

# OUT OF THE EU WAITING ROOM

Civil Society Participation in the Light of the "New Approach"  
to Enlargement to the Western Balkans



With the support of the Europe for Citizens  
Programme of the European Union

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CIVIL SOCIETY PARTICIPATION IN THE LIGHT OF THE “NEW APPROACH”  
TO ENLARGEMENT TO THE WESTERN BALKANS



# IMPRESSUM

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Belgrade, October 2015



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# FOREWORD

Civil society participation is on the rise in the Western Balkans, both at the policy and practical level. While the Central and Eastern European enlargement was mainly negotiated between EU and state-level actors, greater inclusiveness in the process has since become one of the priorities of accession negotiations. Enabling broad participation in membership talks is indeed crucial, not only to ensure that adopted reforms reflect broader societal interests and concerns, but also to enhance the likelihood and quality of implementation.

In its most recent enlargement strategy, the EU once again recognizes the importance of civil society, by emphasizing that “there is a need to work even more closely with local civil society actors to anchor reforms across society.” While important formal steps have been made to enhance the openness and transparency of the enlargement process, much still remains to be desired, both on the side of the EU and of the (potential) candidate countries.

This volume makes a valuable contribution to ongoing discussions on the degree and effectiveness of civil society involvement in the EU accession negotiations and in domestic policy-making more broadly. The country studies tackle both the legal framework in place and the practical mechanisms of civil society involvement. Findings are illustrated

through concrete instances of participation, with each contribution thus painting a broad and comprehensive picture of the state of play across the Western Balkans region.

The individual chapters point to a certain diversity in the extent and shape of civil society participation across the region. Yet, they also reveal some common challenges in ensuring the effective involvement of civil society in the policy-making process, most notably enhancing the receptiveness of political leaders to external input and the reliable implementation of agreed consultation procedures. These observations serve as a useful point of departure for further strategic thinking, about how to not only enhance the formal framework for mobilization, but also allow for the effective translation of civil society demands into adopted policies. The effective empowerment of civil society in the enlargement countries would benefit not only the local population, but also the EU as a whole, thanks to a higher preparedness for accession and broader domestic support for reforms.

— [Natasha Wunsch](#)

# INTRODUCTION

Civil society participation in the EU integration process gained an important role within the new enlargement strategy. The new approach, introduced by the Enlargement Strategy 2012-2013, put “rule of law” at the heart of the process and subsequently also “economic governance” (2013-2014) and “public administration reform and strengthening of democratic institutions” (2014-2015). The very fact that the EU decided to put good governance at the core of the process led to the recognition of the greater role of civil society within it – as an actor that articulates the concerns of citizens, engages in the public arena, fosters pluralism, and further participatory and deliberative democracy.<sup>1</sup> The engagement of civil society in the overall process should lead to a deeper and substantial transformation and democratization of the society. Civil society is in the position to claim *public ownership* over the European integration process of one country and transform the process of decision-making according to principles of transparency, accountability and inclusiveness. Moreover, the sooner the EU integration process becomes open, transparent and accountable to citizens, the higher the chances that obstacles to consolidation of reforms and post-accession backsliding will be avoided.

The need to foster consultation and dialogue in decision-making, so as to enhance the legitimacy of decisions taken, was highlighted by the European Commission in the 2001 European Governance

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1 Various international organizations – not only the EU, but also the Council of Europe and the UN Economic Commission for Europe (UNECE) – have recognized the importance of the direct engagement of citizens in the drafting of laws and policies affecting them, and provided models and guidelines for this process; even though non-binding, they provide standards, principles and best practices against which to assess the performance of domestic practices.

White Paper<sup>2</sup>. The White Paper, a non-binding guideline, underlined the need for transparency, participation, effectiveness and coherence in decision-making, as building blocks of democracy and rule of law. Based on the White Paper, the Commission adopted its general principles and minimum standards for consultation of stakeholders that set the requirements for an effective consultation process: access to documents, inclusion of all interest groups, allowing enough time, publishing results and providing feedback to participants on the impact of their participation on the final outcome. Consultation procedures in decision-making were expressly affirmed with the entry into force of the Lisbon Treaty in 2009, in its Art. 10(3).<sup>3</sup>

In its key documents and statements, the European Commission (EC) has repeatedly emphasized that civil society has an irreplaceable role in the reform and EU integration process: two Communications from the Commission on the Western Balkans<sup>4</sup>, the Communication on Civil Society Dialogue in Candidate Countries<sup>5</sup> and the Communications on the Enlargement Strategy. In 2014, the Commission for the first time explicitly underlined the importance of civil society by mentioning in each of its country progress reports how “an empowered civil society is a crucial component

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2 Commission Communication, *European governance - A white paper*, COM(2001) 428 final, 25 July 2001

3 Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

4 Commission Communication, *The Western Balkans on the road to the EU: consolidating stability and raising prosperity*, COM(2006) 27, 27 January 2006 and “Western Balkans: Enhancing the European perspective” COM(2008) 127, 5 March 2008.

5 Commission Communication, *Civil Society Dialogue between the EU and Candidate Countries* COM(2005) 290, 29 June 2005.

of any democratic system and should be recognized and treated as such by the government.” This constitutes an important shift from previous *ad hoc* and unsystematic references to civil society. The EU Enlargement Strategy 2013-2014 recognizes that “a stronger role for civil society is key” to strengthening democratic institutions and ensuring inclusive processes:<sup>6</sup> “Dialogue between decision makers and stakeholders needs to be further developed. An empowered civil society is a crucial component of any democratic system. It enhances political accountability and social cohesion, deepening understanding and inclusiveness of accession-related reforms, as well as supporting reconciliation in societies divided by conflict.”

The External Relations Section of the European Economic and Social Committee adopted an own-initiative Opinion on Enhancing the Transparency and Inclusiveness of the EU accession process in June 2014.<sup>7</sup> The Opinion outlines some of the key features and lessons learned from the EU’s enlargement policy over the past five years. Many of the recommendations urge for more significant participation of civil society and other social partners in the negotiation process. Moreover, the EC established the Civil Society Facility (CSF)<sup>8</sup> in 2008 in order to support the development of civil society in candidate and potential candidate countries. The inclusion of civil society in the legislative process is further foreseen by the Commission’s DG NEAR “Guidelines for EU support to civil society in enlargement countries, 2014-2020”. An empowered civil society is deemed crucial for ensuring that candidate countries respect and remain committed to promoting the EU principles of human dignity, freedom, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities. To achieve this, the European Commission recognizes the need for creating a conducive environment, and strengthening the CSOs’ capacities.

How and to which extent the civil society organizations (CSOs)<sup>9</sup> in the Western Balkans use

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<sup>6</sup> European Commission, *Enlargement Strategy and Main Challenges 2014-15*, COM(2014)700 final, 8 October 2014.

<sup>7</sup> European Economic and Social Committee, *Opinion on Transparency and Inclusiveness of the EU Accession Process*, (2014/C 451/06), 10 July 2014.

<sup>8</sup> The CSF aims at contributing to the consolidation and broadening of political reforms and EU alignments and to the progress made to date with regard to the implementation of the EU *acquis* and participatory democracy in the country.

<sup>9</sup> In this study, civil society refers to civil society organizations, due to their basic nature that they are non-

opportunities granted through the new approach to the EU enlargement to improve reforms and embed democratic mechanisms and practices, will be the main subject of this study. In fact, despite some progress the Western Balkans (WB) made on the path to EU accession since the initial membership perspective was granted, the situation is still not satisfactory. The reforms are not advancing fast enough, and the countries’ progress towards EU accession has been uneven, which could prevent the rest of the region from joining the EU for a long time. More than a decade after the process first began, only one country in the Western Balkans, Croatia, succeeded in joining the EU. EU accession negotiations are on-going with Serbia and Montenegro, but neither will be able to accede before the end of the decade. Albania is still outside a formal accession process. Former Yugoslav Republic of Macedonia<sup>10</sup>, Kosovo<sup>11</sup> and Bosnia and Herzegovina are blocked on their respective paths for different reasons. The new approach to enlargement is expected to lead to the resolution of present challenges in the Western Balkans. Therefore, this regional policy study aims to explore the various forms and dynamics of public participation in the decision and policy-making process in the framework of the EU integration process, through the example of the Western Balkan (WB) countries. The current situation in the WB demonstrates that civil society involvement in national policy and decision-making processes is still far from an established practice and calls for more intensive communication between CSOs and the state as well as CSOs and the EU. The Annual Progress Reports<sup>12</sup> published by the European Commission underline

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state, non-for-profit structures in which people organize to pursue shared objectives and ideals. (Definition given by the European Commission within its Communication „The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations“, from September 2012).

<sup>10</sup> Republic of Serbia recognized Macedonia under the name Republic of Macedonia. Official policy of the European Union is to use the name Former Yugoslav Republic of Macedonia. In this study, authors will use the name Macedonia, which does not reflect the official policy of the European Union.

<sup>11</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence. The decision of the authors is to continue using the name Kosovo without asterisk, which does not reflect the official policy of the European Union nor the authors’ attitude towards the status of Kosovo.

<sup>12</sup> This study does not consider the Annual Progress Report 2015, as the research and study were finalized before its publication.

a number of shortcomings when it comes to the active role of civil society and recommend further improvement of the cooperation between the government and CSOs. Despite several positive developments, much remains to be done if the desired results are to be achieved. Successful democratic transformation of the WB requires policies that address real problems, with improved civic participation in the decision-making process.

