

Monitoring Matrix on Enabling Environment for Civil Society Development

Country Report:
Montenegro
2019



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List of abbreviations

BCSDN	Balkan Civil Society Development Network
CSO	Civil Society Organization
CRNVO	Center for Development of Non-Governmental Organizations
EU	European Union
Law on NGOs	Law on Non-Governmental Organizations
MM	Monitoring Matrix
NGO	Non-Governmental Organization
PBO	Public Benefit Organization
TACSO	Technical Assistance for Civil Society Organizations

Introduction

Centre for Development of Non-Governmental Organizations and the Balkan Civil Society Development Network are pleased to present the [fifth] edition of the *Monitoring Matrix on Enabling Environment for Civil Society Development*, covering developments in Montenegro in 2019.

This report is part of a series of country reports covering seven countries in the Western Balkans and Turkey: Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, Serbia and Turkey. A Regional Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country at www.monitoringmatrix.net.

The Monitoring Matrix, developed in 2013 by BCSDN with support of its members, partners, ICNL and ECNL, 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-areas¹:

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

The principles, standards and indicators rely on 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 that 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 application².

In addition to the in-depth and qualitative monitoring, in 2015 an assessment of the enabling environment with categorization ranging from fully disabling to fully enabling environment was introduced. The system was created in order to address the need for 'compressed' and effective visual communication of findings and systematic presentation of changes in the enabling environment for civil society development (CSDev) on the level of standards across countries and years. It does not replace, but complements the qualitative assessment, as the narrative country reports are the basis on which the categorization is conducted.

The research conducted under the MM aims to provide for shadow reporting on the enabling environment for CSDev and influence Enlargement policy and funding support towards sustainable and strategic development of the sector.

¹. As a research tool for measuring the health of the legal, regulatory, and financial environment in which CSOs in WBTE operate, the Matrix aims to respond to the need of CSOs to have evidence-based research products and capacities to advocate for policy changes towards a more enabling civil society environment.

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

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The Centre for Development of Non-Governmental Organizations (CRNVO) would like to express appreciation to all those who provided the possibility to complete this report with precise data and information. First of all, we would like to thank representatives of 50 CSOs that participated in online questionnaire and provided their insights regarding their work in 2019.

In addition, we would like to thank representatives of media, volunteering organizations, informal groups and mechanisms for cooperation with CSOs, who participated in interviews related to their experience in the field they work in. Moreover, we would like to thank all institutions and authorities that provided answers and information asked through Free Access to Information.

Without all of them, we wouldn't be able to complete this report and provide relevant data on civil society in Montenegro.

Finally, we express our deepest gratitude to BCSDN team members who enabled the preparation of this report and who contributed with their expertise and knowledge in creating this document.

We hope that this report will contribute to the analysis of the state of the civil sector in Montenegro and strengthen our fight for civil society!

Background - Country overview

In 2019, Montenegro faced awakening of its citizens following more and more frequent scandals regarding the ruling party; many important new laws or draft laws were introduced and/or adopted, but there were no significant changes for the civil society sector.

The political situation in Montenegro in the last 12 months was marked by deep divisions and lack of trust and communication between the most important actors. Most notably, the parliamentary Committee that was in charge of creating and proposing a new electoral legislation, finished its work without opposition members in it and currently there are major suspicions in the opposition public about the conditions in which the next parliamentary elections, scheduled for autumn 2020, will be held.

At the end of 2019, the Law on freedom of religion was adopted in a session filled with incidents, and after arrests of all MPs from the biggest opposition parliamentary group. After the adoption of this law, historical national identity and ethnic divisions came to surface again, which were mostly visible during 2006, when Montenegro gained its independence, shadowing all other major issues in the country, and a large protest processions led by the Serbian Orthodox Church started to happen twice a week in different towns across the country. Several large civic protests took place also in the first half of 2019, after a video tape of illegal funding of the ruling party's election campaign of was revealed.

2019 was also a year without significant progress in EU negotiations considering that none of negotiating chapters were neither opened nor closed.

When it comes specifically to the civil society situation, it remained mostly the same as the previous period. From the government officials there is a repeated rhetorical readiness for cooperation, but substantial involvement of civil society is still lacking. A positive development is that the Prime Minister attended several events in which he had discussions with CSO representatives. Furthermore, from the beginning of 2020, he held one-on-one consultations with representatives of some of the biggest CSOs in the country. There are also mixed messages from opposition politicians towards the civil sector. While the majority of them talk fondly and support the role of CSOs, some label them as protagonists of foreign interests and say that their work and funding should be monitored more closely.

Executive summary

Civil Society Overview

	2018	2019
Number of registered organizations (per type) (+ how many have registered in 2019)	5288 (422 registered in 2018)	5705 (417 registered in 2019)
Main civil society laws	Law on non-governmental organizations	Law on Non-Governmental Organizations
Relevant changes in legal framework	Decree On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies	No changes in the legal framework were adopted during 2019.
State funding (for the previous year) (key bodies and amounts)	Ministries in the government – 3,342,929.94 EUR	Ministries in the government - 3,457,712.35 EUR
Human resources (employees and volunteers)	854	N/A
CSO-Government Cooperation (relevant and new body: consultation mechanism)	Council for Cooperation of NGOs with state bodies	Council for Cooperation of NGOs with state bodies
Other key challenges	Fiscal environment, Insufficient official data about CSOs, underdeveloped philanthropy and donations, Insufficient number of employees in CSOs	Fiscal environment, Insufficient official data about CSOs, underdeveloped philanthropy and donations, Insufficient number of employees in CSOs, Lack of funding diversity

Key findings

The Report shows that there are still many obstacles in the work of CSOs. There is no Register on CSOs that is being updated regularly and that comprises all the information about organizations, such as the field of their work, number of employees, contact information, area of work, etc., as the existing Register managed by the Ministry of Public Administration has not been updated in the last two years. In addition, current fiscal policies do not provide enough incentives neither for work of CSOs nor for individuals and corporations to give donations. There are no diverse funds that are sufficient to fulfill the needs of CSOs to implement their projects. Current legislation on service provision of CSOs does not contain any closer information on this area, as there is no unified law. Namely, several different laws regulate service provision in different fields, which is not favorable for work of CSOs. On the bright side, Council for the Cooperation of CSOs and the Government is more proactive than it was the case with the previous one, which results in better dialogue between these sectors.

Key findings of the report	
1.	There is not enough official data on the diversity of the civil sector
2.	Existing tax benefits do not encourage individual or corporate giving
3.	Available state funds do not provide sufficient support to CSOs
4.	There is a lack of legislation on service provision of CSOs
5.	The Council for the Cooperation of CSOs with the Government has reached a more proactive role

Key recommendations

Tax administration is confusing for CSOs, they are still treated equally with businesses and this should be harmonized with the Law on NGOs. A procedure for submitting financial reports, such as balance sheets and income statements, should be simplified for CSOs, as the current procedure is burdensome and complicated. More state supported programs for volunteering should be provided, including volunteering within CSOs, as one of the main actors in society. Improved or newly created register of CSOs should be established, as the current register of CSOs is not updated, nor does it contain sufficient information. CSOs that are service providers should be recognized within a special law and a process for obtaining licenses must be made easier for organizations.

Key findings of the report	
1.	Register on CSOs should be updated regularly containing general information on organizations along with their main field of work
2.	Tax incentives for donors should be introduced, such as exclusion of VAT for donations and sponsorships
3.	Volunteering, internships and/or fellowships should be made a part of curriculum in high schools and faculties
4.	Comprehensive law on CSOs providing services should be drafted and adopted
5.	Register of organizations that provide services and whose programs are accredited should be created
6.	State should introduce institutionalized grants in order to ensure sustainability and capacity strengthening of CSOs
7.	Simplified process of submitting annual financial reports to the Tax Administrations should be introduced for CSOs, as for now the process is the same as for all other legal entities

Findings

Area 1: Basic Legal Guarantees of Freedoms

Sub-area 1.1. Freedom of association

1.1.1. Establishment of and Participation in CSOs

When it comes to freedom of association, it is guaranteed under Article 53 of the Constitution of Montenegro. The Article stipulates freedom of association, without the need for approval, with registration with competent authority. Limitations of this rule are stated in articles 54 and 55 of the Constitution. Article 54 prohibits political association in state organs. It is not allowed for judges, state attorneys, Ombudsman, members of Central Bank Council, Council of State Audit Institution, Military, Police to be members of political associations. Article 55 clearly states that it is not allowed to form any kind of organization that is directed to the “violent demolishing of the constitutional order, violation of territorial integrity, human rights violation or promotion of national, racial, religious or any other type of hate”. It is also prohibited to form any kind of subversive organizations.

Association of citizens is regulated through the Law on Non-Governmental Organizations³ along with three bylaws⁴ that further regulate this area. This Law defines that non-governmental association can be formed by at least three people, of which at least one has to be citizen or resident of Montenegro, or by a legal entity. However, NGOs cannot be established by political parties or state bodies. Foundations can be established by one person regardless of their citizenship or place of residence. This law also allows organizations to form or join networks and alliances. Specific types of association such as unions, religious associations, business associations, political parties, organizations formed by the state, etc. are regulated by special laws. Therefore, we can say that constitutional and legislative framework is favorable for exercising freedom of association. In addition, CSOs define their key field of work in their statute, while Article 32 of the Law on NGOs defines the list of priority areas of public interest (total of 21 priority areas).

CSOs are required to register at the Ministry of Public Administration. In order to register, organizations must have at least 3 founders, whereas registration is free of charge. Organizations should be registered within 30 days from the day of submitting an application. If a decision is not made in that period, the organization will be considered registered on the next working day after the deadline. There are no data on number of CSOs that were not registered within the legally

³ Official Gazette of Montenegro, no. 39/11 and 37/17

⁴ The Decree On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies; the Decree on the procedure and manner of co-financing projects and programs of NGOs supported from EU funds and the Decree on financing projects and programs of non-governmental organizations in areas of public interest.

prescribed time, as Ministry of Public Administration does not own such information⁵. However, total of 12 requests for registering NGO were denied in 2019⁶, mainly due to the fact that names of those organisations were not in accordance with the Law (they included "Center", "Institute", private name of a deceased person whereas the family didn't provide consent, or foreign word) or they did not submit all the necessary documents. In addition, based on answers to the online questionnaire by organizations that were registered during the past 12 months, all registrations were done within the legally prescribed time, the registration procedure was conducted impartially, and they were not asked for additional documents. During 2019, 417 new NGOs registered within the state, while in 2018 that number was 422. However, during public events organized by CRNVO, the issue of long registration process has been brought up. Even though the Law stipulates that the registration should be completed within 30 days, some organizations stated that it lasted for several months. According to representatives of the Ministry of Public Administration, whenever certain change in the Statute or in the name of the organization is requested, a new deadline of 30 days begins on the day the information is submitted.

