized between Office for cooperation with civil society and Human Resources Management Service of the Government of the Republic of Serbia (HR Service) in the period 2012-2014. The topic of most of them was "Cooperation of State Administration and Civil Society in the Process of Development and Implementation of Public Policies". In the course of 2014, HR Service organized two trainings on "Coordination and Cooperation in the Process of Development of Regulations" for 44 state administration representatives, providing also overview of cooperation of state bodies with CSOs. During 2015, Office organized 10 trainings for LSG representatives on transparent state funding and CSOs inclusion in the regulations adoption process.

According to the Office for Cooperation with Civil Society - Baseline Study for the purpose of the Strategy, 16 bodies that reported this form of cooperation also reported direct involvement of civil society representatives in the work of established project or working groups. Statements of interviewed CSOs show that generally, they do not use this kind of cooperation (for most questions regarding this standard, on the scale 1-5 where 1

is the lowest level of participation and 5 is the highest, answers were marked with 3). Still, there is no available data on violation, but it is important to notice that in most of cases, there are no internal measures for working group and there is no mechanisms to ensure adoption of CSOs proposals. According to mentioned study, only a few of the surveyed state bodies established working groups to which they invite, most often, certain civil society organizations that they recognize as relevant for different reasons. (only eight of the total 38 working groups in 2014). There are no clear rules on the procedure for this type of public calls, but in some of cases, the organizations are primarily selected on the basis of concurrence of areas of fulfillment of objectives with the working group topic or according to earlier publications, results and cooperation with the state authorities and the selection process was conducted by The Government Office for cooperation with civil society (Working group for monitoring Anti-discrimination Strategy and Working group for development of the 2nd Action plan for Open Government Partnership). There is no available data on violence. In the decision making processes where their proposals are not accepted, CSOs use other ways for advocacy and making pressure.

According to the preliminary data for the local level, out of total number established working groups, local self-governments formed 233 working groups/bodies/committees that included CSOs in their work, which is 75% of all working groups formed by local self-governments in 2014.

National Convention on the EU (NCEU) is a permanent body for thematically structured debate on Serbian accession

into the European Union, between representatives of the governmental bodies, political parties, NGOs, experts, syndicates, private sector and representatives of professional organizations. NCEU was established primarily as body with the aim to facilitate cooperation between the National Assembly and the Civil society during the process of the EU accession negotiations. The cooperation is established in accordance to the good strategic cooperation between the highest Serbian legislative body and chosen representatives of civil society, which was enforced by the Resolutions of National Assembly from 2004 and 2013. It was initiated by the European Movement in Serbia and currently gathers more than 700 CSOs (NGOs, 19 faculties, 12 institutes, 24 professional associations, 11 unions and 3 business associations). Cooperation with the Government was formalized after consultation process which was led since May 2015 by Chief of Negotiations team and the cabinet of Ministry of EU integrations on modalities of communication with NCEU, level of transparency and level of availability of information and documents related to EU Accession process. In August 2015, in its decision - Government of Serbia recognized NCEU as key channel in informing citizens on EU Accession process. Level of cooperation between NCEU and National Assembly remains on very high level.

Law on Free Access to Information of Public Importance defines clear procedures for access to public information, conditions, exceptions and deadlines to be met. According to the Law, everyone shall have the right to be informed whether a public authority holds specific

information of public importance, i.e. whether it is otherwise accessible as well as everyone shall have the right to access information of public importance by being allowed insight in a document containing information of public importance, the right to a copy of that document, and the right to receive a copy of the document upon request, by mail, fax, electronic mail, or in another way. Law on Free Access to Information of Public Importance also prescribes sanctions for civil servants for breaching the legal requirements on access to public information. There is no possibility for appeal on decision of 6 key state subjects: The National Assembly, The Government, The President, The Constitutional Court, The Supreme Court and The Supreme Prosecutor.

According to last available data (2014) of the Commissioner for free access to information of public importance, the number of requests for access to public information increases every year as well as the number of appeals to the Commissioner. In most of cases (about 90%) appeals are adopted. It is indicated that in more than half cases, state authorities provide the information, after warning of Commissioner. The most of appeals refers on national state level. The most significant challenge regarding Law implementation is exception of the most important state authorities' subjects. The Commissioner's power is to propose the sanctions. There are cases when even he had to prescribe fines, execution couldn't be carried. In those cases he requested the Government for assistance but without success. Also, there are cases when state authorities initiated administrative proceedings against the Commissioner.