Therefore, this study focuses on regional comparisons to examine civil society participation and its effects, and covers all countries of the Western Balkans: Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. The study is divided into three chapters. The first chapter addresses civil society participation in the accession negotiation process in **Montenegro**. The second chapter examines civil society participation in the accession negotiation process in **Serbia**. The third chapter is a joint analysis of **Albania, Bosnia and Herzegovina, Kosovo and Macedonia**, as potential candidate and candidate countries that are not yet formally engaged in accession negotiations. Each chapter covers the legal framework for the CSOs' participation in the EU integration process, public participation practices in decision-making, a country case study and country-specific conclusions. The final conclusions provide some general recommendations for improving civil society participation in the accession negotiation process in Montenegro and Serbia that are applicable to all the countries in the region. The recommendations also aim to provide some guidance to the countries that still lag behind on how to increase the inclusiveness, transparency and accountability of the EU integration process in the current and forthcoming phases.

The key finding of the regional policy study is that WB countries have established different mechanisms and practices for civil society involvement in the policy and decision-making processes. Achievements and results in this context vary from country to country and also from one policy area to another. What this study will show is that the accession negotiation process, which is the focus of the chapters on Montenegro and Serbia, offers a unique window of opportunity for substantial involvement of civil society in EU-related reforms and improvement of the sustainable positioning of civil society in the overall decision-making process. On the other hand, CSOs from countries that have not been able to start accession negotiations yet, that have very different starting levels and domestic governance features, had few occasions to influence the agenda setting directly and bring regulatory issues to the attention of public authorities.



# EU ENLARGEMENT AND THE WESTERN BALKANS



**CHAPTER I**

# **MONTENEGRO**

**ANA NOVAKOVIĆ**

## INTRODUCTION

Montenegro officially began negotiations with the European Union (EU) on 29 June 2012. The start of negotiations was preceded by an intense period in which the Montenegrin Government was required to comply with significant conditions, and also by official decisions of relevant EU institutions. Specifically, on 23 May 2012, the European Commission (EC) published the Report on Montenegro's progress in the implementation of reforms and proposed that EU Member States open EU accession negotiations with Montenegro in June 2012. One month later, on 26 June 2012, the European General Affairs Council in Luxembourg adopted a decision recommending that the EC start accession negotiations with Montenegro.

One of the key documents in the phase which preceded the opening of negotiations between Montenegro and the EU is the **Opinion on Montenegro's Application for Membership of the European Union**, published on 9 November 2010. Based on this Opinion, the Council of the European Union granted official candidate status to Montenegro in December 2010. However, what makes this document particularly important is the fact that the Opinion, with its accompanying Analytical Report, established the grounds for the involvement of civil society in the process of further integration and negotiations. The Opinion contains seven priorities, which the Montenegrin Government has to fulfil in order to acquire official candidate status. These are generally related to the alignment with political membership criteria (Copenhagen criteria), which require stability of institutions that guarantee the rule of law. One of these seven political priorities communicated within the Opinion was: *"Enhance media freedom notably by aligning with the case-law of the European Court for Human Rights on defamation and strengthen cooperation with civil society"*.<sup>13</sup>

Following the receipt of the Opinion, the Government of Montenegro began to develop action plans for implementing the seven recommendations from the document. The civil society was involved in a wider public debate on the proposed plans, and therefore a special set of activities was created that focused on implementing the recommendation for better cooperation between the Government and civil society organizations.

Since the adoption of action plans for the implementation of recommendations from the Opinion, the civil society has been extensively involved in furthering Montenegro's European integration process. In the follow-up of preparation of structures for the negotiations with the EU, the Montenegrin Government adopted the **Decision Establishing the Negotiating Structure for the Accession of Montenegro to the European Union**. This Decision enables the involvement of "subject field experts" in the working groups, which establishes the legal grounds for the inclusion of civil society representatives as well.

The specificity of Montenegro's integration process is reflected in the "new approach", whereby the EC first opened negotiations on Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Justice, Freedom and Security, to allow for enough time not only for the adoption of changes in these sensitive areas, but also for their effective implementation on the ground.

The citizens of Montenegro welcomed this course of action. The non-governmental sector mostly supported the new approach, as the opening of these chapters was understood as a form of recognition that corruption, an inefficient and subservient judiciary and human rights violations are the key problems in Montenegro and that solving these systemic issues is a precondition for development in all other areas. At the same time, the Chief Negotiator for Negotiations on Accession of Montenegro to the EU, Aleksandar Andrija Pejović, said: "In this respect, we in Montenegro understood this approach as a good and encouraging mechanism designed to help us complete our "homework" in a better, faster and easier way, and reform our society from the inside. These chapters will not only shape the further dynamics of the negotiation process, but also, more importantly, the quality of life of our citizens, which is why all society's structures, the Government, the Parliament, judicial authorities, and civil society organizations have

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*for membership of the European Union*, COM(2010) 670, 9 November 2010, page 11.

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13 *Commission Opinion on Montenegro's application*

directed all of their capacities towards meeting their obligations in these areas.”<sup>14</sup>

It is a fact that, among other actors, civil society organizations play an important role in the process of general democratization of Montenegrin society. Its efforts and achievements have become recognized to a greater extent after negotiations started. However, civil society organizations in Montenegro became engaged in their work and activism almost 20 years ago.

## CIVIL SOCIETY IN MONTENEGRO

According to the most recent data published by the Ministry of Interior, as the authority responsible for the registry of non-governmental organizations, on 20 April 2015 there were 3,589 registered non-governmental organizations in Montenegro.

The majority of registered associations operate in the following areas: culture – 560, agriculture and rural development – 270, social care for children and youth – 282, development of civil society and volunteerism – 229, social and health protection – 218, environmental protection – 217, protection and promotion of human rights – 203, art – 201, institutional and non-formal education – 183, sports – 183 and technical culture – 135. The following areas have the least number of registered non-governmental organizations: crafts – 3, fight against corruption and organized crime – 8, sustainable development – 15, economy and entrepreneurship – 20, aid to the elderly – 20 and Euro-Atlantic and European integration of Montenegro – 20.<sup>15</sup> In the latest Needs Assessment Report published by the Technical Assistance for Civil Society Organizations (TACSO) office in Montenegro, in the majority of cases Montenegrin CSOs are small, poorly equipped, local organizations, committed to problem-solving directly in the local community. On the other hand, on the national level, there is a nucleus of reputable, organizationally mature CSOs which mainly deal with public advocacy, monitoring and capacity building in areas such as fight against corruption, state ad-

ministration, poverty reduction and human rights. Such a small number of professional organizations is in stark contrast with the large number of poor, volunteering or semi-professional CSOs operating at local level, which mainly provide services to the community or to their own members.

Regardless of this gap, generally speaking, non-governmental organizations in Montenegro represent an exceptionally important sector, which has, so far, achieved serious changes in Montenegrin society. Taking into account the nature of the activity of non-governmental organizations, and the fact that they mainly focus on social problems, the changes and results achieved by the civil society sector are of a qualitative more than quantitative nature. Anyway, non-governmental organizations in Montenegro have so far implemented a large number of successful projects from various fields, high-profile campaigns and mobilization of citizens, they have strongly influenced the improvement of the quality of national legislation, monitored the implementation of laws and informed the public on shortcomings in the work of institutions, while simultaneously empowering the transparency and accountability of institutions. As far as the change of consciousness and modernization of civil society are concerned, the non-governmental organizations are those which have raised the sensitivity of Montenegrin public to the most sensitive issues such as: LGBT rights, coming to terms with the past, gender equality, drug addiction, and so on.<sup>16</sup>

Another specific area to which the civil society sector in Montenegro also significantly contributed is the European integration process of Montenegro. In fact, non-governmental organizations run their first training programmes on European integration when this topic was not present in formal education in any way. The European Integration School, organized by three partner CSOs: the Centre for Civic Education, the European Movement in Montenegro and the Centre for Development of Non-Governmental Organizations (CRNVO), gathered the first group of learners as early as 2004. This non-formal training programme has been implemented over the past five years with several hundreds of trainees, including students, members of the Montenegrin Parliament, journalists, civil servants, and CSO sector activists.

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14 “Pristupni pregovori Crne Gore i Evropske unije: Novi princip za novu Evropu”, *Oslobodjenje*, Bosanskohercegovačke nezavisne novine, Sarajevo, Bosnia and Herzegovina, 29 April 2014, <http://www.oslobodjenje.ba/vijesti/bih-eu/novi-princip-za-novu-evropu-> (accessed on 14 October 2015).

15 More information is available on the website of the Ministry of Interior of Montenegro: [http://www.mup.gov.me/rubrike/Registracija\\_NVO/148409/U-Crnoj-Gori-registrovano.html](http://www.mup.gov.me/rubrike/Registracija_NVO/148409/U-Crnoj-Gori-registrovano.html) (accessed on 14 October 2015).

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16 Achievements of civil society organizations in Montenegro can be found in the following publication on the web site of TACSO <http://www.tacso.org/documents/otherdoc/?id=9549> (accessed on 14 October 2015).

Apart from that, in all these years of activity some non-governmental organizations have built high-level capacities and knowledge in certain areas now being addressed through the negotiation chapters. Finally, also as a result of many years of work and activity, resource materials have been created by non-governmental organizations in numerous fields, in the form of analyses, researches, and reports, which are now gaining additional use-value in the negotiation process.

## EU INFLUENCE ON CSOs' PARTICIPATION IN MONTENEGRO

From the very beginning of the integration process, progress reports did not treat the civil society sector to the extent expected from its representatives in Montenegro. However, civil society's strong commitment to reforms in various fields and participation in the integration process have led the European Commission to recognize its importance, which is reflected in the increasing attention dedicated to this topic in progress reports.