Informal groups have not been given official requests for registration, nor they were sanctioned for not being registered⁷. There were several informal groups which were very present in the public life, or they had successful initiatives. For instance, the civic initiative "To hold upright" which aimed to save cypresses that were planned to be cut from High School's yard in order to build kindergarten, was partially successful, as the building of the kindergarten was stopped. However, cypresses were cut, despite months of protests of citizens of Bar. Another successful initiative was the civic initiative that aimed to stop the building of the mini hydropower plant on the river Bukovica in the North of Montenegro. Both informal groups had good cooperation and support of CSOs, especially those acting in the field of environment protection. In addition, one of the largest informal groups was the Movement "97000 - Resist" which gathered several thousands of people on the streets and which protested against many political and corruption scandals that emerged in Montenegro. Interest for cooperation with other CSOs existed on both sides, however more serious cooperation was not achieved.

It is allowed for organizations to form networks, coalitions and other types of unions. This is regulated by the Law on Non-Governmental Organizations, which stipulates that for those entities same rules apply as for associations. No prior permission or registration is required, but is possible. Networking is one of the successful ways of joining resources, knowledge and capacities in order to achieve the same goal in Montenegro. So far, there are 256 networks, unions, clusters and coalitions that have been officially registered in Montenegro. Coalitions and networks are usually created within a project which can be an obstacle for sustainability after the project is completed. 68.8% of organizations that participated in online questionnaire reported they are a member of domestic or international network. On average, they are members of four networks. None of the organizations surveyed reported that they had to inform a state body on their intentions to join or form a network, nor the process for registering a network were complicated.

There are organizations established by persons employed in government institutions or local self-governments and legally there are no restrictions or limitations in this regard.

⁵ As per FoI request answered by the Ministry of Public Administration on February 4th 2020.

⁶ As per FoI request answered by the Ministry of Public Administration on March 18th 2020.

⁷ As per interviews conducted with representatives of five informal groups on February 2nd 2020, February 4th 2020, February 7th 2020, February 10th 2020 and February 11th 2020.

1.1.2. State Interference

The legislation clearly prescribes powers as well as the limitations of powers of the Government towards functioning of CSOs. However, these limitations are at time overstepped and the Government directly or indirectly interferes in the work of CSOs. This is usually done through excessive audits, non-funding of programs and projects, but also through the National broadcaster RTCG, where political interference of the State is noticeable, where critically oriented organisations are not welcome and are often boycotted.

CSOs are subject to audit, inspections, evaluations, and similar types of control and monitoring according to the same law that applies to other legal entities, such as companies, corporations. This can be at times excessive, as for instance an organization that has one or zero employees or annual budget of less than 10,000.00 EUREUR, may experience the same kind of control as a corporation with 120 employees and revenue of several million EUR. All CSOs are obliged to submit balance sheet and income statement to the Tax Administration during first quarter of the year for the last year. The need for creating new regulation for submitting financial reports to Tax Administration is recognized in the Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020. However, this has not been realized yet.

Penal provisions are prescribed by the Law on Non-Governmental Organizations, but also by Criminal Law or any other law that applies to every legal entity. Sanctions stipulated by the Law on NGOs are proportionate to breaches made. They are monetary sanctions which are regulated as misdemeanors. The Ministry of Public Administration and the Inspection Directorate did not issue any monetary sanctions against NGOs in 2019⁸. Based on answers of CSOs from online questionnaire, 4% (two CSOs) of organizations reported they were sanctioned due to noncompliance – half of them consider the sanction proportional, while the other half believes the sanction was excessive for the breach. These organizations stated they had the opportunity to appeal in court, but they did not use that right. The institutions did not report cases of appeal in court.

CSOs are allowed to dissolve, according to the law on NGOs. The NGO will be deleted from the register: upon expiry of the period for which it was established, within three days from the last day of that period; on the basis of the decision on termination of work; based on the decision to ban the work of a non-governmental organization; on the basis of the decision to terminate the bankruptcy or voluntary liquidation procedure under summary procedure in accordance with the laws governing the procedure of bankruptcy or voluntary liquidation. The Network is also deleted from the register at the request of members of the association, if the number of members of the association is reduced below the minimum number of founders prescribed by law, and the competent body of the association does not make a decision on the admission of new members within one year.

Based on answers from the online questionnaire, 6.25% of organizations experienced threats by government officials, while 4.16% responded that the government intruded into their internal work, whereas they did not specify what kind of threats they experienced, and the same number said they experienced unannounced inspections by the state authorities. The Inspection directorate stated there were four inspections of CSOs conducted during 2019⁹. Three of those inspections were conducted by the initiative of a physical or legal entity and one was conducted within the regular activities of the Inspection. One of the organizations was issued a warning to remove all noted irregularities, but no monetary fines were addressed.

⁸ As per FoI request answers by the Ministry of Public Administration and the Inspection Directorate.

⁹ As per FoI request answer.

1.1.3. Securing Financial Resources

The Law on Non-Governmental Organizations prescribes that CSOs can acquire financial resources from membership fees, voluntary contributions, gifts, donations, bequests, interest on deposits, dividends, rents, income from business activities and in any other way that is not contrary to the law. The Law allows organizations to receive foreign donations (EU funds, embassies, foundations, etc.), as well as donations from individuals and companies. CSOs are also allowed to participate in public tenders for financing of their projects from state and local authorities and to raise funds from other legal persons such as commercial companies.

Non-governmental organizations, as all other legal entities, are obliged to register themselves at the regional tax authority. They are, according to Law on Non-governmental organizations allowed to participate in economic activities. In order to do so, they must register in the Central Register of Business Entities. CSO can generate income of up to 4.000 EUR. Exception from this rule is if income of organization is bigger than 4000 EUR, but it does not exceed more than 20% of total annual income from previous year.

The number of CSOs in Montenegro that exercise economic activities is 334¹⁰. During 2019, eight new organizations were registered for economic activities. 21.1% of the surveyed organizations reported they exercise economic activity. Out of these organizations, 60% reported they did not have any obstacles in engaging in economic activities, 10% reported complicated rules on reporting and control, and 20% reported comprehensive administrative requests in order to engage in economic activities towards CSOs (for instance, licensing).

Concerning the funding base, there are many different actors that provide funds for CSOs, and many organisations are considered very dependent of external funding. The largest donor remains to be the European Union. Based on answers from the online questionnaire, 39.5% of organizations received funds from the EU. Out of that number, 64% responded the EU funding represents 50% or more of total yearly budget of their organization. In addition, 29.1% responded they receive other foreign funds (from embassies, foreign foundations, etc.). 35% of these organizations reported these funds are 50% or more of total yearly budget of the organization. When it comes to restrictions when receiving foreign funds, 12% of organizations responded they had to register within the state in order to receive funds, while 24% of organizations stated that procedures for obtaining VAT are complicated. Central Bank of Montenegro stated that they do not possess information that any organization was forbidden from receiving foreign funds.

One quarter, 25%, of organizations that participated in online questionnaire reported they receive donations from private sources (corporations, individuals, etc.). However, these donations

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, freedom of assembly and other related freedoms remain to be legally guaranteed in Montenegro. Relevant laws prescribe that all individuals and legal entities can assemble peacefully and establish, join and participate in non-formal and/or registered organisations and although there have been few cases of organisations that were banned from registration, it was due to the non-compliance with the Law on NGOs and the fact the organisations did not supplement the necessary documentation.

¹⁰ As per FoI request answer by the Central Register of Business Entities on February 7, 2020.

represent very small part of CSOs' annual budget, as there are no incentives for individuals or companies to donate to organizations. None of these organizations stated they had any difficulties to access funding from these sources.

Sub-area 1.2. Related-freedoms

1.2.1. Freedom of Peaceful Assembly

The freedom of assembly is protected in the Constitution of Montenegro in Article 52. It guarantees freedom of peaceful assembly, without approval, with prior notification to competent authority. In the same article cases in which this right can be temporarily limited are listed. Those cases are prevention of disorder or crime, protection of health or moral, or for the safety of people and property, in accordance with the law.

This area is regulated by the Law on Public Assemblies and Public Performances¹¹ adopted in 2016. The good sides of this Law are that it contains positive obligations for the state in issues related to the safety of people, property, protection of human rights and freedoms, health, which must be performed by the police in cooperation with other competent bodies and services. The Law defines public gatherings as “any peaceful gathering of more than 20 people outdoors to express political, social and other beliefs and goals, protests, interests and diversity”. In addition, the Law puts clear restrictions to hold an assembly closer than 15m from the Parliament, Presidential Building and Constitutional Court, or within 10m proximity to the Government building.

Spontaneous assemblies are also recognized and allowed by the Law on Public Assemblies and Public Performances. Other assemblies must be reported to the authorities (Police Department) at least five days before they take place. The notification must contain place and date of the gathering and name of the person responsible for it. Police may temporarily restrict freedom of public assembly if such restriction is necessary “to prevent disturbance of law and order, the commission of criminal offenses, endangering human rights and freedoms and special minority rights and freedoms of others, security of persons and property, or at the request of the authorities the state administration competent for health affairs, in the event of a health threat”. The police may also make a decision not to allow a public meeting to be held if it is not timely and duly reported. The organizer may file a lawsuit to the Administrative Court of Montenegro, no later than 24 hours after receiving the decision.

During 2019, the Police Department secured 425 public gatherings, which were in accordance with the Law, while three requests for gatherings were denied out of which all three referred to religious gatherings organized by the Montenegrin Orthodox Church (1 gathering) and the Metropolitanate of Montenegro and the Littoral (2 gatherings). Two gathering requests referred to the same event on the same day, whereas the Police Department banned them due to the possibility of disturbing public order and peace (since these are opposing churches).¹²

Respondents of the online questionnaire who participated in public gatherings (47.9%) stated the following: 13% said that administrative procedure for organizers were complicated, 8.7% said that they faced restrictions on participating in public gatherings, while 8.7% stated that due to the restriction, participants were not able to gather at the agreed time. 8.7% of organizations who participated in public gatherings reported that police restricted the gathering because it was not reported to the authorities. Respondents stated that they did attend various types of assembly. For instance, 20.8% responded they participated in simultaneous assemblies, while 10.4% reported they attended spontaneous assemblies. None of the CSOs were familiar with cases where the police banned the assembly due to the possibility of counter-protests. 8.7% of CSOs who participated in public assemblies during 2019, said that spontaneous assembly was banned

¹¹ <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-javnim-okupljanjima-i-javnim-priredbama.pdf>

¹² As per FoI request answer by the Police Department obtained on February 13, 2020.

or dispersed because the official authorities were not informed about it nor the official permission was obtained.

Media representatives have been able to access and freely report on public gatherings and they did not witness any restrictions in this regard.¹³ No such cases have been recorded by the Ombudsman either, whether by initiative of a physical or legal entity, or by official duty. When it comes to police protection, 65.2% of CSOs who participated in assemblies said the police did not assure peaceful assembly, nor it took precautionary measures during spontaneous assemblies. Official response from Ombudsman was that there were cases recorded where the police did not assure peaceful assembly, whether by initiative of a physical or legal entity, or by official duty. Although a significant number of organisations answered that they feel the police did not assure peaceful assembly and protected them, none of them reported that to the Ombudsman or any other authority, as per official information from these institutions. 4.3% of organizations that participated in public assemblies reported that the police used excessive force on participants. Online questionnaire's respondents said that they witnessed detention of participants of public assemblies (13.04%). Few interview participants of informal groups stated that the police even used excessive force on old people, people with health issues and pregnant women, which was also debated a lot in the media¹⁴. In addition, some of these participants were detained in the police station. At the very end of 2019, i.e. on December 27, 2019, the Parliament adopted Law on Freedom of Religion¹⁵ which caused a lot of disturbances, not only in the public but also in the Parliament. While the Law was being debated in the Parliament, an incident occurred among MPs, which resulted in the opposition representatives being excluded from the voting on the Law. During the entire day the Law was debated, spontaneous public gatherings occurred in several Montenegrin cities and resulted in protests and riots, while some municipalities were blocked¹⁶. More than 30 people were detained.