Main recommendations for the sub-area 3.2:

Legislative:

- Adoption law or binding by law document with clearly defined standards on the involvement of CSOs in the policy and decision making process.
- Changes in the Government Regulation on the principles for internal organization and job classification in terms of clearly defining criteria for introduction specified units or officers for cooperation with civil society and obligatory of educational trainings for civil servants on CSOs involvement
- Changes in the Law on Local Self Government and adoption additional by-laws in terms of clearly defining criteria for introduction specified units or officers for cooperation with civil society on local level and obligatory of educational trainings for civil servants on CSOs involvement
- Changes in the Law on Public Administration, Law on Local Self Government, Government's Rules The National Assembly's Rules in terms of clearly defining obligatory of publishing both draft and adopted laws
- Changes in the Government Rules of Procedure and adoption of binding law or by-law with clear criteria for CSOs inclusion in cross-sector bodies.
- Based on consultations with the Commissioner for Free Access to Information of Public Importance in the Law on Free Access to Information of Public Importance which shall provide higher level of responsibility of all state levels

Practice:

- Encourage CSOs for constant monitoring and reporting on consultation processes
- Establishing annual state statistics on CSOs inclusion in regulations adoption processes on local and national level
- Additional trainings for civil servants on CSOs inclusion in regulations adoption processes
- Consistent implementation of the Commissioner's decisions in the cases of violations of the Law on Free Access to Information of Public Importance by all state authorities
- Capacity building for state authorities, local self-government representatives and civil society organizations on importance of cooperation with CSO

EU Guidelines findings reflected in the sub-area 3.2

3.1.a. Percentage of laws/ bylaws, strategies and policy reforms effectively* consulted with CSOs

There were no changes in the legal framework regulating public consultations and still consist of: Government Guidelines for inclusion of civil society organizations

in the regulation adoption process with provisions in The National Assembly's Rules of procedures, Government's Rules of procedures, Law on Public Administration and Law on Local Self-Government, Regulation on the principles for internal organization and job classification and The Strategy of Public Administration Reform.

This means that still there is no consolidate data about CSOs consultations. This is clearly reflected in the Government Office for Cooperation with Civil Society Baseline Study. There is no available consolidate data on the draft laws/bylaws consulted with CSOs in accordance to national legislation. For example, during 2015, the National

Assembly adopted 182 laws, from which 44% (80) were under the urgent procedure. This is less compared with data for 2014 when 79% law adopted in an urgent procedure. The framework provides: legal obligation to publish draft laws on the Internet and drafts are regularly published (except in cases of urgent adoption), minimum 15 working days for comments, with different practice between national and local level. In terms of selection and representativeness and diversity of working groups on both national and local level, invitations are sent to those CSOs that authorities have been already cooperating with, and key criteria is that CSO area of work is in accordance with the topic of the working group. There is no obligatory of official feedback or degree to which input is taken into account. Not existing as unique information regarding total number of laws/bylaws, strategies and policy reforms passed by the legislative. Data are available in different reports and difficult to obtain. Baseline survey incomplete data on national level, 13 public bodies that participated in the survey in 2014, formed 38 working groups and other types of bodies/committees in which they involved CSOs. According to the preliminary data for the local level, out of total number established working groups, local self-governments formed 233 working groups/bodies/committees that included CSOs in their work, which is 75% of all working groups formed by local self-governments in 2014.

Sub-area 3.3: Collaboration in service provision

The Law on Social Protection (March 2011) introduced CSOs as potential service providers, which is a novelty as compared to the previous Law, criteria for standardization and licensing need to be fulfilled first. Identified Law gaps still are not filled). Also,

all predicted by-laws, necessary for full Law implementation are still not adopted.

According to the Law on Social Protection, CSOs are allowed to provide innovative services and they are not a subject of stricter requirements in the areas in which they provide services compared to other service providers. But, from the other side, the process of licensing CSOs as service providers in the system of social protection has not taken root enough, considering the very high functioning standards (in regard to the space for offering services) that must be satisfied, and for which the CSOs have no possibility to fulfill. The most important by-law documents related with full implementation of Law on Social Protection is still not adopted.