Evidently, more attention and space for the civil society sector in progress reports actually coincides with the intensification of the negotiation process between Montenegro and the EU. This was expected considering that cooperation of the Government with civil society was embedded in the Action Plan on Chapter 23.

### Civil Society in the 2014 Progress Report on Montenegro

In the last Progress Report, a paragraph devoted to civil society covered each of the topics important for the creation of an enabling environment for CSOs in Montenegro.<sup>17</sup> Among the recommendations for further development and enhancement of the institutional and legal framework for the functioning of CSOs, attention is also drawn to CSOs' participation in the integration process: *"Representatives of CSOs continue to be involved in the activities of the state and local administration, including working groups on the EU accession negotiation chapters. On various occasions, civil society representatives have voiced their dissatisfaction with their level of involvement in the process."*

Following the publication of the Progress Report, findings in certain of the fields mentioned herein established the ground for the activity of civil

society organizations, but also the activity of institutions responsible for these topics. Therefore, recommendations from the Progress Report were the basis for shaping some policies and the activity of some of the actors.

With regard to the participation of civil society representatives in the working groups for the preparation of negotiations, and the dissatisfaction CSOs had voiced regarding their level of involvement, this is primarily related to the CSO representatives in the working group for Chapter 23, who publicly expressed their dissatisfaction with the treatment in the working group, the dynamics of the work and transparency. After the Progress Report was published, civil society representatives in this body were given access to the portal to report about the implementation of measures from the Action Plan on Chapter 23. Otherwise, no significant steps forward were made in fulfilling the requirements of civil society activists. These requirements were mostly related to scheduling more frequent meetings, and the transparency of documents containing the EC's opinion on laws and by-laws prepared by state authorities as part of the measures envisaged by the Action Plan on Chapter 23. Still, working group meetings are organized sporadically, and the opinions provided by the Commission are not accessible to the members of the working group.

In its Progress Report, the EC criticized the lack of continuity of the cooperation between state administration authorities and CSOs. Following the publication of the Report, the training of civil servants was initiated to familiarize them with regulations governing the cooperation with CSOs.

The Progress Report also states one of the key problems faced by the non-governmental sector in Montenegro, which is the funding of CSO programmes and projects out of the state budget. Accordingly, the Government began to draft amendments to the Law on NGOs to regulate this area.

This clearly shows that the creation of an enabling environment for civil society participation in Montenegro depends on external "pressure". In fact, the Montenegrin CSOs have constantly been advocating for all of the issues raised in the Progress Report: involvement in the integration process, involvement in shaping public policies, and better public funding. However, their efforts needed external support, which was provided primarily by the EC in its Opinion from 2011, and its subsequent progress reports. This proves that

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<sup>17</sup> European Commission, *Montenegro Progress Report 2014*, SWD(2014) 301 final, 8 October 2014, page 10.

the Government is willing to invest in the creation of an enabling environment for CSOs only if so required by the EU. At the same time, it illustrates the strong influence that EU documents have on CSOs' participation in Montenegro.

The examples mentioned herein reflect the situation in the area of creating a better institutional, legal and financial context for CSOs in Montenegro. There is another side of the coin – the political one, which shows substantial relations between Government and CSOs. Relations between CSOs and Government in this area have remained a sensitive issue in Montenegro with the Progress Report also stating these relations *“have been overly adversarial on occasion, especially on issues concerning the political situation, rule of law and fundamental rights”*.<sup>18</sup> In this area, the situation has not changed regardless of the statements in the Report. This is certainly a particularly sensitive issue in the relations between the Government and CSOs, which entails confronting the attitudes regarding the most significant topics in the country. Therefore, it appears that the recommendations of the European Commission may considerably influence the improvement of the conditions for the activity of CSOs in terms of improving the legal, institutional and funding solutions. On the other hand, these recommendations still cannot significantly change the essential problems in these relations, as such a change would require political will in the country, to ensure unhindered activity of civil society activists, who criticize and have different viewpoints from the government.

## **INSTITUTIONAL MECHANISMS FOR CSO PARTICIPATION IN DECISION MAKING IN MONTENEGRO DEVELOPED IN THE EU INTEGRATION PROCESS**

### **The Council for Development of CSOs**

The Council for Development of Non-Governmental Organizations was established by Decision of the Government of Montenegro (Official Gazette of MNE 21/14) in September 2014. It is composed of a chairman and 22 members (11 representatives of state bodies and 11 CSO representatives who were elected on the basis of a public call and proposals made by CSOs). The Chairman of the Council is a Government representative, while the deputy chairman is a CSO representative. The Council is tasked with monitoring the implementation of the Strategy for Development of NGOs and related Action

Plan, and the implementation of the Action Plan on Chapter 23 in the segment of cooperation between Government and CSOs. The Council gives opinions on all regulations and other documents concerning an enabling environment for CSOs, provides recommendations for the improvement of cooperation between the Government and CSOs, and fosters dialogue between the two sectors. At least once a year, the Council informs the Government about its work and about matters relevant for establishing cooperation between state bodies and CSOs.

Considering the work of the Council for Development of Non-Governmental Organizations, following the receipt of the Progress Report and the recommendation that *“The Council should be in the position to better steer the process of development of civil society”*, this body adopted its work plan and intensified its work – sessions of this body have been held on a monthly basis. So far, the Council has held eight sessions and provided opinions with regard to a number of documents and processes related to civil society.

### **Focal Points in Ministries**

Focal points in ministries and other state administrative bodies are a specific mechanism of cooperation with CSOs and they are being continuously appointed since 2007. This mechanism enables direct communication between CSOs and relevant ministries. Focal points mostly coordinate this cooperation. There are some obstacles in making this mechanism fully functional. The first is the lack of a clear definition of the scope of work of focal points for cooperation with CSOs in the rulebooks on internal organizations and job descriptions, and the fact that in most cases this is an additional workload for the employees. Furthermore, there is frequent staff fluctuation among focal points, which implies frequent adjustments in relations between CSOs and their contact persons in ministries. At the moment, there are 57 focal points in different state bodies.

## **LEGAL MECHANISMS FOR CSO PARTICIPATION IN DECISION-MAKING IN MONTENEGRO DEVELOPED IN THE EU INTEGRATION PROCESS**

The Action Plan for the implementation of the recommendation from the Opinion of the European Commission contains a special section dedicated to the improvement of cooperation between state bodies and CSOs, and participation of civil society in policy-making. This document was the policy base for drafting legislation in this field, including two decrees that regulate these

<sup>18</sup> European Commission, *Montenegro Progress Report 2014*, SWD(2014) 301 final, 8 October 2014, page 10.

topics: The Decree on the Manner of and Procedure for establishing Cooperation between State Administration Bodies and NGOs and the The Decree on the Manner of and Procedure for Conducting Public Consultation in Law-Making. Both decrees were adopted in 2012.

**The Decree on the Manner of and Procedure for establishing Cooperation between State Administration Bodies and NGOs** regulates for the first time the main forms of cooperation between the public and civil sectors (informing, consulting, and involvement in working bodies). All of these forms are recognized in the Code of Good Practice for Civil Participation developed by the Council of Europe in June 2008. However, all the forms are formulated to become totally integrated in a national legal system. From the moment of the decree's adoption, there has been huge progress in terms of CSOs' participation in working bodies for drafting laws. According to the findings of the CRNVO Report on the implementation of this decree, 55 CSO representatives participated in working groups for drafting various public policies in 2014. However, the process of consultation and informing remains a challenge.

**The Decree on the Manner of and Procedure for Conducting Public Consultation in Law-Making** lays down legal prerequisites for efficiently consulting the public in the process of preparing laws, other pieces of legislation, and strategic and planning documents, making it focused on strengthening participatory democracy. It brought innovations in terms of defining public debate and overcoming the traditional understanding of this mechanism in Montenegro. In fact, before the Decree was adopted, public discussions concerned mainly a random organization of round tables once the draft of the law had been prepared. This approach limited civil participation because it offered only one place and time for civil society to provide its contribution to the law. Also, once the draft law is prepared, it is hard to essentially shape its provisions so the influence is limited to so-called "cosmetic" changes. That is why this decree prescribes two phases of the public discussion: before and after a draft law is completed. This first phase of pre-consultation of civil society offers a real possibility for it to shape the law. However, according to the findings of CRNVO Report on the implementation of this decree, in 2014 the Government adopted 73 laws, 57 of which did not pass the pre-consultation phase and 21 which did not pass the discussion on the draft.<sup>19</sup>

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<sup>19</sup> *Civilno društvo u kreiranju i primjeni javnih politika – godišnji monitoring izvještaj (Civil Society in the Creation*

## POLICY MECHANISMS

### Strategy for Development of CSOs

The Strategy for the Development of CSOs was adopted in December 2014. It was based on the results of the implementation of the previous Strategy for Cooperation between Government and CSOs. The process of drafting this document was very participatory, since two CSO representatives participated in the working group for its preparation, and three public discussions were organized afterwards. The strategy reflected the CSOs' needs, and in the end it consisted of the following topics:

- institutional mechanisms for cooperation with non-governmental organizations in Montenegro; participation of non-governmental organizations in public policy making and implementation; financial sustainability of non-governmental organizations; an enabling environment for the work of CSOs (volunteering, lifelong learning, social entrepreneurship, as well as equal access of persons with disabilities to state administration bodies); and the role of CSOs in the process of the European Integration Capacity building of CSOs.