The media also reported excessive use of force during civic initiatives and protests. Many video recordings of excessive police force during various gatherings were published on online media and portals, which were condemned by the public¹⁷.

1.2.2. Freedom of Expression

Freedom of expression is guaranteed by the Constitution of Montenegro. Article 47 of the Constitution clearly states that everyone is entitled to freedom of expression by speech, written word, painting or other forms. It can only be limited if it infringes right on dignity, reputation or honor of another person, or if it endangers the public moral or security of Montenegro. Although freedom of expression can be limited if it is directed towards someone's dignity, reputation or honor, a person cannot be charged with libel, as it is not part of the Criminal Law anymore. It used to be Articles 195 and 196 of the Law, under the part Criminal Acts Against Honor and Reputation, but it not recognized by the Law as of 2011.

12.5% of surveyed organizations reported pressures for critical speech, and the same number reported pressures for engaging in activities targeting state policies. In addition, participants of informal groups reported that there were many pressures in regard with critical speech, whether

¹³ As per interviews with three media representatives conducted on February 3 2020, February 6 2020 and February 10 2020.

¹⁴ <https://www.cdm.me/hronika/nadlezni-utvrduju-da-li-je-policija-u-baru-prekoracila-ovlasčenja-ucenica-protesta-izgubila-bebu/> and <https://www.dan.co.me/?nivo=3&rubrika=Regioni&clanak=684062&datum=2019-02-11&najdatum=2019-02-16>.

¹⁵ <http://zakoni.skupština.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/884/2178-12812-23-3-19-7.pdf>

¹⁶ <https://www.vijesti.me/vijesti/politika/pregled-cijelog-dana-od-policijske-blokade-podgorice-do-izglasavanja-zakona>

¹⁷ For instance: <https://www.vijesti.me/vijesti/drustvo/pogledajte-kako-policija-odvodi-ucenike-protesta-u-baru>,

on social media or during protests as the police created misdemeanor charges and they brought policemen to falsely testify¹⁸.

Throughout 2019, there were several cases of individuals who were detained and/or sanctioned for posting hate speech on social media. These individuals mostly criticized authorities or high official. In addition, several journalists were arrested for publishing fake news which were focused on state policies. This fake news was labeled as "causing panic". Journalists were later released, however some of them resigned from their positions as editors.

On the other hand, throughout the last several years many smear campaigns were directed towards CSO representatives. This practice continued in 2019 whereas several articles were issued in daily newspaper or portals against some CSO activists. Although these newspapers were usually connected with the ruling party (DPS), last year articles were published on the portal connected with the opposition party Democratic Front (DF)¹⁹.

1.2.3. Access to Information

The new Law on Free Access to Information²⁰ was adopted in 2017, bringing some changes to the first Law which was adopted in 2012. The Law regulates the way of requesting information, as well as the manner of acting upon request, at the same time prescribing 15 days deadline for answering the request. However, in 2019 the Draft Law Amending the Law on Free Access to Information was introduced which caused a lot of reaction among CSOs. Namely, draft law includes new restrictions that are not in according with the Constitution and that would severely limit possibility to exercise this constitutional right. According to critics, particularly problematic is provision where public officials can determine which information is of public interest and therefore public has access to it. Another problematic solution is that a request for free access to information can be declined if it requires to many information. It is clear that these provisions significantly increase limitations much further to those in Constitution and leave a lot of space for subjective interpretations. The Law is still in debate and should be adopted in 2020.

The Law on Electronic Communication²¹ regulates access to public communication services and the internet. There are no limitations to who can use these services, as that can be any physical or legal entity that signs a contract with an operator and agrees to operator's conditions of using services. An operator, a provider of public communications services, may restrict access to its services, that is, terminate a subscriber's contract and terminate the subscription contract, if the latter has failed to meet the obligations due or has breached other conditions specified in the subscription contract. The provider must define in general terms what measures are implemented in the case of certain offenses and the time limit within which the measures are implemented, which must be commensurate with the violation committed and non-discriminatory.

Article 119 of the Law on Electronic Communication prescribes that it is forbidden to listen, eavesdrop or store the content and data of the communication, i.e. its interruption or supervision by other persons, without the consent of the users of that communication, except in cases when

¹⁸ As per interview with a member of informal group conducted on February 4, 2020.

¹⁹ <https://m.cdm.me/politika/vladu-savjetovao-kao-pravnik-kao-nvo-aktivista-pozivao-na-njeno-rusenje/>, <https://www.cdm.me/politika/tezak-udar-na-vladavinu-prava-u-crnoj-gorji/> and <https://www.in4s.net/daliborka-doliva-ulje-na-vatru-stetna-i-neodgovorna-retorika-spc-i-df/>

²⁰ <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-slobodnom-pristupu-informacijama-1.pdf>

²¹ http://www.ekip.me/download/Zakon%20o%20elektronskim%20komunikacijama-40_2013.pdf

it is necessary for the purpose of transmitting the message (fax, e-mail, SMS, voicemail etc.), or when there is legal authority to do so. However, operators are required to provide adequate hardware and software at their network, and at their own expense, to enable lawful interception of communications (Article 125).

Very few CSOs reported that their channels of communication were blocked (6.25%), while the same number stated that they faced restrictions to access information online or offline. It was not specified what kind of restriction was applied, nor for how long communication means were blocked. One informal group member stated that phone calls, Viber and WhatsApp were monitored on several occasions, and they weren't able to access their Facebook account.

CSOs and informal groups representatives didn't report prosecution for activity in an online network or initiative. The Police Department noted there were no online groups that were banned nor any of their members were prosecuted or detained.²² Ombudsman also stated that there were no cases of breaching human or any other rights of members of online groups or initiatives. When it comes to accessibility to the internet, according to the Agency for Electronic Communications and Postal Activities reports on the number of internet users in Montenegro, there were 178,587 internet connections at the end of 2019²³. Out of that number, 94,01% are physical entities and the rest are legal entities. As it is very common that several family members connect to one internet connection, the precise number of population that use internet cannot be determined. Mobile operators do not publish number of mobile internet users, which makes it more difficult to determine percentage of population who are internet users. However, World bank reported that in 2018²⁴, 75% of the population in Montenegro had access to internet.

Analyzing the average internet price based on offers available at internet providers, it was determined that price per 1GB is 3.47 EUR. Bearing in mind the fact that the average NET income in Montenegro is 517 EUR, the internet is affordable, as price per 1GB is 0.67% of average income.

When it comes to communication tools, 6.25% of CSOs reported their communication tools were hacked or blocked. One informal group participant²⁵ reported there were more than 50 attempts each month to hack their social media accounts, as they were getting warnings on their accounts that someone tried to log in their account.

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, freedom of assembly and other related freedoms remain to be legally guaranteed in Montenegro. On the other hand, the introduction of the new Draft Law on Free Access to Information was subject to debate as it introduced less possibilities to access information and is still in consultation process.

²² As per FoI request answer by the Police Department on February 13, 2020.

²³ http://www.ekip2.me/download/izvjestaji/dec2019/Internet_-_decembar.PDF

²⁴ <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=ME>

²⁵ As per interview conducted on February 4, 2020.

Area 2: Framework for CSO Financial Viability and Sustainability

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

2.1.1. Tax Benefits

The legislative and tax system has couple of benefits for civil society organizations. The most important one from Article 13a of the Rulebook on tax exemption procedure regulates tax exemption of projects funded by the European Union. Exemption from VAT is realized on total contract amount, including European Union resources, as well as co-funding resources. Non-governmental organizations are also exempt from tax on real-estate which is in their ownership, if it is used for achieving the goals of organizations. On the same ground they are exempt from tax on real-estate turnover. However, CSO representatives stress that more tax benefits are necessary, bearing in mind the fact that CSOs are non-profit organizations and paying all taxes as companies or corporations do affects the volume of services they can provide. It is significant to emphasize that 58.3% of organizations that participated in the online questionnaire were not familiar with the existence of tax benefits for NGOs.

6.25% of surveyed CSOs reported they had to pay fees to the State in order to receive funds, apart from regular bank fees for transactions. On the other hand, 10.41% of organizations said they had to pay bank fees, while none of CSOs reported they had to pay indirect taxes.

When it comes to taxes for economic activities of CSOs, the tax base is reduced for 4.000 EUREUR if the income is used in a way that contributes to achieving the goals of the organization. Organizations that are founded only for conducting non-profit activities do not pay income tax and are not obliged to report it, according to the Law on Corporate Income Tax. Taxes, surtaxes and contributions to employee earnings are calculated as is the case with any other employer. Tax base is 70% of gross earning at the rate of 9%. Only 2.08% of CSOs reported they used tax benefits for economic activities. However, 6.25% of CSOs stated they use tax benefits such as exemption of VAT.

The Income Statement and Balance sheet, that every organization must submit at the first quarter of the year for the previous year, contain overview of all income and expenses. There is no specific category that is named *Passive investments*, but there is a category *Other income*. None of the CSOs reported they utilize passive investments.

As of December 2019, there are 207 domestic endowments in Montenegro, which are registered as foundations. Out of all CSOs that participated in online questionnaire, only 2.08% reported complicated procedures for registration, while 6.25% report complicated administrative requests for operating endowments. In addition, 2.08% of CSOs reported high financial costs for maintaining endowments.

2.1.2. Incentives for Individual/Corporate Giving

The Law on Corporate Income Tax²⁶ recognizes expenditures in the area of public interest up to 3.5% of the total income of the taxpayer. Amendments to the 2016 Law addressed some of the key problems in the Act: the concept of public interest was aligned with the provisions of the Law on NGOs (recognizing all 21 areas of public interest, instead of only 5 in previous legislation), specifying that benefits would be recognized as expenditures only if they were incurred in legal entities registered for performing activities in areas of public interest defined by the Law, in accordance with special regulations and stipulated that expenditures are recognized not only in money but also in things, rights and services. Unlike the Law on Corporate Income Tax, the Personal Income Tax Act²⁷ recognizes only five areas of public interest (health, education, sporting and cultural purposes and environmental protection) out of 21, and therefore should be further harmonized. According to Catalyst Balkans latest analysis, non-profit organizations were on third place in 2018, behind individuals and institutions, in the category of donation recipients, with 27% of donor actions organized for them. Non-profit organizations received most donations by individual citizens (36.5%). Most frequent donors in Montenegro are individuals who are creditable for 36.9% of donor actions. However, by far largest amount of donations is provided by business sector which secured 71,3% of the full donations sum.