Regarding the legislative framework, important novelty is that, at the end of 2015, an initiative by Trag Foundation for amendments to the Corporate profit tax law has been adopted, which was supported by the Civic Initiative together with 113 other organizations³¹. Among other things, these changes prescribe that disbursements made to social welfare institutions and other providers of social services, can be considered an expense for the company. These changes will enable equal treatment of civil society organizations as social service providers, opening up new possibilities for additional funding for CSOs - providers of social services by legal entities.

Although, the Law predicts the obligation of public call/tender announcement by local self-government units if there is more than 1 licensed provider, the practice is very different. There is

a wide practice of direct financing services provided by Centers for Social Welfare, beside other licensed CSOs. In some cases, licensed CSOs are awarded as grantees within regular public call for CSOs, although, they are providing social services - 39,47% of interviewed CSOs stated that they are providing services based on the contract, while 28,95 % of them consider tender procedures as unfair. CSOs are not included in all phases of the development and provision of services, having in mind that only state institutions - Centers for Social Welfare- are authorized to estimate if there is need for social services and for which services Ministry for Labor, Employment, Veteran and Social Rights official data states a total number of 108 licensed providers of social services. 27 of them are CSOs which is increase for 20 CSOs in compare with 2014. Even that, 34,21 % of CSOs consider procedure as burdensome. Average cost amount of the licensing process exceeding 100,000.00 RSD (almost 1.000 EUR).

The Budget prescribes following budget lines, available for social services providing: 472 - Benefits of social protection but there is large practice of financing services through the budget line 481 - CSOs activities. The Law on Public Procurement (2012), which requires transparent tender procedure in case of bidding for funding services from public sources (including social service from the budget line 472), with criteria that not many CSOs can meet.. Based on budget rules in Serbia, no multi-year funding available.

In most of cases, CSOs as social service providers financed through the budget lines 472 and 481. Based on earlier data (2012-2014), 90% funds for CSOs as social service providers are allocated from the budget line 481. 31,58% of CSOs that provide

³¹ <https://www.tragfondacija.org/pages/posts/obezbeden-ravnopravan-tretman-ocd--pruza-oca-usluga-socijalne-zastite-u-zakonu-o-porezu-na-dobit-pravnih-lica-1922.php>

social services considered that allocated funds to CSO are not sufficient; the funds are reduced to a level that is hardly carried out activities, minimal operating costs and almost never institutional - development costs. 18,42% of CSOs considered that the funds they receive from the state is sufficient to cover the basic costs of providing services. 13,16% of interviewed CSOs stated about delays in payments. Only 3 interviewed CSOs stated about flexibility of state authorities in payments.

The Public Procurement Law prescribes measures, procedures and types of procedures for the funds for services distribution. There were more changes of the Law in order to harmonize it with EU legislative, including last in the August 2015. The last changes were adopted without public debate. The amendments have been made with the aim of improving efficiency and reducing costs of the public procurement procedure, which enables undisturbed performance of the purchaser's activity. However, there are still a numerous gaps in the Law, which are potential areas for corruption and manipulations for all types of procurement and bidders. Mandatory conditions which the bidder in the public procurement procedure must fulfill and refer to: registration, i.e. entry into register; absence of certain felonies of the bidder and its legal representative; absence of any injunctions/restrictions pertaining to performance of activities; paid taxes and contributions; valid bidders' license. Additional conditions for participation in the procurement procedure are determined by the purchaser in the tender documents. The purchaser can determine additional conditions in terms of financial, business, technical and personnel capacity. In addition, by tender documentation it can also be determined that the bidder must

prove that the bankruptcy or liquidation procedure has not been initiated against it, i.e. previous bankruptcy procedure or additional conditions if they are related to social and environmental issues, as well as additional conditions in terms of fulfillment of the obligations that the bidder has toward his subcontractors and suppliers. Services funded from the line 481, are measured by principles and rules according to legislative on state funding for CSOs.