According to findings from the first Report on the Implementation of the Strategy, prepared by the Council for the development of CSOs, there has not been sufficient progress so far in the most important areas such as: financial sustainability, volunteering, equal access for persons with disabilities to state administration bodies, social entrepreneurship, etc. This is the reason why the Council prepared very concrete conclusions reflecting dissatisfaction with the strategy's implementation, as well as a recommendation for fostering the implementation of measures that directly and essentially affect the sustainability of CSOs in the country.

## FORMAL CSO INVOLVEMENT IN THE NEGOTIATION PROCESS IN MONTENEGRO

### Working Groups for Preparing Negotiations

By adopting the **Decision for Establishing the Negotiating Structure for the Accession of Montenegro to the European Union**,<sup>20</sup> the Government of

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*and Implementation of Public Policies – Annual Monitoring Report of 1 January 2014 - 31 December 2014*), Centre for NGO Development (CRNVO), Podgorica, September 2015.

<sup>20</sup> Decision on the Establishment of the Structure for Negotiations on Montenegro's Accession to the EU, *Official Gazette of the Republic of Montenegro* No. 9/2012.

Montenegro established the legal basis for opening its negotiation structures to civil society. In fact, according to this Decision, the Chief Negotiator may invite experts to join working groups for preparing negotiations. This has resulted in invitations to civil society organizations in Montenegro to nominate their representatives to the working groups. In doing so, Montenegro has become the only country that has chosen this model, i.e. the formal involvement of civil society organizations in working groups.

The Chief Negotiator's Office developed a mechanism for the selection of CSO representatives, which includes publishing an open call for participating in working groups for negotiation chapters. The application form contained two parts: one for the organization proposing the candidate and one for the candidate him- or herself. Both organization and candidate were required to be experienced in issues relevant to the chapter they are applying for. The experience had to be proven by concrete projects and work references for both.

Montenegro has opened 20 chapters, two of which have been provisionally closed, namely *Science and Research* and *Education and Culture*.

Currently, 52 civil society representatives are involved in the work of the working groups for the preparation of negotiations.<sup>21</sup>

### **Operational Structure Responsible for Implementing the Strategy on Informing the Public about Montenegro's Accession to the EU 2014-2018**

The Operational Structure Responsible for Implementing the Strategy on Informing the Public

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<sup>21</sup> As stated in the Strategy for the Development of Non-Governmental Organizations 2014-2016, CSOs are involved in working groups tasked with the preparation of negotiating positions for the following chapters: Free Movement of Goods; Free Movement of Workers; Right to Establish Enterprises and Freedom to Provide Services; Free Movement of Capital; Public Procurement; Commercial Law; Intellectual Property Law; Competition Policy; Financial Services; Information Society and Media; Agriculture and Rural Development; Food Safety, Veterinary and Phytosanitary Policy; Fisheries; Transport Policy; Energy; Taxes; Economic and Monetary Union; Statistics; Social and Employment Policy; Entrepreneurship and Industry; Trans-European Networks; Regional Policy and Coordination of Structural Instruments; Judiciary and Fundamental Rights; Justice, Freedom and Security; Science and Research; Education and Culture; Environment; Consumer Protection and Health; Customs Union; Foreign Affairs; Foreign, Security and Defense Policy; Financial Control; Financial and Budgetary Provisions (33 working groups - data from July 2013).

about Montenegro's Accession to the EU 2014-2018 was formed by the Government of Montenegro. Tasks of the Operational Structure are: preparation of annual action plans; communication and enforcement of intersectoral actions related to the implementation of strategies to inform the public on the accession of Montenegro to the EU 2014-2018; assistance in the preparation of members of structures for negotiations and conclusion of the Treaty of Accession of Montenegro to the European Union for public appearances; and adoption of recommendations of improvements informing citizens about the process of Montenegro's accession to the European Union. The body has 28 representatives: 19 representatives of ministries and one for the Parliament, one on the Union of Municipalities, two representatives of the Government and five representatives of CSOs.

### **CASE STUDY ON A COALITION OF 15 CIVIL SOCIETY ORGANIZATIONS FOR MONITORING THE COURSE OF NEGOTIATIONS WITHIN CHAPTER 23 - JUDICIARY AND FUNDAMENTAL RIGHTS**

Upon the initiative and in co-ordination with the Centre for Development of Non-Governmental Organizations, (CRNVO), in parallel with the opening of this chapter, a coalition was established for the monitoring of the negotiations on Chapter 23 - Judiciary and Fundamental Rights. The long-term goal of the activity of the Coalition is the contribution to the development of institutions which will protect the interests of citizens in a higher quality way, which will then contribute to the achievement of the overall improvement of the lives of Montenegrin citizens.

The Coalition was created as the key result of the project "Together for the Goal", implemented by CRNVO in partnership with the Centre for Peace Studies in Zagreb. As part of this project, Coalition members underwent several months-long training on topics related to the content of Chapter 23; monitoring and reporting methodology; and the creation of a communication strategy by the Croatian ad hoc CSO coalition formed for the monitoring of negotiations in the field of Chapter 23 (current Platform 112), the first of its kind in the region. In addition, they had an opportunity to talk to the most significant stakeholders in the civil and public sectors in the Republic of Croatia, as well as with representatives of the EU Delegation to the Republic of Croatia.

The Coalition, which was created in response to the need to ensure a high level of transparency of

the negotiation process of Montenegro with the European Union, was composed of 15 organizations with long-standing experience in the area of negotiation Chapter 23, including the following: the Centre for Development of Non-Governmental Organizations (CRNVO), Juventas, Human Rights Action (HRA), the Centre for Monitoring and Research (CEMI), the Centre for Democracy and Human Rights (CEDEM), LGBT Forum Progress, Alternativa Institute, the European Movement in Montenegro, NGO Secure Women's House, SOS Phone for Women and Children Victims of Violence Nikšić, the Centre for Women's Rights, the Social Inclusion Institute, the Association of the Youth with Disabilities of Montenegro, the Centre for Anti-Discrimination "EKVISTA" and NGO Anima – the Centre for Women's and Peace Education.

The Coalition has been open to all civil society organizations that want to contribute to essential change by their knowledge and experience in the field of human rights, judiciary reform, and the fight against corruption in Montenegro, and that at the same time share the values and beliefs that brought the existing members of the Coalition together.

## Current Results

Immediately upon its establishment in December 2012, the Coalition for the Monitoring of Negotiations on Chapter 23 created 200 specific requirements for the Montenegrin Government to implement reforms in all four areas covered by this chapter. The requirements were thoroughly elaborated and they were the product of long-standing work and analysis of all organizations in all areas. Additionally, numerous requirements were already integrated into national strategic documents, as well as the documents of international organizations, but their implementation was lacking in practice. This document was also addressed to the working group for the preparation of negotiations on Chapter 23. It was publicly emphasized several times that the requirements of the Coalition were among the documents used by the working group when developing the action plan.<sup>22</sup>

## Reports

In its work so far, the Coalition published three Monitoring Reports regarding the situation in the field of judiciary reform and human rights (Chapter

23) in Montenegro<sup>23</sup>. The Reports are aimed at providing independent information and observations about the level of reforms undertaken in the field of the judiciary, the fight against corruption, protection of human rights, and civil society development. The Reports followed the dynamics of the Progress Reports, in that they covered the reform periods between the two Progress Reports for Montenegro.

The overview of the situation in all areas was accompanied by specific recommendations for the improvement of the situation, whose application, according to the opinion of the members of the Coalition, was not necessary before the official opening of the negotiation process of Montenegro with the European Union related to Chapter 23.

A particular segment of the Reports is dedicated to recommendations to the European Commission to help improve access to reporting on Montenegro's progress, as well as to ensure full transparency of the negotiation process and the implementation of specific measures in the field of judiciary reforms, the fight against corruption, and human rights protection in compliance with its authorities.

In addition to this, the Coalition has drafted the Comments to the First Report of the Government of Montenegro regarding the implementation of the action plan for Chapter 23. The Comments are related both to the content of information submitted by the Government and to the reporting methodology.<sup>24</sup>

A coalition of civil society organizations to monitor the negotiations proved to be a very successful model for several reasons. First, the coalition gathered the truly prominent civil society organizations in the areas covered by Chapter 23, ones that have several years of experience and an established presence in society. Sincere dedication to a cause such as transparent and high-quality negotiations and rapid reforms in society has been a key driving force for the association of these organizations. Although each member of the Coalition is sufficiently recognized in society and has a high quality level of knowledge in the field in which it operates, they have chosen to join their capacities and forces,

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<sup>23</sup> The first, semi-annual Report is related to the period from October 2012 to April 2013; the second, annual Report is related to the period from October 2012 to October 2013; and the third, semi-annual Report is related to the period from October 2013 to April 2014.

<sup>24</sup> All reports, key official announcements are uploaded on the link: <http://www.crnvo.me/vijesti/koalicija-nvo-za-praenje-pregovora--poglavlje-23.html> (accessed on 14 October 2015).