The CSO Sustainability index for 2018 states that majority of CSOs do not have diversified funding sources, bearing in mind that philanthropy, non-monetary donation and corporate social responsibility at low level. The report also stated that although the legal framework does not provide incentives or tax benefits for companies, Telenor, Telekom, Coca Cola Hellenic and Pivara Trebjesa, as well as some banks, regularly finance CSOs' projects by announcing calls in fields such as environmental protection and sustainable development, education and culture, and digital technology. The World Giving Index 10th edition²⁸, which was published in October 2019, provided ranking of 10 highest and 10 lowest scoring countries in the world. Montenegro is placed in the bottom 10, ranking at 119th place out of 126. However, when it comes to donating money, Montenegro is placed 82nd in the world. The development of individual philanthropy is constrained by the lack of trust in Montenegrin society and the limited awareness of the importance of such activities. However, some CSOs do raise funds from individuals through crowdfunding.

50% of CSOs that participated in online questionnaire reported they strongly agree or agree that receiving tax benefits are hard for individual donors. The same number of CSOs believe the same when it comes to corporations.

There is no official data on CSOs working in areas of public interest. Only 2.08% of organizations that participated in online questionnaire reported having PBO status. However, many organizations that work in the field of rights of persons with disabilities, human rights, culture, etc., do have this status. The Law in Montenegro does not recognize tax deductions on any type of donation, which is something many CSOs, as well as corporations, advocated for.

²⁶ <http://www.poreskauprava.gov.me/ResourceManager/FileDownload.aspx?rid=52682&rType=2&file=1216286298.pdf>

²⁷ <https://www.paragraf.me/propisi-crnegore/zakon-o-porezu-na-dohodak-fizickih-lica.html>

²⁸ https://www.cafonline.org/docs/default-source/about-us-publications/caf_wgi_10th_edition_report_2712a_web_101019.pdf

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, no new legislation was introduced in part of Tax and Fiscal Benefits or Corporate Giving. The existing legislation does not provide any incentives for CSOs which affects its work in part of number of employees, number of potential activities and projects, but also it does not provide any stimulations for donations by companies or individuals.

Sub-area 2.2. State support

2.2.1. Public Funding Availability

A new system for distribution of public funds to CSOs' projects and programs has been established. Financing of projects and programs of CSOs is now decentralized. They are funded by government ministries who declare areas of public interest from their area of work and in which projects will be financed. On that basis public calls for funding are announced. Projects are evaluated by independent assessors, and the Commissions in each ministry makes final decision on supported projects.

Government support to civil society is defined in the Law on Non-Governmental Organizations. It states that the State will provide funding for programs and projects of public interest in amount of minimum 0.3% of the annual current budget. Additionally, 0.1% of the annual current budget will be allocated for programs and projects of non-governmental organizations in the area of protecting people with disabilities. Another 0.1% of the annual current budget will be given for co-funding of programs and projects funded from European Union funds. This new, decentralized system of funding was introduced in 2018, and its periodical evaluation is planned for 2021. At the end of each year, ministries that are going to publish calls for funding CSOs' projects in the next year, publish sector analysis calls for all stakeholders and CSO representatives can participate in consultations during this phase.

The new amendments to the Law on NGOs clearly oblige ministries to organize sectoral consultations in order to consult all relevant stakeholders, including CSOs. CSOs are consulted over funding priorities by each government ministry through sector analyses in which CSO representatives participate. However, 64.58% of organizations that participated in online questionnaire said they disagree or strongly disagree with the fact that CSOs actively participate in defining priority areas of public interest.

In 2019, 6,001,249.05 EUR were planned in the Budget line: *Transfer to NGOs* in the Budget of Montenegro. As the Law on NGOs stipulates, Ministries should publish public calls for NGOs by March 1 for projects that are planned to be implemented in that year. Fourteen Ministries announced 28 calls for projects of CSOs, whereas only several calls were published within legally prescribed deadline. Total of 3,457,712.35 EUR were allocated to 193 organizations for 309 projects. In 2018, 3,342,929,94 EUR were allocated, which points to the increase of 3.43% in 2019. Average funding per project was 11,190.00 EUR.

The Ministry for Human and Minority Rights allocated by far the largest share of state funding in 2019 – 43% or 1,487,180.32 EUR. This amount was allocated through five calls for projects for the following areas: protection of persons with disabilities, rights of LGBTQ+ population, minorities, Roma and Egyptian (RE) population and gender equality. The Ministry of Labor and Social Welfare

followed with 7.32%, or 472,177.05 EUR for two calls.

The Ministry of Public Administration co-financed EU funded projects on five occasions in 2019. The call for co-financing is open throughout the year. In 2019, total of 910,737.43 EUR were planned to be allocated. Out of that sum, 378,791.4 EUR were allocated for 23 projects. In comparison to 2018, when 852,273.04 EUR were allocated for 50 projects, significant decrease is noticeable – 56.56%.

37.5% of organizations that participated in the online questionnaire reported that they received funds from the state. Out of these organizations, only 11% report these funds are amounting to 50% or more of their total yearly budget. 43.75% strongly disagree or disagree that available funds are in accordance with CSOs' needs.

2.2.2. Public Funding Distribution

When it comes to national funds allocated by Ministries of the Government of Montenegro, there has been a lot of criticism regarding the new funding system. In 2018, when this system was firstly introduced, 12 out of 17 ministries announced calls for project proposals for CSOs. The Law on CSOs stipulates that all calls must be announced by March 1st of the current year for projects that will be implemented in that year. In 2018, none of the ministries respected that deadline and on average, they were 101 days late with announcing the call. Furthermore, almost 3.6 million EUR were set aside for CSOs' projects, but 93.77% were actually allocated, which means that 221.861,79 EUR were not allocated. In 2019, the situation was a bit different, as several ministries did respect the Law in this part.

On the other hand, the Law on NGOs nor any other act does not stipulate the deadline for announcing the Decision on the allocation of funds, which was heavily misused in 2018, since the average time between announcing the call and the decision was 153 days. However, the Law does prescribe the deadline for completing administrative check phase, which is 15 days after the deadline for submitting projects is finished.

All Ministries that announce calls for funding projects of CSOs should announce them on their websites. The Call is to be published publicly and open for 30 days starting from the day it was announced. All calls should contain information on: the call title, within which priority area it is published, what are specific objectives of the call, what supporting documentation is required, what is the total budget of the call, what is the minimum and the maximum amount that can be allocated, deadline for submitting project proposals, address to which proposal should be submitted. In 2018, all 12 ministries that published calls respected these criteria, which was also the case in 2019 when all 14 ministries abided by the criteria.

After the deadline for submitting projects has passed, the Administrative Check-list is published and CSOs whose documentation is not complete have five working days to submit additional documents. After that, the evaluation of projects is conducted, the Commission decides on projects that received the most points from independent evaluators. After the list of supported projects is determined, it is publicly announced on ministry's website, along with number of points that each project received.

The Ministry of Human and Minority Rights reported there were five cases initiated before the Administrative Court for the Decision on allocation of funds. There were no complaints for the existence of conflict of interest reported by the Ministry of Culture, Ministry of Science, Ministry of Justice, Ministry of Transport and Maritime Affairs as well as Ministry of Labor and Social Welfare. Yet, 64.58% of organizations that participated in the online questionnaire stated that they disagree or strongly disagree that Decisions on allocation of funds are fair. Only 8.33% agree

with this statement.

47.91% of the surveyed organizations stated they agree or strongly agree that state institutions respect the procedure for allocating funds, while 52.08% disagree or strongly disagree. 47.91% agree or strongly agree that criteria for allocating funds are clear and precise, while 45.88% disagree or strongly disagree. Moreover, 66.66% of organizations disagree or strongly disagree that requests for applying are simple, as they stress that many additional documents are asked.

There were many complaints by CSOs that the criterion that organization must submit evidence of a project or program conducted in the previous year in the field the project is announced is too burdensome, as evaluators of one ministry may accept submitted evidence, while evaluator of another may not. Also, ministries propose that one of the following evidence are acceptable: project contract, annual report of the organization, press clipping, narrative report, etc. However, there were cases where commissions or evaluator wouldn't accept only one evidence, but they asked for several more.

2.2.3. Accountability, Monitoring and Evaluation of Public Funding

The Law on NGOs stipulates that the intended use of the funds allocated to non-governmental organizations is controlled by external auditors, who are hired by the advisory body, i.e. the Council for Cooperation Between the Government and Non-Governmental Organizations. In addition, there are templates for conducting monitoring visits and evaluation of implemented projects. Every organization must submit reports during the implementation of the project as well as final report after the project is finalized. Moreover, financial report is submitted along with the narrative report. On occasion, on field monitoring visits are conducted by representatives of the Ministry.

Contracts that organizations sign with Ministries, state that the Commission appointed by the Ministry can analyze finances and expenses at any time during the implementation of the project and two years after the project is completed. In addition, the Commission has the right to contact every physical or legal entity in order to check the credibility of all documentation. If the Commission determines that the funds are used non-purposefully, or that the project was not implemented on time, the beneficiary is obliged to repay all funds with interest calculation within 30 days after the Announcement on the Obligation of Returning Funds is received by the organization. If the commission determines that the beneficiary has not fulfilled his contractual obligations, it will be denied the right to apply for the project funding in the next two years. In the event of a dispute, the problem can be resolved through mediation, and all other disputes can be resolved before the Basic court.

When it comes to monitoring of the implementation of state funded projects, Ministry of Culture created Plan for Monitoring Visits whereas monitoring was implemented in nine CSOs, as well as template for the Report of On-Field Monitoring. Ministry for Human and Minority Rights implemented 10 monitoring visits through attendance of public events as well as through control of interim reports and monitoring of visibility. The Ministry of Labor and Social Welfare conducted 24 monitoring visits for projects in four fields and CRNVO received copies of templates for monitoring visit, interim report, financial report and final report. The Ministry of Transport and Maritime Affairs conducted 12 monitoring visits in 2019, while the rest (13 visits) were conducted in the beginning of 2020. The Ministry of Science didn't conduct monitoring in 2019, since funds were allocated in November 2019, therefore monitoring will be implemented in April 2020. In addition, this ministry does not have a monitoring plan, but instead uses Rulebook On the Criteria for the Appointment of Experts and the Procedure for Evaluation of Research Programs and Projects of Public Interest. Other ministries did not carry out monitoring of supported projects or

they denied access to the information²⁹.

14.6% of organizations that participated in online questionnaires reported they had experience with control of projects funded by the state. Out of these organizations, 71.4% responded that control was based on monitoring of the implementation of project activities, while 28.6% reported the control was done by undertaking on filed visits.

Bearing in mind the fact that the new Law on NGOs was adopted at the end of 2017, only two years of call publishing have passed, therefore periodic evaluation (conducted every 3-5 years) of the effects of state funding have not been implemented yet.

2.2.4. Non-Financial Support

The Law on NGOs stipulates that the state may grant to the non-governmental organization the use of state property (premises, technical equipment, etc.), in accordance with the Law Governing the Use, Management and Disposal of State Property, or other law. In addition, each ministry that allocates funds may decide on providing any other type of non-financial support (organizing events, trainings, providing equipment, human resources, etc.).