According to the Law on Social Protection: the purchaser is obliged to provide the highest quality and most cost-effective provision of social services to be procured through the procurement. Criteria for selection are determined in the Rulebook on mandatory elements of tender documents in public procurement and the manner of proving eligibility. The Law on public procurement prescribes following criteria for selection: 1) the economically most advantageous bid or 2) the lowest price offered. The economically most advantageous bid criterion is based on various criteria, depending on the subject of public procurement, especially including: 1) price offered, 2) payment terms, 3) delivery period or period of completion of services or works, 4) current costs, 5) cost effectiveness, 6) quality, 7) technical and technological advantages, 8) after-sale service and technical assistance, 9) warranty period and the type of warranties, 10) obligations concerning spare parts, 11) post-warranty maintenance and 12) aesthetic and functional characteristics. Beside the Law, principles for selection are predicted also in the by-laws: Rulebook on the contents of the report on public procurement and the manner of keeping records of public procurements, Rulebook on the form and content of a procurement plan and report on

the performance of a procurement plan, Rulebook on the form and content of requests for opinions on the merits of the application of the negotiated procedure, Rulebook on the civil supervisor

Public procurement Law (in Articles 100 - 118) incorporates separate body and prescribes the rules of distinct administrative proceeding which shall be conducted by such body. The Republic Commission for the Protection of Rights in Public Procurement Procedures is autonomous and independent body of the Republic of Serbia which ensures the protection of bidders' rights and public interest in public procurement procedures. Within its competences the Republic Commission decides on requests for the protection of bidders' rights and public interest, decides on appeals lodged against the procuring entity's conclusions, decides on the procuring entity's proposal that the submitted request for the protection of rights should not stay the activities in public procurement procedure, decides on the expenses of the rights protection procedure, monitors the implementation of decisions adopted by it, cooperates with foreign institutions and experts in the field of public procurement and performs other activities accordance with the law. The Republic Commission renders a Conclusion as a decisive act by which it rejects a request for the protection of rights, terminates the procedure on the basis of receiving a written notice on withdrawal of the request for the protection of rights prior to the making of the decision, rejects the appeal as inadmissible, untimely or lodged by an unauthorized person, accepts the request for the protection of rights and cancels the public procurement procedure wholly or partly if the request for the protection of rights is well-founded, rejects the request for the protection of rights as unfounded or confirms the conclusion of the procuring entity or cancels the

conclusion of the procuring entity and orders further actions of the procuring entity.

There is a wide practice of contracting services within the budget line 481. According to data from the analysis done by Civic Initiatives on budget financing of social services for the period 2012-2014, only 15 local self-governments (not in every year) paid for services from the budget line 472 which still does not indicate existing of public procurements. There is a very clear tendency of increase funds from the line 481 (for 3-years period, 94% is from this line). Of the total funds from both lines for 3-year period, amount 10-12% were awarded to CSOs. Centers for social welfare still are in the privileged position.

Although, according to the Law, CSOs are equal social services providers, the practice shows different position compared with centers for social welfare. 28,95 % interviewed CSOs considered competitions unfired. Conclusions from the P2P Conference on

social service providing (June 2015) indicate that the employees in the centers for social welfare have high resistance of to all other providers of social service outside of the public sector³².

There is a lack of capacities of state officials, particularly on the local level. According to data from the analysis done by Civic Initiatives on budget financing of social services for the period 2012-2014, local-self-governments official do not understand provisions of the Law on social protection generally. They considered social benefits as social services, as well as they do not recognize purpose of strategic approach and beneficiaries' needs in the social services providing. At the end of 2014, only 25% of them owned strategy of social protection.

Possibility of the monitoring social services providing is prescribed by the Law on Social Protection, as well as by Regulation on licensing CSOs social service providers and Rules on the conditions and standards for the provision of

social services. Clear standards are determined in the Rules on the conditions and standards for the provision of social services. 34,21% of interviewed CSOs stated that CSOs as social service providers are not the subject of some excessive control. Within budget line 481, as for other types of grants, monitoring end evaluation of quality and effects/impact of services provided are performed during the project implementation as well as other projects. No available data for services financed from the line 472.

Role of CSOs in the field of health care is not defined in health policy and normative acts. The lack of a clear framework for co-operation prevents a greater role of CSOs in health care. The cooperation of the Ministry of Health and CSOs takes place through the Programme of Support to Associations and Organizations which provided financial support in the line 481 to certain CSOs. This Programme also includes support to the activities the Red Cross of Serbia.