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<sup>22</sup> All requirements of the Coalition may be found on the web site of the Centre for NGO Development: <http://www.crnvo.me/index.php/vijesti/crnvo-vijesti/8117-vie-od-200-zajtjeva-novoj-vladi> (accessed on 14 October 2015).

recognizing the coalition as an additional opportunity to influence decision-makers and improve the legitimacy of their advocacy efforts. Second, the activity of each of the Coalition members requires large investments and efforts. Internal communication, division of tasks, the harmonization of positions, coordination: all of these are embedded in the experience of the Coalition members. So, while working on the preparation of reports and following the course of the negotiations, the Coalition has dealt with internal organization, as well as fundraising, which was an additional effort for each of the member organizations. The fact that the Coalition has nonetheless largely achieved its tasks gives added value to its work. Third, the Coalition has undoubtedly succeeded in producing reports and recommendations which were accepted by both domestic stakeholders and the European Commission, whose representatives delivered positive comments about the reports, rating them as a quality source of information about the complete negotiation process. Fourth, this kind of association allows for a clear reference to the responsibilities of key stakeholders in the country and the formulation of specific political messages. A coalition of civil society organizations is, by its nature, advocacy-oriented. Therefore, its activities do not only apply to a detailed analysis of the situation and defined recommendations. The Coalition had the opportunity to go a step further and clearly open the issue of political will for key reforms in certain areas.

## CONCLUSION AND RECOMMENDATIONS

A state seeking membership in the EU undoubtedly needs to create an enabling environment for civil society activity and functioning. Also, regardless of EU accession, each country going through the transition process should enable participation of the civil society in the decision-making process, since this represents a substantial democratic precondition for a country's further development. This means that civil society organizations should participate in the creation of policies that affect citizens' everyday lives. By having them as key stakeholders in the process, each government would achieve three results. First, better quality legislation, as CSOs often possess a high level of knowledge and even expertise in different areas. Second, increased legitimacy of its legislation and policies by having CSOs and, indirectly, citizens involved in the process of creating policies. Ac-

ceptance of their suggestions and opinions would mean that the policy has been developed according to their needs and has been supported by them. Third, legislation developed in a participatory manner would be better implemented, as it would meet the needs and resources on the ground.

The EU integration process may contribute to the creation of a better environment for the civil society's development and work. It will mostly reflect the creation of a better institutional and legal solution as a key precondition for its development. However, it may not directly help the improvement of substantial relations between governments and civil society. This remains an internal issue in each country and it is up to domestic stakeholders, especially the government, to change its attitude towards CSOs and understand the importance of their involvement in the decision-making process.

Institutions and legislation for the development of CSOs and their involvement in decision-making should be improved. These mechanisms will not guarantee immediate higher involvement of CSOs in the creation of public policies, but they do represent a long-term and sustainable approach to this issue. In the long run, these solutions contribute to a change in the governments' culture concerning the creation of public policies with the involvement of CSOs and taking into account their suggestions and contributions.

When it comes to CSOs' concrete engagement in negotiations, it is crucial that organizations actively participate in the process. This can be achieved through different models of involvement. Direct participation in negotiation structures enable CSOs to contribute to the quality of action plans and negotiation positions, with their knowledge and expertise, and the transparency of the overall process. Being part of structures that create action plans increases their possibility to influence the content of the document at the earliest stage. At the same time, participation in these structures and work with government officials may help CSOs learn about the process from an internal perspective and thus improve their own capacities where needed.

Another model considers that CSOs monitor negotiations without direct involvement in the structures. This engagement of CSOs (such as the Coalition of NGOs for the Monitoring of Negotiations on Chapter 23) is needed in every country. Organizations may also do it without the creation

of coalitions and a network. In any case, CSOs should monitor the transparency of negotiations, and realization of reform within different chapters. The creation of shadow reports about reforms is an added value to this engagement that should help domestic and EU stakeholders to adequately monitor and evaluate progress.

## Recommendations

- It is crucial that member organizations first agree in detail about all internal procedures, and only then start working. One possibility is the adoption of the Rules of Procedure, as was the case with the Coalition, although the adoption of this document does not always guarantee full understanding and consent, inherent to every form of association and alliance. In addition, it is extremely important that each member equally value the work of the Coalition, and is dedicated and ready to invest its efforts and capacities into its work.
- The work of Coalition members invested in the preparation of analyses and reports can be voluntary. However, to achieve its real goal, influencing decision-makers, the Coalition requires fundamental resources, such as the publication of reports, and the possibility of going to Brussels or other locations, to advocate and establish communication with key stakeholders. Otherwise, the work of the Coalition could be reduced to the occasional press release, or presenting analysis in only certain areas, which is not sufficient to achieve goals such as changes in legislation and their proper implementation.
- In addition to representatives of the European Commission, there is the necessity of establishing communication with members of the European Parliament (MEPs). MEPs are among the key enlargement policy makers and their adequate awareness about the situation in countries aspiring to join the EU is a prerequisite for making rational and well-founded decisions in this respect.



# EU ENLARGEMENT AND THE WESTERN BALKANS



## CHAPTER II

# SERBIA

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## INTRODUCTION

Serbia formally embarked on the accession negotiation process with the European Union (EU) on 21 January 2014. The first phase - the screening process, (which is the analytical assessment of the extent to which the legislation of the candidate country has been aligned with the EU *acquis*), was completed in March 2015. However, Serbia is still waiting for the opening of the first negotiation chapters. Throughout the on-going EU accession process, the Government of the Republic of Serbia has repeatedly emphasized the need for greater transparency and inclusiveness. Serbia has adopted a set of documents for the establishment of the negotiating structure and clearly stated that EU accession negotiations will be based on the principle of transparency, and that civil society will be consulted in the process. Influenced by the “new approach” to enlargement, and not only the Croatian but also the Montenegrin experience, Serbia has chosen a different path than either of the aforementioned countries. At the beginning, the modus of cooperation was not formalized and representatives of civil society organizations (CSOs) were not directly engaged as members of negotiating groups in the accession negotiations. However, the government recognized the importance of civil society in the process. The representatives of CSOs were given the opportunity to follow the explanatory screening meetings through a live-stream and have had de-briefing meetings with the chief negotiator and heads of negotiating groups for negotiations chapters. The Joint Consultative Committee (JCC) between EU and Serbia is also noteworthy, as an existing official mechanism for cooperation with CSOs, established according to the Stabilization and Association Agreement. On the other hand, CSOs in Serbia mobilized early on, not only to prepare for getting involved in the process, but also to monitor and influence the process from its

very beginning. Currently, there are six platforms operating in Serbia at national and regional levels: The National Convention on the European Union (NCEU), the prEUgovor Coalition, Coalition 27, Let's Speak about Negotiations, Eastern Serbia towards the European Union and Platform of Banat.

After the first phase of the process, the Government of the Republic of Serbia recognized the NCEU as an institutionalised channel for communication and consultation with the civil society. An official model, such as the NCEU, is a good starting point for bringing important issues to the government's attention and increases the likelihood that the other side will listen and provide feedback. On the other hand, bearing in mind the importance of an external, impartial and expert monitoring assessment, the unofficial model, embodied in the work of the other initiatives, which are more oriented towards providing an evidence-based content in the different issues/areas, make an excellent platform for influencing and improving reforms as well.

At this stage, Serbia has already developed a framework for conducting accession negotiation, formed a Negotiating Team and finalized the first phase of the accession negotiation process (screening), which allows for a deeper analysis of the actual impact of civil society organizations. Despite several positive developments, much remains to be done to achieve the desired results. The national authorities and institutions should hold regular consultations with relevant stakeholders in the various stages of the negotiation process. Relevant documents within the negotiation process should be made public, to allow interested parties to submit suggestions, comments and recommendations and to monitor the process. All stakeholders should be regularly informed about the activities and dynamics of the process. The EU accession negotiations process and its implications should be communicated to the public in a better and more efficient manner. Therefore, a much broader space exists for various initiatives to emerge for the purpose of effectively influencing and monitoring the process.

The EU accession negotiations process is important for the citizens' engagement as it tackles all aspects of Serbian society. Bearing in mind the number of actors and procedures involved, the dynamics of the reforms of the policy making system to ensure that the adopted *acquis* is fully and properly implemented, the EU accession negotiations process should be seen as a chance to establish a

functional policy-making process. With the active involvement of interested stakeholders, especially CSOs, the quality and relevance of a decision taken in this process will be higher, which will increase the likelihood of a more successful outcome of the accession negotiations process. So, the rationale behind the focus on this topic rests in the fact that the EU accession process requires greater attention to be paid to the policy-making process. Additionally, it provides a unique opportunity for civil society, as its involvement in policy-making within the EU integration process is recognized and supported through the new EU enlargement approach. CSOs' participation in decision-making within the framework of the EU accession process is indivisible from the CSOs' participation in decision-making in general. CSOs can provide valuable contributions to developing strategic documents and legislation, to the impartial evaluation of the implementation of these plans, the process of negotiations and progress achieved.

Having in mind these initial assumptions, the research had the following outcomes: 1) various forms and dynamics of public participation in the decision-making process in the framework of Serbia's EU integration process are explored; 2) the level of civil society impact on the current phases of the process (screening and preparations for opening negotiation chapters) has been examined; 3) recommendations for improving public participation in the forthcoming phases of the accession negotiation process are provided. The research team used a combination of qualitative and quantitative methods in the research and gathering materials. The main methods used in the research were: 1) **desk analysis** of the key national documents that enable the inclusion of civil society in the overall national decision-making process; documents emerging from Serbia's EU accession process that stipulate it in detail; and key EU documents related to Serbia; 2) **questionnaire** filled by 104 CSOs from Belgrade Open School's database of mapped organizations interested in monitoring and getting engaged in the accession negotiation process. The database was created in 2014 within the "Let's Speak about Negotiations" project; 3) **focus group discussions and interviews** with representatives of key platforms and/or civil society organizations engaged in monitoring the accession negotiations process. The authors have tried to consolidate the diversity of responses received throughout the research, and of data gathered from the content analysis of documents, texts, and ar-

ticles by the research team, and find some common elements, while being aware of the risks that some interesting ideas, proposals and approaches might remain unrecorded in this publication.