In the Law on State Property, NGOs are not recognized as subjects of use of state land. However, Local Self-Governments may allocate property to CSOs based on published criteria. Although, these criteria are mostly not clear nor the allocation is conducted transparently. There are many CSOs that have been working hardly in order to provide the best services to their target groups and that have still not received premises for use, even though some of these organizations have PBO status. Other non-financial support is not defined by any Law, but Ministries decide on it based on individual requests by CSOs.

Based on answers from nine ministries, only the Ministry for Human and Minority Rights provided non-financial support to CSOs on several occasions (e.g. by providing some equipment, covering participants' accommodation expenses, organizing an info session etc.) These means were not transferred to organizations' bank accounts, but covered directly by the Ministry. Ministry of Culture, Ministry of Science and the Ministry of Labor and Social Welfare stated they did not receive any requests for non-financial support, whereas other three ministries denied access to information.

It is noticed that CSOs are mostly not familiar with opportunities for non-financial support by the state, as majority of the online questionnaire responses for each question was "I do not know". Namely, 47.91% of organization do not know whether the conditions for receiving non-financial support are easy to fulfill. The same percentage of organization disagrees or strongly disagrees with the statement, while only 4.16% agree with it.

Furthermore, 54.16% of organization disagree or strongly disagree that CSOs have advantage for receiving non-financial support in comparison with other entities (sport clubs, culture institutions, etc.), 43.75% do not have opinion on this, as they marked the answer "I do not know", while only 2.08% agree with the statement.

When it comes to organizations that are critically oriented towards the State, 16.66% agree or strongly agree that these organizations can apply for non-financial support, 33.33% disagree or strongly disagree, while 50% doesn't know. Moreover, 50% of organizations disagree or strongly disagree that Decision on allocating non-financial support are fair; 4.16% agree or strongly agree, and 45.83% doesn't know.

²⁹ All information obtained through responses to FoI.

There have not been officially reported cases of CSOs being deprived from or not given non-financial support due to their political affiliation/critical stance.

However, there is a general perception that CSOs who work on the “catch-all” principle emerge and that they have the Government’s support, which is supported by the fact that their representatives are being elected in advisory and other decision-making bodies. This perception is generally present in the sector, and the indicators are these representatives in the bodies. Due to this trend, it would be good to establish a methodology according to which the existence (and characteristics) of GONGOs and PONGOs would be unambiguously determined, and then, based on that methodology, a survey on the number of these organizations should be conducted.

Box 1: EU Guidelines assessment here

Result 1.1. Public funding is regulated by the Law on NGOs, which was introduced in 2017. It is available and provided in a transparent manner. However, improvement is needed in this area as small and in-development organizations often do not have enough capacities in order for their projects to be supported, but funds are allocated to medium and big organizations.

Sub-area 2.3. Human resources

2.3.1. Employment in CSOs

The Labor Law does not differentiate between employees of corporations, state or CSOs. CSOs are obliged to pay full taxes and surtaxes for every employee. However, the Law on NGOs stipulates that CSOs do not have obligation to have any employees, as it is case with other legal entities. On the other hand, since there are no articles that provide incentives for employment in civil sector, majority of organizations do not have any employees. Draft of the new Labor Law was recently upheld by the Government. This draft law contains several provisions that are important for CSOs. Most notably, it will be possible to hire someone on fixed term contract for a period of up to 36 months. Also, work from outside employer’s premises is recognized which is important for smaller organizations who don’t have adequate facilities for their work. It was suggested during focus groups that the new law should also recognize hiring on project basis.

Based on 2018 data, there are 854 employees in CSOs in Montenegro. Data for 2019 are still not completely available, as legal entities submit their annual report during the first quarter of the year for the previous year.

There are incentives for every employer, including CSOs, that employ person(s) with disabilities, whereas the following benefits are available: grants for adjusting the workplace and working conditions for employment of persons with disabilities; credit facilities on favorable terms for the purchase of machinery, equipment and tools necessary for the employment of persons with disabilities; participation in financing the personal expenses of assistants (work assistants) of persons with disabilities; wage subsidies for persons with disabilities. In addition, there is a vocational training program for persons with higher education, funded by the State, to hire

graduates for period of 9 months. There is significant number of cases where new employees would sign contract of employment after expiration of this period³⁰. Most smaller organizations do not have funds for pays in order to keep interns after their program ends, so they apply to receive new ones every year for the same work positions. During 2019, 102 graduates were employed in the civil sector through state-funded Vocational Training Program. There is no data on users of other incentives program.

2.3.2. Volunteering in CSOs

When it comes to volunteering, the most important thing that happened in 2019 is the new Draft Law on Volunteering³¹. After the procedure of public debate has been conducted, the Government passed the proposal of the new law in November and now it entered parliamentary procedure. The Law introduces new definition of volunteering, ways of keeping records on volunteers, and it does not obligate organizers of volunteering actions to sign contract with a volunteer if the volunteering is less than 10 hours per week, which is one of the changes the most advocated by CSOs. According to information obtained from the Ministry of Public administration, the new law is in accordance with strategic documents and it will establish volunteerism as civic activism instead of working relationship. Adoption of this law is in accordance with the Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020.

Until the new law is adopted and comes to force, this area is still regulated by the Law on Voluntary work. This law defines voluntary work as unpaid and done in freewill. It requires that volunteers and organizers of voluntary work must sign a contract. The law also states that volunteers have volunteer booklets which are issued by local administration, which is not used in practice as local self-governments do not issue these booklets.

The Law prohibits volunteering to children under 15 years of age, even in cases when activities are organized by educational institutions or are in the function of education of those children. In that way, the Law is preventing the development of culture of volunteerism exactly in that age group that would be a natural target group for the development of culture of volunteerism. It should be noted that these provisions of the Law are in conflict with the practice of the Bureau for Education Services, that has optional and compulsory curricula materials for elementary and high school education, titled "Volunteer and humanitarian work", which includes practical volunteering.

Volunteer work can take up to six hours a day and no more than 25 hours a week. If the contract on volunteer work is concluded in the case of vocational training, the volunteer work can last no longer than 40 hours per week. The agreement on volunteer work is concluded in writing between the volunteer and the volunteer organizer. The organizer of volunteer work is obliged to register the volunteer for insurance in case of injury or occupational disease during the volunteer work. However, even though the law stipulates these provisions, such cases are not very common in practice.

There are no incentives for volunteers, but some are planned when the Law on Volunteerism is adopted. Interviewed representatives of youth/volunteer organizations all agree that there are no programs and incentives for volunteers on national level. There are some on international level, but those are not available to all volunteers.

³⁰ <https://www.vijesti.me/vijesti/drustvo/kurpejovic-vise-od-2-9-hiljada-viskoskolaca-na-strucnom-osposobljavanju>

³¹ <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=388452&rType=2>

Based on the questionnaire answers, 66.7% of the organizations included volunteers in their work. Out of these organizations, several received certain requests regarding volunteers. Namely, 9.37% had to register their volunteers to the authority while 6.25% believe administrative procedure for volunteers is complicated. Others did not encounter any problems. None of the organizations reported sanctions for not registering volunteers or for organizing spontaneous volunteering.

2.3.3. Non-Formal Education

The importance and role of the CSO sector is recognized in the Adult Education Strategy for Montenegro 2015-2025, which states that in order to increase the social inclusion of adult citizens through lifelong learning and education, it is necessary to use the potential of the NGO sector in adult education for civil democracy, protection of life environment, sustainable development, energy efficiency, gender equality, media literacy, etc. Also, appreciating the role and contribution of non-governmental organizations in the development of institutional and non-institutional education, the Ministry of Education, in accordance with the Law on Non-Governmental Organizations, annually allocates funds for financing projects and programs of NGOs in these fields.

There is no precise data on the total number of CSOs active in the field of education and learning, but it is evident that a large number of NGOs, in the framework of their project activities supported by national, EU and other foreign funds, implement public interest programs to strengthen the capacities and skills of different target groups (persons with disabilities, youth, members of the Roma and Egyptian communities, women and children victims of violence, civil servants, politicians, journalists, representatives of the civil sector, etc.).

The Law on Education of Adults recognizes CSOs as one of key actors in providing informal education programs, which are defined as following: training, retraining, further qualification, specialization and professional development; acquisition and improvement of key skills and key competences (foreign languages; Montenegrin language for foreigners, use of information and communication technologies; entrepreneurship, etc.); acquiring knowledge and skills for civil democracy, environmental protection, sustainable development, family life, successful social integration, raising the quality of life, health; education, social skills, third age, etc.

The procedure for accreditation of non-formal education programs is regulated by this law and non-governmental organizations have the same rights and obligations in this regard as other entities envisaged by the law. However, most educational programs implemented by NGOs in practice have not undergone program accreditation procedures in accordance with applicable legislation. In most cases, non-governmental organizations implement programs of non-formal education, without obtaining a license.

According to the 2019 Analysis of Adult Education Programs implemented during 2018, conducted by the Centre for Vocational Education, there were 18 accredited informal education programs of 10 CSOs. This analysis indicates that the largest number of accredited CSO programs are vocational qualification education programs and education programs for the acquisition and improvement of key skills and key competences. Fewer accredited programs belong to the third group of non-formal education programs for acquiring knowledge and skills for civil democracy, environmental protection, sustainable development, family life, successful social integration, raising the quality of life, health education, social skills, third age, etc.

On the other hand, the largest number of activities and programs implemented by NGOs in practice, without formal accreditation, are activities and programs that belong to the aforementioned third group of non-formal education programs. For instance, organizations such

as the Center for Civic Education, Prima, ADP ZID, Active zone, Association of Youth with Disabilities, Prona, etc., organize many schools and trainings for youth and adults on different topics. CRNVO regularly organizes trainings on writing projects, civil society, strategic planning, advocacy, etc.

In addition, the Youth Strategy 2017 – 2021 recognizes the importance of informal and non-formal education programs provided by CSOs as one of key measures are participation of youth in these programs and internships and vocational training programs within CSOs.

When it comes to civic education in formal education system, until 2017, Civic Education was a mandatory subject in elementary schools and elective subject in high schools. However, the new Education Reform proposed that Civic Education should be an elective in elementary schools, as well. The program of the subject stated that through Civic education children will be prepared for life in multicultural community through learning about democracy, human rights and other cultures. Many CSOs appealed against this reform, as through the reform children will lose the opportunity to learn about the aforementioned areas and civic concept.

At universities, these topics are studied at faculties of law, political science, state and European studies, etc. More precisely, these subjects are planned in the curriculum of study programs in the field of social studies. There are no such themes in programs of STEM education faculties.

When it comes to internships and fellowships, some Faculties have them as part of the curriculum (for instance Faculty of Political Science, Faculty of Philology, Faculty of Tourism and Hospitality, Faculty of Maritime Studies, etc.) Although some high schools do recognize volunteering as important part of non-formal education, none of them has them as mandatory part of the curriculum.

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, a new Law on Volunteerism was adopted in the Government and is expected to be adopted in the Parliament in 2020. It brings a lot of improvement in this area in comparison to the previous Law on Volunteer Work. However, legal environment does not stimulate employment in CSOs, as CSOs are obliged to pay full taxes and surtaxes for every employee, which is often not sustainable for small and medium organisations.