Main recommendations for the sub-area 3.3:

Legislative:

- Amend Law on Social Protection in terms of relaxing formal conditions and costs for CSOs in the process of licensing
- Adoption all by-law documents for full implementation of the Law on social protection particularly Government Regulation on transfer funds for social services to the LSG
- Amend Law on Public-Private Partnerships and Concessions in terms of contractual public-private partnership that could ensure a fair competition between different service providers protection
- Amend budget legislative so that multi-year funding for social services is possible
- Amend Law on Healthcare protection and adoption relevant by-laws in terms of introduction CSOs as service providers

Practice:

- Additional educational trainings for local self-governments officials for better understanding the principle of plurality in service providing
- Introduction service costs calculation which shall provide sufficient funding to cover CSO basic costs, including overheads
- Introduce more flexibility in the funding of social services
- Capacity building for CSOs for the process of licensing
- Capacity building of CSOs as well as state officials on monitoring and evaluation of social services providing
- Independent monitoring of CSOs in social services providing

³² Conclusions - TACSO P2P conference on social services providers, Palic, June 2015

VI USED RESOURCES AND USEFUL LINKS

1. List of legal and strategic documents, reports and analyses used

- a. The Law on Personal Income Tax, Official Gazette No. 57/2014
- b. The Law on Health Protection, Official Gazette No. 107/2005, 72/2009 – second law, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 – second law and 93/2014
- c. The Law on Social Protection, Official Gazette No. 24/2011
- d. The Law on Official Use of Language and Alphabets, Official Gazette No. 45/91, 53/93, 67/93, 48/94, 201/2005 – second law and 30/2010
- e. The Law on Local Self-Government, Official Gazette No. 129/2007, 83/14
- f. The Law on Public Information, Official Gazette No. 83/2014
- g. The Law on Public Property, Official Gazette No. 72/11, 88/2013
- h. The Law on Public Administration, Official Gazette No. 79/05, 101/07, 95/10, 99/14
- i. The Law on Compulsory Social Insurance, Official Gazette No. 57/2014
- j. The Regulation on the means of fostering or missing part of the funding for the program in the public interest implemented by associations, Official Gazette No. 16/11

k. The Government's Rules of Procedures, Official Gazette No. 61/2013.

l. The National Assembly Rules, Official Gazette No. 21/2010,

m. Report on the Implementation of the Law on Free Access to Information of Public Importance and personal data protection for 2015

n. Draft of National Strategy for an Enabling Environment for Civil Society Development in Serbia

o. Guidelines for inclusion of civil society organisations in the regulation adoption process, Official Gazette No. 90/14

p. Resolution on the role of the National Assembly and the principles of the negotiations on the accession of the Republic of Serbia to the European Union,

q. Regular annual report of the Ombudsman for 2015

r. Report on the Economic Value of the Non-Profit Sector in the Countries of the Western Balkans & Turkey

s. Baseline Study on cooperation of state administration and CSOs for the purpose for the Development of the first National Strategy for Creating an Enabling Environment for Civil Society Development in the Republic of Serbia 2015–2019.

t. "Towards efficient budget

policies on local level - budget line 481 donation to NGOs" by The Centre for Development of Non-Profit Sector & Centar and Public Policy Research Centre

u. "Line 481 - to improve the processes of monitoring and evaluation", Center for Democratic Development "Europolis" Novi Sad.

v. Annual summary report on expenditure of funds to support the program and project activities provided and paid to associations and other civil society organizations from the public funds of the Republic of Serbia in 2013 - a summary.

w. Status of giving for the common good in Serbia 2015, Catalyst Foundation

2. Useful links

- www.gradjanske.org
- www.razvoj.gradjanske.org
- www.civilnodrustvo.gov.rs
- www.srbija.gov.rs
- www.apr.gov.rs
- www.mos.gov.rs/vesti/omladina
- www.minrzs.gov.rs
- www.zastitnik.rs
- www.poverenik.rs
- www.ravnopravnost.gov.rs
- www.nuns.rs
- www.anem.rs
- www.paragraf.rs
- www.tragfondacija.org
- www.catalystbalkans.org
- www.crnps.org.rs

*Monitoring Matrix on
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Civil Society Development
-Serbia Country Report 2015-*

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