Apart from the introductory section, the main text of the study is structured into four sections. The first section deals with the existing legislative framework in Serbia and key EU documents, which enable and shape participation of civil society in the decision-making process. The second section contains the analysis, based on the research data collected mainly through the questionnaire and focus group discussion. It examines several different aspects of CSOs' participation: from organization of their capacities, through communication and cooperation with relevant national and EU institutions, to access to information of public importance. The third section elaborates in detail a specific case study of civil society participation in monitoring the accession negotiations in Serbia in Chapter 24. The fourth section contains the conclusions of the research and the recommendations based on the previous analysis.

## LEGAL FRAMEWORK FOR PUBLIC PARTICIPATION IN DECISION-MAKING

Documents regulating the CSOs' participation in the national framework directly affect the participation in the EU accession process as well. In previous years, Serbia has adopted several documents dealing with this issue. Some of them are sectoral, such as those adopted in environmental policy, while others are cross-cutting and affect all policy areas in Serbia. These documents are needed in order to create a solid basis for the CSOs' participation. Although some of them are non-binding ones, they still provide the conditions for the CSOs' engagement and guidelines for public institutions on national, provincial and local level in this regard. However, the problem is rooted on the one side in the CSOs, which do not have clear knowledge on the provisions of the documents and the impact they can produce by taking advantage of the conditions for the CSOs' participation these documents provide, and on the other side in the official institutions in some cases when they fail to implement the prescribed provisions.

Several documents will be analysed below: those dealing with the general framework for the CSOs' participation in decision-making; and those developed within the Serbian EU accession negotiation process. In analysing these documents, we will focus on presenting the opportunities they provide

for the CSOs' to take part in the general decision-making process, as well as in the context of the European integration process.

## National Documents Regulating CSO Participation in Decision-Making

### Binding Documents

In general, the existing legal framework provides CSOs with a solid basis for participation in the decision-making process. The preconditions for public participation and involvement in the decision-making process are prescribed by the **Constitution of the Republic of Serbia**. Specifically, Article 53 guarantees the right to participate in the management of public affairs. Article 51, stipulating the right of free access to information of public importance, creates the basis for public participation in the decision-making process. Providing access to information must assure truthfulness, completeness and promptness of the process<sup>25</sup>. The **Law on Associations**, while not strictly related to the establishment of the basis for participation of CSOs, creates a supporting environment for their operation<sup>26</sup>.

Other documents regulating the issue of the CSOs' participation were developed on an already existing base. These documents are: Law on State Administration, Law on Local Self-Government, Law on Referendum and Civil Initiative, Law on Free Access to Information of Public Importance, Rules of Procedure of the Government and Rules of Procedure of the National Assembly.

The underlying principles of the **Law on Public Administration** are respect of the users of public services and transparency in public administration. The principle of respecting users of public services requires public institutions to use the best possible means to meet the needs of the user. The principle of transparency binds public institutions to provide insight into their work to the public. One of the chapters of this Law deals specifically with transparency and public relations. Articles 76, 79 and 80 are of particular importance for the topic of our analysis. Articles 76 and 79 address transparency and delivery of information to public service users and the general public. On the other side, Article 80 addresses the obligation

of public administration to provide opinions on the implementation of laws and other acts at the citizens' request<sup>27</sup>. This article clearly stipulates the right of citizens to seek an opinion on specific issues related to the legislative process. Consequently, citizens also have the right to question and request opinions on activities related to the Serbian EU accession negotiations process.

The **Law on Local Self-Government** goes even further on this issue. This Law contains a specific chapter dealing with the direct citizens' participation in local government. As a means of direct citizen participation, the Law envisages the following models of participation: civic initiative, citizens' assembly and the referendum. By taking initiative and enabling the consent of 5% of the local voters, citizens have an opportunity to provide proposals on local legal acts. Citizens' assemblies are convened to discuss and provide proposals on issues under the jurisdiction of local authorities. On the other side, a referendum is called not by the citizens ("bottom-up" approach), but by local authorities ("top-down" approach). Also, as local authorities are a part of the public administration, its bodies are obliged to provide information to the public<sup>28</sup>. The models of civic participation on local level previously described are also present and used in a similar fashion at the national level as well. Primarily, these models are referendum and people's initiative<sup>29</sup>.

Beside the previously mentioned acts, the most important act on this issue is the **Law on Free Access to Information of Public Importance**. Information of public concern is defined as "information held by public authorities, produced while serving public office, or information contained in specific documents relating to anything that the public has a justified interest in knowing<sup>30</sup>". Having in mind the purpose and the nature of the process, this kind of information is produced within the Serbian EU integration process. The right to access information is universal and available to all citizens.

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<sup>27</sup> Law on Public Administration, *Official Gazette of the Republic of Serbia* No. 79/2005, 101/2007, 95/2010, 99/2014, articles 10, 11, 76, 79 and 80.

<sup>28</sup> Law on Local Self-Government, *Official Gazette of the Republic of Serbia* No. 129/2007, article 68, 69, 70 and 71.

<sup>29</sup> Law on Referendum and Civic Initiative, *Official Gazette of the Republic of Serbia* No. 48/1994, 11/1998.

<sup>30</sup> Art. 2, para. 1 of the Law on Free Access to Information of Public Importance, *Official Gazette of the Republic of Serbia* No. 120/2004, 54/2007, 104/2009, 36/2010, article 2.

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<sup>25</sup> Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia* No. 98/2006, Article 51 and 53.

<sup>26</sup> Law on Associations, *Official Gazette of the Republic of Serbia* No. 51/2009, 99/2011.

A binding procedural act which addresses public participation in decision-making is the **Rules of Procedure of the Government of the Republic of Serbia**. According to Article 92 of this document, the Government and its bodies cooperate with “other public institutions, expert associations, labour unions, municipalities, cities, City of Belgrade, autonomous provinces and other legal entities.” The issue of transparency has been tackled in this document as well. Transparency is enabled through press conferences, websites, press releases and other means of communication. However, there are some restrictions regarding public discussions. When a law is not a so-called “systemic”<sup>31</sup> law, and if the Governmental board decides not to put the law up for public debate on a specific issue, then this law will not be included in the public consultation process. Therefore, the document can be published only when a specific board decides to do so<sup>32</sup>.

Regarding the representative body of Serbia, the National Assembly, its **Rules of Procedure** prescribe that Assembly’s working bodies, specifically committees, may allow citizens or associations of citizens to attend and participate in the meeting of certain committees. However, this possibility is reserved for the Committee for Environmental Protection only. The participation of experts and scientists is possible only by official invitation<sup>33</sup>.

## Non-Binding Documents

In addition to these binding documents, there are the non-binding documents as well, which are like “orientation” documents<sup>34</sup> dealing with the issue of public participation in the decision-making process. **Guidelines for Inclusion of Civil Society in the Legislative Process** is the first document in Serbia that defines principles, standards and level of CSOs participation in drafting, adopting and monitoring the implementation of legal acts. The Guidelines offers models in the form of recommen-

datations for the CSOs’ participation alongside official public institutions in the process of drafting, adopting and monitoring implementation of acts through exchange of information, counselling, inclusion and partnership<sup>35</sup>. The Guidelines are based on the recommendations provided in the **Code of Good Practice for Civic Participation in the Decision-Making Process**<sup>36</sup>. Several civil society organizations engaged in monitoring Serbia’s EU accession negotiations process also noted and referred to this document<sup>37</sup>. However, one should keep in mind that this document is not a binding one. Currently, the **National Strategy for an Enabling Environment for Civil Society Development 2015–2019**<sup>38</sup> is being prepared. The draft Strategy has a chapter that addresses the CSOs’ participation in the EU accession process. However, this document is still being drafted; hence, the authors of this study will not cite this document.

Other non-binding documents tackling the issue of the CSOs’ participation in the decision-making process are the **Strategy of Public Administration Reform**<sup>39</sup>, with its related **Action Plan for the period from 2015 to 2017**<sup>40</sup>. The third chapter of the Strategy, part “D”, deals with the issue of raising transparency, improvement of ethical standards and accountability of public institutions. Also, the third chapter, part “D.1”, proposes to improve conditions for stakeholders’ participation and inclusion in the activities of public institutions. As stated, active citizens’ participation is crucial for the transparency of public institutions. It was also underlined that there is a lack of spaces for public debate, considering that these are organized for 20% of all legal acts only. The above was also a part of the Strategy’s related Action Plan.

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31 According to the Rules of Procedure, a “system law” is a law which significantly changes the regulation of a certain issue or a law which regulates an issue of particular public interest.

32 Rules of Procedure of the Government of the Republic of Serbia, *Official Gazette of the Republic of Serbia* No. 61/2006, 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011, Article 41, 42, 92 and 94.

33 Rules of Procedure of the National Assembly of the Republic of Serbia, *Official Gazette of the Republic of Serbia* No. 52/2010, article 63 and 74.

34 Such as strategies and guidelines adopted by official authorities.

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35 Guidelines for Inclusion of Civil Society Organizations in the Legislative Process, *Official Gazette of the Republic of Serbia* No. 90/2014.

36 *Code of Good Practice for Civic Participation in the Decision-Making Process*, International Non-Governmental Organizations Conference, Council of Europe, CONF/PLE(2009)CODE1, 1 October 2009.