Area 3: Government-CSO Relationship

Sub-area 3.1. Framework and practices for cooperation

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

The Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020³² was adopted at the end of 2017 and is accompanied with an action plan as well as measures for its implementation. In addition, indicators for each measure are defined, along with the responsible institution or other actor. In August 2019, a Report on the implementation of the Strategy for 2018³³ was published, along with percentages of implemented, partially implemented and measures that have not been implemented for each measure. There were total of 30 indicators for 2018 that were supposed to be realized, while only 46% (14 indicators) were completely realized, 10% partially, and 44% of indicators was not realized. Most of the unrealized indicators were in the Chapter 4: Role of CSOs in socio-economic development (80% of indicators were not realized), Chapter 5: Role of CSOs in the EU accession process (33,4% of indicators were not realized) and Chapter 6: Monitoring, reporting and evaluation of the realization of the Strategy and the Action Plan (50% of indicators were not realized). In addition, recommendations for improving the implementation of the Strategy were included in the report: coordination meetings with ministries' representatives in order to communicate the implementation of the Law on NGOs should be organized; second consultative meeting with CSO representatives should be organized; educations on the implementation of the Law on NGOs and its bylaws should be organized; e-participation services should be promoted; and authorities should advocate for more efficient realization of activities in the field of philanthropy, social entrepreneurship and volunteerism. For purposes of monitoring of the implementation of the Strategy, a database³⁴ on which it is possible to track realization of Strategy measures.

There is no data on number of organizations that participated in the consultation phase for making the Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020³⁵. Based on the Calls for Public Consultations or Consultative meetings, two calls on the Draft of the Strategy were published, whereas for the first call none of the CSOs applied. There are no data on number of the CSOs that participated in the second consultations. In addition, public call for representative of CSOs in the Working group for Drafting the Strategy was announced.

When it comes to evaluating the Strategy, the evaluation of 2018-2020 Strategy is yet to be implemented during 2020³⁶. When it comes to the previous strategy, the Strategy on Development of Non-Governmental Organizations 2014-2016, the Analysis on the Effects of the Implementation of the Strategy³⁷ was conducted in September 2016. For purposes of this

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<http://www.mju.gov.me/ResourceManager/FileDownload.aspx?rid=301459&rType=2&file=Strategija%20unapre%C4%91enja%20podsticajnog%20okru%C5%BEenja%20%202018-20120.pdf>

33 <http://www.nvo.mju.gov.me/ResourceManager/FileDownload.aspx?rid=377147&rType=2>

34 www.strategijanvo.nvo.mju.gov.me

35 As per FoI request answer obtained from the Ministry of Public Administration on February 14, 2020.

36 As per FoI request answer obtained from the Ministry of Public Administration on February 14, 2020.

37 <http://www.mju.gov.me/ResourceManager/FileDownload.aspx?rid=269414&rType=2&file=Analiza%20efekata%20imple>

analysis, a working group was formed, whereas a call for representative of CSOs was also published. Out of 36 planned activities, 12 were realized, 15 were partially realized, while 9 were not realized. Key findings include: insufficient participation of citizens in the creation of public policies; nonexistence of legal and institutional support for financial sustainability of CSOs (none of the activities in this part was not realized); underdeveloped social entrepreneurship, concept of volunteerism as well as poor accessibility for persons with disabilities; and state should provide institutional grants to enable strengthening capacities of CSOs.

Case study of the Strategy 2018-2020 showed that the comprehensive analysis was conducted prior to drafting the Strategy. Namely, the state of the sector was analyzed based on data of TACSO reports, official Register of NGOs, tax portal, etc. However, a lot of data is not included in the Strategy, such as number of small, medium and big organizations, number of employees, annual revenue of organizations, whether they have their own premises or not, etc. Although the Register of Non-Governmental Organizations does contain information on founders of the NGO/foundation, address, number of Decision, date of establishment, responsible person, and key areas of work, it is not updated accordingly. Namely, there is no data on organizations established in 2018, 2019 and 2020, nor any updates were made for organizations that are in the Register. The Tax Administration has data on number of employees, however there are no separate data on number of full time and part time employees, nor number of volunteers.

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

Most important mechanism of collaboration between civil society and public institutions is the Council for cooperation between state bodies and NGOs, formed in 2018. Its main task is to follow cooperation between the government and CSOs, especially in terms of Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020, foster cooperation and resolves issues and problems that occur in it. With formation of this Council, Council for development of CSOs that existed since 2014 but whose work was not effective and did not had major effects on the state of civil society or its cooperation with institutions, stopped existing.

Besides the Decree On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies, which regulates participation of CSOs in public consultations and working bodies, there is no official act that states CSOs must participate in drafting annual program or similar documents. However, Ministries publish calls for CSOs to participate in drafting sector analysis for purposes of defining key areas for funding projects.

The Council does not have budget, as members do not receive any fees. Number of members is fixed – 12 members and a president who is the Minister of Public Administration. Six members are representatives of CSOs with significant experience in the sector. Mandate of members and president is three years. Total of four meetings were held during 2019, as well as one e-consultations. Although meetings are open for the public, so far, there was no presence of other parties at the meetings.

Councils for cooperation exist on local level. All municipalities have in their acts obligation of at least one annual meeting between mayors and presidents of local parliaments with representatives of local CSOs, but in most cases this doesn't happen in practice. 66.7% of organizations that participated in the online survey reported some kind of cooperation with institutions. Out of these organizations, 25.8% cooperated once, 54.8% two to five times and

[mentacije%20Strategije%20razvoja%20nevladinih%20organizacija%202014-2016..pdf](#)

19.4% more than five times. The cooperation was mostly based on receiving funds for projects, or participation at public consultations, working groups, policy making, etc. The organizations that participated in online questionnaire reported the following: 50% of them said they were not familiar with the work of the Council for cooperation between state bodies and NGOs, 29.2% answered they are familiar, while 20.8% said they are not familiar with the existence of this body. When asked to evaluate the work of the Council with a score from 1 to 5 (where 1 is the lowest score), participants gave average score of 2.62. More precisely, 14.6% gave score 1; 16.7% score 2; 54.2% score 3; 12.5% score 4 and 2.1% score 5.

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, CSOs and Government cooperation remains to be legally regulated through the Law on NGOs as well as the Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020. The most important mechanism of collaboration between civil society and public institutions remains the Council for cooperation between state bodies and NGOs.

Sub-area 3.2. Involvement in policy- and decision-making process

3.2.1. Standards for CSO Involvement

The Decree On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies states that public debate in the preparation of laws and strategies is conducted by consulting bodies, organizations, associations and individuals in the initial phase of drafting a law or strategy; and by organizing a public debate on the text of the draft law or strategy. The Decree proposes that every call for consultations or public debate must contain name of the person responsible for organizing and implementing consultation process. Therefore, every ministry that announced call for consultation/public debate was obliged to have officer for organizing it. However, it is not an obligation for every ministry, as it is case with contact persons for cooperation with CSOs, but the person is designated on demand.

When it comes to inclusion of CSOs in decision making process, in legislative sense, most important act is Decree on the election of CSO representatives to the working bodies of the state administration and the conduct of public debates in the preparation of laws and strategies. This regulation was adopted in 2018, like it was predicted by Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020 and introduces new rules to improve the inclusion of CSOs in the decision-making processes. Thus, the Regulation recognizes two types of cooperation. The first one is stated in Article 3 of the Regulation. It refers to the obligation of state administration organs to include representatives of non-governmental organizations into working that they form, on the basis of public call on their web site and portal of e-administration. The second form of cooperation is through public debates in the preparations of laws and strategies. Interested public can participate in this debates during consultations in the process of drafting laws and in debates on the text of draft law.

The Decree also regulates participation of CSOs in the state funding process. Namely, a Commission for each call for funding must be established and it consists of three members: the president and two members, out of which one member is a representative of public institution and one is a representative of non-governmental organization. The Ministry, before announcing the Call for funding CSOs, must announce call for a representative of CSO. According to the Decree, a representative of a non-governmental organization in the working body may be a person who: resides in Montenegro; has experience in an area of concern that is considered or normatively regulated by a working body; is not a member of political party organs, public official, civil servant, or state employee. After the deadline for submitting suggestions for the representative of CSO finishes, the Ministry announces list of suggested representatives as well as the decision on the representative signed by the Minister.

Neither the Decree nor any other document stipulate that civil servants must undergo a training for conducting public consultations and debates. However, the Decree states that there must be a person, who is a representative of the authority body that conducts the consultation or debates, who is responsible for coordinating the process. The person in charge of coordinating the consultation of the interested public is obliged to promptly record all initiatives, proposals, suggestions and comments and after the consultation is completed a report containing an overview of the participants in the consultation and an overview of the received initiatives, proposals, suggestions and comments.

During 2019, 97 laws, 13 Decisions, 43 decisions on election, appointment and dismissal and 34 reports were adopted. All adopted laws are available either on ministries' websites, or in the

Catalogue of Regulations³⁸.

72 representatives of NGOs participated in work of Working bodies of the Parliament³⁹. When it comes to Ministries, 9 CSO representatives participated in working bodies of the Ministry of Human and Minority Rights, and four representatives in working bodies of the Ministry of Internal Affairs. The Ministry of Internal Affairs formed six working bodies during 2019, the Ministry of Human and Minority Rights seven, Ministry of Finance eight, while the Ministry of Culture formed four bodies⁴⁰.

CSOs that participated in the online questionnaire stated that they participated in consultation on drafting laws, bylaws and policies in a large extent – 47.9% of responses. Out of these organizations, 52.2% responded that some of their suggestions were included; 13% that all of their suggestions were included, while the same number reported their suggestions were not considered at all. 27.08% agree or strongly agree that notice of consultations is published at least one week in advance, while majority of answers, 47.91%, were marked as “I don’t know”. On the other hand, CSO representatives mostly disagree or strongly disagree that there is enough time to prepare and submit comments – 35.41%, while 25% agree or strongly agree with that statement.

Based on CRNVO’s data, during 2019, 66 calls for participation in public hearings, while 45 were published on the e-government portal. Total of 51 minutes and reports are published, while only 26 on the e-government portal. There were 37 public hearings on draft laws during 2019. Although the public is consulted on a slightly higher level, the lack of documents available in electronic format on e-government portal remains a trend. This can be supported by the fact that 39.58% of organizations that participated in online questionnaire believe that draft documents such as Draft Laws, bylaws, decisions, reports, etc., are not available prior to consultations.

Based on answers received from seven ministries, during 2019 total of three public servants have undergone training for engagement in the consultation process. Namely, these civil servants in the Ministry of culture have undergone trainings on: new models of reporting on conducted public debates; standards of public consultations; and training on improved module of e-participation.

52.08% of online questionnaire participants disagree or strongly disagree that appointed public servants facilitated effective engagement of CSOs in the consultation process. 10.41% agree or strongly agree with this statement. In addition, 45.83% reported they disagree or strongly disagree with the statement that civil servants have enough capacities to include CSOs in drafting new documents and acts. 14.58% responded they agree or strongly agree on this issue.