37 For more information, please check the “Case Study” part.

38 *Draft of the National Strategy for an Enabling Environment for Civil Society Development 2015 – 2019*, Office for the Cooperation with the Civil Society website, Serbia, Belgrade, 2015, <http://strategija.civilnodrustvo.gov.rs/> (accessed on 15th of the October 2015).

39 Strategy of Public Administration Reform, *Official Gazette of the Republic of Serbia* No. 9/2014.

40 Action Plan for the Public Administration Reform Strategy of the Republic of Serbia for the 2015-2017, *Official Gazette of the Republic of Serbia* No.31/15, pages 39 and 40.

## Other Sectoral Documents

There are some specific sectoral documents which should also be taken into consideration in this regard, such as **Aarhus Convention** (as a binding document)<sup>41</sup> and **Strategy on Sustainable Development** (as a non-binding document)<sup>42</sup>. However, these documents deal with decision-making on environmental issues only and, therefore, can be useful in CSOs participation in decision-making for negotiations on Chapter 27 - Environmental and Climate Change.

## Documents Regulating CSO Participation in the Accession Negotiation Process

The emerging negotiating framework is set in such a manner that it recognizes the importance of civil society inclusion in order to provide the citizens' ownership over the process. This is particularly important as it shows that the overall context of accession negotiations has potential to raise civil society participation in decision-making to a new and advanced level and enable its sustainability within the national framework. Acknowledgement of civil society's role in the process opens up the space for their **empowerment** and provides civil society with an opportunity to **improve the quality and effects of EU-oriented reforms**. However, as the following analysis will show, if it is based on statements rather than concrete actions, recognition does not lead to sustainable improvements and desired impact. The role of civil society was specially acknowledged in the "Opening Statement of the Republic of Serbia" for the first Serbia–EU intergovernmental conference held on 21 January 2014. This document explicitly mentions the special role of the CSOs in the accession negotiations "*Civil society organizations will have a special role in the accession negotiations. In this way the process will get full legitimacy and it will become the ownership of all citizens of the Republic of Serbia.*"<sup>43</sup> However, the concrete documents that were developed for the establishment of the accession negotiations' structure and related procedures deviated from these opening proclamations.

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41 Law on Ratifying Convention on Access to Information, Public Participation in Decision-Making Process and Access to Justice in Environmental Matters, *Official Gazette of the Republic of Serbia* No. 38/2009.

42 National Strategy of Sustainable Development, *Official Gazette of the Republic of Serbia* No. 57/2008.

43 *The Opening Statement of the Republic of Serbia*, [http://www.seio.gov.rs/upload/documents/pristupni\\_pregovori/the\\_opening\\_statement\\_of\\_the\\_republic\\_of\\_serbia.pdf](http://www.seio.gov.rs/upload/documents/pristupni_pregovori/the_opening_statement_of_the_republic_of_serbia.pdf) (accessed on 14 October 2015).

The legal and institutional framework for negotiations on Serbia's accession was adopted in September 2013<sup>44</sup>, but was changed by decisions in 2014<sup>45</sup> and 2015<sup>46</sup>. These documents establish the negotiating structure and procedures for conducting EU accession negotiations of the Republic of Serbia. The coordination of accession negotiation takes place through a specially designed institutional framework. At the top is the **Coordination Body for the Process of the Accession of the Republic of Serbia to the EU**, (chaired by the Prime Minister and composed of key members of the Government, with the participation of the Head of the Negotiating Team and the Head of SEIO). This body considers the most important issues and guides operations within the scope of the public administration in the process of accession of the Republic of Serbia to the EU. **The Coordination Body Council**, (chaired by the Minister responsible for European Integration and composed of the Head of the Negotiating Team, chairpersons of each of the 35 negotiating groups, a representative of the National Bank of Serbia, a representative of the National Secretariat for Legislation, the Deputy Director and Coordinator of the EU funds at SEIO, plus a representative of the Civil Society Cooperation Office), deals with current issues in the process of EU accession. The major part of preparation activities related to the process of negotiation takes place in **35 negotiating groups** (organized to mirror the negotiation chapters). In accordance with the De-

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44 Government Acts establishing EU accession negotiating structures and procedures: <http://www.seio.gov.rs/documents/national-documents.834.html> (accessed on 14 October 2015).

45 *The Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Procedure of Preparing the Negotiating Positions in the Process of Negotiations on the Accession of the Republic of Serbia to the European Union*, <http://www.seio.gov.rs/documents/national-documents.834.html> (accessed on 14 October 2015).

46 *Decision on Establishing the Negotiating Team for Accession of the Republic of Serbia to the European Union, Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Procedure of Preparing the Negotiating Positions in the Process of Negotiations on the Accession of the Republic of Serbia to the European Union and Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Process of Implementation of Analytical Review and Assessment of Harmonisation of the Regulations of the Republic of Serbia with the Acquis Communautaire of the European Union and their Implementation (Screening)*, <http://www.seio.gov.rs/documents/national-documents.834.html> (accessed on 14 October 2015).

cision on the Establishment of the Coordination Body for the Process of Accession of the Republic of Serbia to the European Union<sup>47</sup>, the Office for Cooperation with Civil Society of the Government of the Republic of Serbia is formally included in the work of negotiating groups for ten chapters. At the operational and technical level, although CSOs are not members of the negotiating groups, the Chairmen of the Coordination Body and the President of the negotiating groups could include professional organizations and field area experts in order to resolve complex issues related to the Negotiation Team tasks. However, the criteria for the selection of professional organizations and experts to be included are unclear and require additional procedural regulation, which means that their terms of reference should be specified in writing. It should also be noted that this is only envisaged as optional, so it will depend on the inclusion of individuals from the negotiating team and negotiating groups.

**The Negotiating Team for the Process of Accession of the Republic of Serbia to the EU** is the body responsible for managing the accession negotiations under all of the chapters and at all stages of the accession of the Republic of Serbia to the EU. The core negotiating team includes, by virtue of their position, the state secretaries of the ministries of finance and foreign affairs, Head of the Serbian Mission to the EU in Brussels, Director of the EU Integration Office and a representative of the Office of the Minister without portfolio, the remaining 19 members of the team are chosen from the public administration, the ministries that already took part in the screening process, and representatives of the academic community and CSOs. It is responsible for the horizontal coordination of operations of relevant institutions in negotiation process. The Negotiating Team with the EU was established in August 2015, and consists of 24 members who come from the public administration, the academic community and CSOs<sup>48</sup>. However, the criteria for selecting members of the Negotiating Team are unclear, particularly for non-public sector members (academia, media and CSOs). In numbers, the ratio is the following:

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<sup>47</sup> Decision on the Establishment of the Coordination Body for the Process of the Accession of The Republic of Serbia to the European Union, *Official Gazette of the Republic of Serbia* No. 84/2013.

<sup>48</sup> *Decision on the Appointment of the Members of the Negotiating Team* [http://www.seio.gov.rs/upload/documents/nacionalna\\_dokumenta/pregovori\\_sa\\_eu/pregovaracki\\_tim\\_clanovi.pdf](http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/pregovori_sa_eu/pregovaracki_tim_clanovi.pdf)

there are 16 state officials, six academia representatives, one media representative and one CSO representative. The basic duties of the Negotiating Team include leading the negotiation process, taking part in formulating the negotiation position, and informing the public about the negotiation process and the relevant documents produced in this process. Yet, the decision on its formation prescribes that informing the public will only come as a result of the initiative started by National Convention on the European Union and the Serbian Chamber of Commerce. Therefore, the right of the citizens to be informed will be exercised exclusively through these mechanisms.

In the Decision on Establishing the Negotiating Team for Accession of the Republic of the Republic of Serbia, the NCEU is recognized as a channel for communicating the developments, content and important documents regarding accession negotiations (including negotiation position) to the interested public, in accordance with the regulations and international agreements regulating protection of classified information and access to information. Prior to determining a negotiating position for each chapter, the Government is required to submit its proposed negotiating position to the European Integration Committee of the National Assembly of the Republic of Serbia. Before considering the proposed negotiating position, the Committee is obliged to consider proposals, additions and recommendations from civil society representatives, i.e. the NCEU.

The Resolution on the **Role of the National Assembly and Principles in the Negotiations on the Accession of the Republic of Serbia to the European Union**, adopted on December 2013, defines the role of the National Assembly in the process. The Serbian National Assembly's resolution has invited all state authorities and social stakeholders to take part in public debates on the accession negotiations with the EU. The National Assembly particularly emphasizes the importance of informing the public, timely and continuously, about European values, the EU, developments and results of the negotiations on the accession of the Republic of Serbia to the EU.

It should be highlighted that the Serbian **European Integration Office (SEIO)** will continue to be the focal institution with the greatest responsibilities in EU affairs, responsible for the coordination and preparation of accession negotiations, inter-ministerial coordination in this matter, and for providing assistance to the

ministries in regard to harmonization of the national legislation with the EU *acquis*. The Mission of the Republic of Serbia to the EU in Brussels, as part of the Ministry of Foreign Affairs, is the main channel of communication with the European Commission, the European Parliament and the Council of the EU.

## Serbia's Accession Negotiation Process in the EU perspective

The way in which Serbia designed its negotiating framework, and in particular how it recognized the role of the civil society and the National Assembly, has been acknowledged in the **Annual Progress Report of the European Commission for Serbia in 2014**<sup>49</sup>. This document points out several positive developments regarding the institutional and procedural improvement of the role of CSOs in the accession negotiations: the National Assembly of the Republic of Serbia adopted a resolution aiming at its close involvement in the accession negotiations process, together with other stakeholders, including civil society; the authorities have taken steps to involve civil society in the accession process at regular intervals; the NCEU continues to act as an effective platform for cooperation with civil society in the accession negotiation process; the Office for Cooperation with Civil Society (OCCS) improved its management capacity and played an important role in ensuring civil society participation in the screening process; the Government adopted the Guidelines for the participation of civil society in the legislative process in August 2014.