3.2.2. Public Access to Draft Policies and Laws

The Decree On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies states that public debate in the preparation of laws and strategies is conducted by consulting bodies, organizations, associations and individuals in the initial phase of drafting the law or strategy; and by organizing a public debate on the text of the draft law or strategy.

The authorized Ministry shall publish on its website and e-Government portal, within 15 days from the day of adoption of the annual work program, a list of laws and strategies that will prepare a

³⁸ www.katalogpropisa.me

³⁹ As per FoI request answer obtained on February 19, 2020.

⁴⁰ As per FoI requests answers obtained from these ministries.

public debate in their organization, a brief explanation of the need to adopt a law or strategy and other information from importance for the preparation of the law or strategy. In addition, a draft paper should be uploaded along with the Call.

The existing Law on Free Access to Information regulates that every domestic and foreign physical and legal entity has the right to access information, without obligation to state the reasons and explain the interest of seeking information. Every national and local body and institution is obliged to have Guidelines for Access to Information on their websites. The body may limit or deny access to information if asked information is a business or state secret, or in cases of: protection of privacy from disclosure of information provided by the law governing the protection of personal data; security, defense, foreign, monetary and economic policies of Montenegro; prevention of the investigation and prosecution of perpetrators of criminal offenses to protect against disclosure of information; performing official duty; protection of trade and other economic interests. The institution must provide answer for the requested information, 15 days from the day the request is received by the institution, at latest. If the answer is not provided, entity that requested information may appeal to the Agency for protection of personal information and access to information.

The Law prescribes monetary sanctions if the information is not provided, if it is provided after the deadline, or if it was not created in accordance with the law. In addition, the Agency for protection of personal data and free access to information will be sanctioned if it doesn't act on the complaint. In 2019, Agency for Protection of personal Data and Free Access to Information received 1715 appeals. 412 appeals referred the silence of the institution from which the information was requested, while 424 appeals were dismissed due to the institution providing information⁴¹.

The topics that raised many concerns in terms of limitation of freedom of expression are the new draft Law on free access to information and the Law on data secrecy. Many domestic CSOs and media, as well as international community, are warning that, if adopted, the new law would be unconstitutional. According to Article 51 of the Constitution, access to information can be denied if it is in interest of protecting life, public health, moral and privacy, conducting criminal proceedings, foreign, monetary and economic policy. The new draft law includes new restrictions that are not in according with the Constitution and that would severely limit possibility to exercise this constitutional right. According to critics, particularly problematic is the provision where public officials can determine which information is of public interest and therefore the public has access to it. Another problematic provision is that a request for free access to information can be declined if it requires too many information. It is clear that these provisions significantly increase limitations much more than those in the Constitution and leave a lot of space for subjective interpretations.

The portal of e-Government⁴² contains four sectors: public debates, consultations, working groups and announcements. Every state body publishes call for one of these sectors along with the draft law/document. Based on information available on e-participation websites, there were 60 calls for public debates in 2019, whereas the draft document was published in 38 cases. Only 24 reports on the public debate were published. Any physical or legal entity is able to publish comments or suggestions through this portal. There were 45 calls for consultations, whereas eight draft documents were published and nine reports on the consultations.

29.2% of the organizations that participated in online questionnaire reported they requested free

⁴¹ <http://www.azlp.me/me/rjesenja-spi>

⁴² <https://www.euprava.me/eparticipacije>

access to information. Out of these organizations, 78.6% reported they received the requested information. 28.6% received information within the deadline prescribed by law; and 14.3% report receiving answer in clear format. On the contrary, 21.4% of organizations received clear information on why the request was denied; while 7.1% did not get any additional explanation. 14.3% of organizations were informed about the possibility to appeal due to the denial of access to information.

3.2.3. CSOs' Representation in Cross-Sector Bodies

The Decree On the Election of CSO Representatives to the Working Bodies of the State Administration regulates the obligation of state organs to include representatives of non-governmental organizations into working and advisory bodies that they form, on the basis of public call on their web site and portal of e-administration. Namely, the Decree is followed by five templates: public invitation for CSOs to propose a representative of a non-governmental organization in the working body; application form for the CSO representative in the working body; public consultation program on the text of the draft law, or strategy; comments and suggestions; public discussion report. According to the decree, the state administration body elects representatives of non-governmental organizations to the working group and other working body which it forms, based on a public invitation published on its website and internet portal of e-government. When the Call is open, organizations may suggest a CSO representative for that body. In addition, other organizations may support the election of that CSO representative by providing all the documents regulated in the criteria of the call. After the deadline passes, a list of suggested CSO representatives is announced, along with list of organizations that supported their application. Also, list of incomplete applications and list of organizations that supported the application of certain CSO representative whose documentation is incomplete is published.

39.6% of the organizations participated in the work of advisory/consultative/ working group bodies and committees in the past year. Every working group, advisory body, consultative body, etc. that is formed must have at least one CSO representative included in their work. There are no recorded cases of non-transparent selection of CSO representatives. Also, there is no official list of bodies that do not publish names of their members, information on meetings and decisions.

Although advocacy is quite present in the civil sector, most organizations focus their advocacy on actions like announcements, statements and media. In regard of networks, they remain one of the most successful ways of joint advocacy. Also, many organizations use other means to promote their opinion: publishing reactions, announcements; signing petitions; protesting, etc. However, there is no official data on number of CSOs that use these alternative means and are representatives in working bodies.

There have been cases when working groups or councils, where there are representatives of CSOs, organize meetings without notifying CSO representatives or organizing them on the day when CSO representative is not available to come (i.e. they are out of country). This is not only a case on national level, but also on local. Representative of CRNVO, who was elected as a member of Local Working Group whereas she received notification on the election after the central public consultation was held, where they had the opportunity to provide comments just as any other interested party and without being able to actively participate in drafting documents for which the working group was formed.

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, involvement of CSO representatives in decision-making process remains regulated by the Law on NGOs and the Decree On the Election of CSO Representatives to the Working Bodies of the State Administration. However, some representatives in working bodies reported being excluded from the decision making process, as meetings were organized without prior notification or their comments were not included in the draft document, which does not contribute to the good governance of public institutions.

Sub-area 3.3. Collaboration in social provision

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

The Law on Providing Services prescribes that the Government, Ministries, Local Self-Governments can provide services to citizens. However, there is no specific law that regulates the area of CSOs that provide services. Ministries under whose jurisdiction is certain area of work, may issue a license to civil society organizations to provide services to citizens. Further information on licensing is available under other laws. For instance, the Law on Child and Social Security prescribes that Ministry of Labor and Social Welfare may issue a license to CSO in this area that fulfils the following criteria: has been entered in the Register; meets the standards for the provision of the service for which it is licensed, in respect of: location, space, equipment, number and type of professional staff and program of service provision.

The license is issued by the Institute for Social and Child Protection for a period of six years and is renewed in accordance with this Law. If the competent state administration authority, during the period for which the activity license was issued, determines that the service provider does not meet the prescribed conditions, it will initiate the procedure for suspension of the license.

Furthermore, the Law on Consumer Protection defines that organizations that work in the area of consumers' protection have the right to serve as service providers for citizens in this field. Namely, organizations may, among other, be financed by the state through the public call for financing legal entities in the field of consumers' protection. In addition, they have the authority to file a class action lawsuit.

There is no regulation that prevents organizations to provide services that are not defined by the law. As stated before, there are some areas in which organizations can provide services, but obtaining license is required. CSOs in Montenegro provide number of services in various areas, but the most recognized ones are: free legal aid, protection of consumers, protection of whistle-blowers, social and children security, protection and providing help to persons with disabilities, education, healthcare, etc.

If CSOs are defined as possible service providers, the same rules apply to them as to other legal or physical entities that may provide same services. Smaller differences in documentation exist, but are subject to different rules of registering the legal entity. For instance, CSO should provide decision on registration within the authorized ministry, but company should provide decision on registration of a company within Central Register of Business Entities. Other significant differences haven't been noticed.

There are no official data on number of CSOs across different areas that received contracts; number of CSOs that reported receiving contracts per different policy fields; number of CSOs that reported receiving contracts per different legal forms. Respondents of online questionnaire didn't have much experience with providing services to the state bodies. Namely, only 6.3% of organizations did apply to Calls for contracts on providing services.

Out of organizations that participated in online questionnaire and that provide services (4 organisations), half did not have to register for obtaining license for providing services, 25% had to, while 25% are not sure whether they had to do so. Moreover, 25% believe process for obtaining license is burdensome and long, 25% believe it is not, while 50% are not sure.

3.3.2. State Funding for CSO-Provided Services

Funding of programs and projects is defined by the Law on NGOs, and can be further defined through other laws. For instance, the Law on Consumer Protection defines that organizations that work in the area of consumers' protection have the right to serve as service providers for citizens in this field. Therefore, organizations may, among other, be financed by the state through the public call for financing legal entities in the field of consumers' protection. In addition, ministries may fund certain services acting on request by organization.

The new Law on Public Procurement states that all legal entities may participate in public procurement, although specific term "CSOs" was not used. In addition, Institute for Employment announces call for projects through grant scheme where companies, as well as CSOs may participate. For instance, in 2018, 56 projects were supported, out of which 30 were CSOs and 26 companies.

The Ministry of Labour and Social Welfare issues licenses for CSOs that work in the field of social and child security for a period of six years, with the possibility of continuation. However, the Ministry is not obliged to fund providing services on the regular basis, but CSOs must find means for providing services through other donors, or they can apply for project funding by the Ministry when call is announced. The government or ministries may allocate funds through a special decision, by acting on request.

Out of the organizations that participated in online questionnaire and that provided services, 25% totally disagrees that CSOs are excluded from public service tenders in their area of work, 25% does not believe so, while other 50% marked "I do not know" as an answer. 75% of the organizations that provide services state that funding was not sufficient to cover basic costs of the services. 25% do not know whether funds were sufficient or not. Answers were the same when it comes to institutional and administrative costs, as 75% responded that allocated funds for services did not cover the aforementioned expenses.

Many organizations that received funds from the state in the field of protection of persons with disabilities and child protection, were not allowed to sign contracts and receive funds until they obtain license for providing services. This was the case with 2018 state funding. However, there is no official data on how many organizations were able to receive funds at the end.

There is no official data on number of CSOs that have faced delays in payments, nor the number of CSOs that were not allowed reallocation of funds and those that were compensated for the losses resulting from delays in payment.

3.3.3. Procedures for Contracting Services

The Law on Public Procurement regulates that the competition must be transparent, open and non-discriminatory. There are several principles that must be respected, including the transparency one which states that the contracting authority must publish open call in electronic service for public procurement with the documentation necessary for implementation and realization of the public procurement procedure. Moreover, the contracting authority is obliged to ensure that all legal entities in the public procurement procedure are treated equally. The contracting authority may not determine the conditions by which national or territorial discrimination is made in the subject matter of the procurement or other discrimination against economic operators, nor discrimination arising from the classification of the activity performed by the legal entity. A contracting authority may not, in a procurement procedure, provide information in a discriminatory manner that would favor a particular participant in the procedure over other participants.

The Law on Public Procurement is the only law that regulates service provision. It stipulates that the contracting authority is obliged, in the public procurement procedure, to select the most economically beneficial tender bid, applying a cost-effective approach, on the basis of the following criteria: price, price / quality ratio or life cycle cost. The contracting authority is obliged to define in the tender documentation the criterion and to determine the methodology of evaluation of tenders. The criterion for the selection of the best offer must be described, scored, related to the subject of the procurement and must not be discriminatory.

The contracting authority is obliged to take appropriate measures to effectively prevent, identify and eliminate conflicts of interest in connection with the procurement procedure. The legal entity participating in the public procurement procedure shall state in the statement of the legal entity whether its authorized person is in conflict of interest.

An appeal may be submitted against: Tender documents; amendments to the tender documentation; decisions on exclusion from the public procurement procedure; decisions on the selection of the best offer, decisions to cancel the procurement procedure. Depending on the type of the appeal, it may be submitted to the court at the latest ten days from the day: the tender was announced; the legal entity was excluded from the procedure; the decision on the tender was announced.

75% of the organizations that participated in online questionnaire stated they disagree that allocation of state contracts is fair and transparent. In addition, 25% did not have an answer for this question.

Nine Ministries that responded to FoI didn't report no official or employee who has undergone public procurement training. CSOs that participated in online questionnaire, that provided service, didn't have positive opinion on capacities and knowledge of state officials to implement procedures for contracting of services. Namely, 25% disagree with the statement they have enough capacities, while 75% do not have an opinion on this issue.

3.3.4. Accountability, Monitoring and Evaluation of Service Provision

Although there is no official law that regulates this issue, other laws that regulate licensing for providing services of social and child security do stipulate that if the competent state administration authority, during the period for which the activity license was issued, determines that the service provider does not meet the prescribed conditions, it will initiate the procedure for suspension of the license. This indicates that the state authority may monitor and inspect service provider.

Other types of monitoring are available through regular monitoring visits of commission if the CSO received funds for conducting project, as well as through audits that are regulated through the Law on Audit. Service provision monitoring standards and criteria are not regulated by any law or bylaw.

There is no data on number of CSOs that are involved in developing and evaluation of services.

The organizations that provided services and participated in online questionnaire had different experience with control. Namely, 25% responded they were subject to excessive control, 50% that they were not subject to excessive control and 25% marked "I do not know" as an answer. 50% of organizations stated that did not receive any notification on on-site monitoring and control.

Box 1: EU Guidelines assessment here

Result 1.1. In 2019, new legislation on service provision of CSOs was not adopted. This area needs a lot of improvement, mostly in legal part.

Conclusions and recommendations

Register on CSOs should be updated regularly containing general information on organizations along with their main field of work

One of the major problems in determining what is the current status of the whole sector is the lack of precise and official data, that is available to public and CSOs, on almost all important aspects of civil sector. There is an available Register of CSOs in Montenegro but it does not distinguish between active CSOs and those that exist only on paper, and it has not been updated in the previous two years. Besides that, there is no publicly available registry or information on how many people are employed in the civil sector and on what kind of contract. Also, the number of volunteers is unknown. Even previous strategies for development of civil society that contained specific measures in terms of creating these kind of statistics, have never implemented those measures. This lack of data affects proper planning for the future development of civil society, and therefore, the improvement of the work of the Register of CSOs should be given priority

Tax incentives for donors should be introduced, such as exclusion of VAT for donations and sponsorships

Current Tax Law does not recognize any type of tax incentives for donors, except for the EU funds which are exempted from paying VAT. However, that is not the case with national donors, which represents an obstacle for both companies, as well as citizens, to make donations for civil sector. In addition, there have been cases where CSOs provided means or equipment that wanted to donate, but that was subject to taxes. Therefore, the Tax Law should be amended in part regarding donations, i.e. make all donations and sponsorships exempt from VAT. That would provide funds for more organizations, but also encourage donors and companies to donate funds and promote corporate giving. In addition, CSOs pay full taxes and surtaxes for salaries, consulting fees and honoraria, which affects the number of employees in CSOs, but also leaves less means for project activities. Bearing that in mind, CSOs should have some incentives for these taxes and surtaxes.

Volunteering, internships and/or fellowships should be made a part of curriculum in high schools and faculties

The new Draft Law on Volunteerism was passed by the Government and is awaiting to be adopted in the Parliament and it will introduce many novelties in this area. As it will intend to promote volunteerism and encourage organizers to include more volunteers in their work, it is needed to also promote it in regular curriculums in high schools and faculties. Besides that, internships and fellowships should also be a part of academic curriculum, as many CSOs offer these opportunities

for high school and university students and are recognized as one of the main program providers in several Strategies. Therefore, volunteering, internships and fellowships' position should be framed within the formal education system and ensure better cooperation between these two sectors.

Comprehensive law on CSOs providing services should be drafted and adopted

Currently, there is no comprehensive legislation that specifically regulates the area of CSOs that provide services. There is no unified law on licensing CSOs and there are no clear criteria on issuing licenses. The process is long, complicated and burdensome. Some organizations were not able to receive funds for approved projects in the field of protection of persons with disabilities until they obtain license. Therefore, a new Law regulating this area should be created and adopted, in order to allow more organizations to register their services and programs as well as to clearly define the process of obtaining license. This is an area that should be regulated, as there are many organizations that provide services in the field of education, healthcare, legal aid, etc. and do not have licensed programs and services, however there are some organizations that do have them but mostly operate in the field of social and child protection and providing help to persons with disabilities.

Register of organizations that provide services and whose programs are accredited should be created

Following the adoption of the Law on CSOs providing services, a Register of organizations that provide service and whose programs are licensed and accredited should be created. This Register should contain list of all licensed organizations, field of their work, as well as services they provide. This would also make the visibility of these organizations' work better and could contribute to having more users that use these services.

State should introduce institutionalized grants in order to ensure sustainability and capacity strengthening of CSOs

Although state provides funds on national level, it does not provide institutionalized grants in order to support capacity strengthening of organizations, especially small organizations that operate on local level. These grants are necessary in order to ensure long-term sustainability of CSOs in Montenegro. This type of support would enable organizations to develop organizational strategy, organizational structure, communication strategies, strengthen connections with citizens and their target groups, as well as to form and join networks.

Simplified process of submitting annual financial reports to the Tax Administrations should be introduced for CSOs

CSOs are required to submit financial reports (balance sheet and income statement) to the Tax

Administration for every year. This process is the same as for any other legal entity and can be burdensome for CSOs, especially small ones or organizations that do not have enough funds. These reports can only be filled in by an accountant and require costs, that some organizations cannot afford. Therefore, a simplified process for submitting these reports should be introduced for CSOs in order to enable more (or all) organizations to submit them. This would also contribute to having more precise information on the civil society and statistics on their finances and number of employees. Another issue that should be considered by the Tax Administration is creating a drop-down menu where organizations could mark themselves as CSOs, and in that way the Tax Administration would have joint and comprehensive data on this sector. As for now, that option is not available and therefore data available is not precise, as each accountant uses different marks for CSOs (some write full name, some write abbreviation, some use dots between, some do not mark them as CSO, etc.)

Annexes

1. Monitoring matrix methodology

Operationalization and data collection

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

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

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

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

practice indicators.

The **survey questionnaire** collects information on civil society organizations' experiences and perceptions on the key aspects of the enabling environment for civil society for the year 2019. The organizational survey includes 50 questions matching the mandatory data types (operationalized dimensions) on basic rights and freedoms, organizational and financial sustainability and civil society's cooperation with the state. The questionnaire dominantly consists of closed questions, and fewer follow-up open questions which require the respondents to elaborate on their experience. The same questionnaire is implemented across all countries, and only the formulation of few items is slightly adapted to the concrete country context to assure questions are understood by respondents. The survey is sent to lists of formal CSOs compiled and updated by country researchers on the basis of available registers or other alternative lists of active CSOs in the country (for more information see section on country-specific notes on methodology). The data collected from the survey is confidential and used strictly on anonymous basis. Individual responses are not connected to the organizations which answered the survey and reported only in an aggregate form.

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

Data analysis and interpretation

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

2. Notes on methodology and country challenges

Desk research on legislation and legal framework was conducted, whereas 17 laws, bylaws, reports, strategies were analyzed.

Online questionnaire was conducted within the civil sector. Total of 50 organizations participated, out of which 49 were associations and one was foundation. Two organizations have PBO status. Majority of organizations (50%) work on local level; 12.5% work on regional level within the state; 29.2% on national level; 4.2% on regional level (Balkan peninsula) and 4.2% on international level.

These organizations work in various areas, as follows: agriculture and rural development – 4.2%; assistance to marginalized people and people with special needs – 6.2%; civil society development and volunteering – 6.3%; culture and art – 6.3%; democracy, good governance and rule of law – 10.4%; economic development and employment – 2.1%; environmental protection and sustainability – 18.8%; health protection and health policies – 4.2%; human rights and anti-discrimination – 4.2%; inter-ethnic relations, minority rights and social inclusion – 2.1%; media and information society – 4.2%; science, education and life-long learning - 8.3%; social protection and children rights – 4.2%; women empowerment, gender equality and LGBTQ rights – 4.2%; Youth – 14.6%.

Annual budget of these organizations for 2019 was: zero EUR – 14.3%; less than 5000 EUR – 26.5%; 5,001 – 10,000 EUR – 14.3%; 10,001-50,000 EUR – 24.5%; 50,001 – 100,000 EUR – 12.2%; 100,001 – 500,000 EUR – 8.2%.

In addition, 12 **interviews** were conducted: 3 with media representatives; three with volunteering organizations; two with mechanisms for cooperation with CSOs; four with representatives of informal groups.

When it comes to **free access to information**, requests were sent to 28 institutions, whereas total of 162 requests were sent.

3. Used resources/Bibliography

- 2018 Report on Implementation of the Action Plan for the "Strategy for Improving Enabling Environment for the Activities of CSOs 2018-2020
- Adult Education Strategy for Montenegro 2015-2025
- Analysis of Adult Education Programs implemented during 2018
- Constitution of Montenegro
- Decree on the election of NGO representatives to the working bodies and the conducting of a public discussions (MNE Gazette number 41/2018)
- Law on Amendments to the Law on Non-Governmental Organizations (Official Gazette number 39/2011 and 37/2017)
- Law on Consumers' Protection
- Law on Data Protection
- Law on Education of Adults
- Law on Free Access to Information
- Law on Public Assemblies and Public Performances
- Law on Public Procurement
- Law on Social and Child Security
- Law on Voluntary work
- Regulation on funding projects and programmes of non-governmental organizations in areas of public interest
- Regulation on procedure of co-funding projects funded by European Union
- Report on the Implementation of the Regulation on the Election of NGO representatives to the Working Bodies and Conduct of the Public Discussions 2018
- Reports and minutes from the meetings of the Council for development of CSOs (Ministry of Public Administration)
- Rulebook on tax exemption procedure
- Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020
- Youth Strategy 2017-2021

4. Other annexes

Total of 50 CSOs participated in online questionnaire, which is 0.88% of total number of CSOs. The following charts and graphs show closer information on diversity of organizations that participated.