However, the overall gist of the **Progress Report 2014** is that there is still much to be done in this regard. It stresses that: 1) further efforts are needed to ensure closer and consistent involvement of parliament and civil society in the accession process; and that 2) developed instruments and mechanisms need to be consistently implemented throughout, and the transparency over public budget expenditure for civil society increased.

Moreover, the **Resolution on the Progress Report on Serbia of the European Parliament in 2014** has welcomed the commitment shown by the Serbian Government to the European integration process. However, it also called on Serbia to improve the planning, coordination and monitoring of implementation of the new legislation and policies, and underlined the need to improve the inclusive-

ness and transparency of the accession process. The European Parliament has stressed the essential role of the Serbian Parliament as well as that of civil society in the accession negotiations process and called for greater involvement of civil society in the integration process. One of the main recommendations was to engage in regular dialogue and public consultations with all relevant stakeholders to ensure full transparency, provide information for a constructive debate regarding the functioning of the EU and the membership, and facilitate broad participation in the process<sup>50</sup>.

**The Opinion of the European Economic and Social Committee** on "The role of civil society in EU-Serbia relations", adopted in July 2013, provided an opportunity to get the views of Serbian CSOs and to take stock of the current situation of civil society in Serbia (legal environment, relations with the authorities, situation of social and civil dialogues) and propose recommendations for possible EU action in this field. Some of the recommendations from the Opinion include increasing support to CSOs for capacity building, increasing funds for the work of CSOs within the Civil Society Facility (CSF) program, and support for establishing better and stronger partnerships.<sup>51</sup>

## FORMS OF CIVIL SOCIETY INVOLVEMENT IN THE EU ACCESSION NEGOTIATION PROCESS IN SERBIA

CSOs in Serbia are using various ways and models of participation to make a qualitative impact in the accession negotiations process. Until this moment, several platforms have been founded with an aim to participate in and monitor Serbia's EU accession negotiations. **The National Convention on the European Union (NCEU)** is the widest participation platform as it gathers more than 570 CSOs from the entire country. Divided into 21 working groups, it operates as a permanent body for thematically structured debate among all stakeholders and for formulation of opinions and recommendations. The NCEU is a platform which has gained official recognition within the negotiating structure as the key channel of communication with the public<sup>52</sup>.

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<sup>50</sup> European Parliament, *Resolution on the 2014 Progress Report on Serbia*, 2014/2949(RSP), 11 March 2015.

<sup>51</sup> Opinion of the European Economic and Social Committee, *The role of civil society in EU-Serbia relations*, 2013/C 327/02, 10 July 2013.

<sup>52</sup> For additional information about the National Convention on the European Union, please refer to the following link: <http://eukonvent.org/eng/about-national-convention-on-the-eu/> (accessed on 14 October 2015).

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<sup>49</sup> European Commission, *Serbia Progress Report 2014*, SWD(2014) 302 final, 8 October 2014.

The “prEUgovor” coalition is the first coalition of CSOs formed to monitor implementation of policies with an emphasis on Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). PrEUgovor was formed at the initiative of Belgrade Centre for Security Policy (BCSP) and is composed of seven CSOs<sup>53</sup>. **Coalition 27** is the second thematic coalition, focused on monitoring the progress exclusively in Chapter 27 (Environmental and Climate Change). It consists of six national CSOs, two international environmental civil society organizations and one foundation. **Let’s Speak about the Negotiations** is an initiative led by the Belgrade Open School. Its aim is to advocate for a transparent and accountable accession negotiation process, based on dialogue and partnership between civil society and public authorities<sup>54</sup>. There are also two regional initiatives: **Eastern Serbia towards the EU**, which is carried out by the Regional Development Agency for Eastern Serbia (RARIS) in eight municipalities<sup>55</sup>, and **Platform of Banat**, which is carried out by the Ecological Centre Habitat and consists of 15 CSOs in from nine municipalities of Banat. Both platforms are mechanisms aiming to increase participation of regional actors in the process of EU accession negotiations. Half of the currently existing platforms have been founded before the accession negotiation started, which shows a clear determination of CSOs in Serbia not only to be involved in the process from its very beginning, but to make use of it for building a visible and relevant position against other actors in the process.

In addition, there are CSOs involved in monitoring the accession negotiation process through their regular activities. The survey results show that 64% of CSOs are using their regular project and operating activities to support the process, by monitoring it and feeding it with content. Reshaping and directing regular activities of organizations to align them with the demands of the process became a practice for those CSOs, which are members of platforms. In this way they are trying to boost the work of platforms with **an additional push in expertise and in resources**.

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53 For additional information about “prEUgovor”, please refer to the following link: <http://www.bezbednost.org/Networks/5260/prEUgovor.shtml> (accessed on 14 October 2015).

54 For additional information about Let’s Speak about the Negotiations, please refer to the following link <http://eupregovori.bos.rs/> (accessed on 14 October 2015).

55 For additional information about Eastern Serbia towards the EU, please refer to the following link <http://www.raris.org/fod/> (accessed on 14 October 2015).

Diversity within civil society should not be an obstacle to focused participation and consistency in achieving shared goals, as long as CSOs work on joining their particular thematic goals and capacities around shared values of democracy, human rights and good governance. Greater solidarity and mobilization among CSOs and their platforms around shared values need improvements in order to direct the process towards consolidated democratization and Europeanization of the society.

The way in which civil society mobilizes and organizes participation in the accession process in Serbia, can contribute to improving overall public participation in the decision-making process. First, in the case of accession negotiations, Serbia faces perspectives for a more effective grouping and strengthening of capacities around particular topic(s) that could lead to greater impact in the decision-making process. Second, if we bear in mind that the accession negotiation is at a very early stage and that only the first phase of the process (screening) has been finalized, existing platforms surely create the conditions for establishing a sustainably vibrant civil society participation beyond the EU integration process.

## Effectiveness

The effectiveness of the current models and practices of the CSOs’ engagement in the process is observed through the ways in which CSOs, working independently or through existing platforms, feed content into the process. The results of the research show that CSOs are still very passive when it comes to their actual contribution to the accession negotiation process. The development and use of evidence-based arguments is limited. As **Figure 1** shows below, policy development activities and advocacy are far below some of the other preferred activities, such as consultative meetings. On the other hand, it is striking that CSOs involved in monitoring and contributing to the process hardly ever use the opportunity to contribute to the annual progress report. The survey data confirms this, as **22%** of respondents stated that they are not using any tool through which they could make an impact.

When it comes to frequency, the majority of the CSOs that stated they used some of these tools to provide their contribution actually use these tools very rarely. For example, only **13%** of those that submitted contributions to the Progress Report and **6%** of those that developed policy analyses **do that on a regular basis**. Some other means

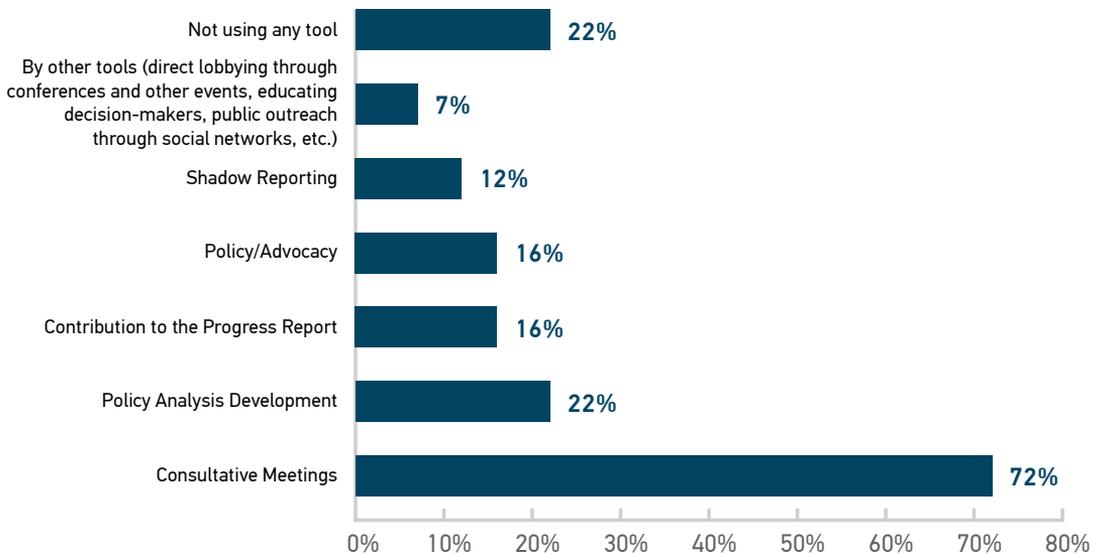


Figure 1 – CSOs’ Tools for Exercising Influence

of providing contributions identified in the survey are: participation in public discussions on laws and in working groups; submitting comments on various documents, from laws through strategies to action plans, which are in the process of adoption; advocacy initiatives through coordination of national councils of national minorities and other councils and bodies within local authorities; and capacity building programmes for government representatives. More work remains to be done to raise the capacities of CSOs to provide evidence-based arguments and to develop adequate advocacy strategies.

On the other hand, platforms of CSOs are more active when it comes to providing the process with the content based on monitoring activities and developing analysis and recommendations. They are regularly contributing to the annual progress report, developing shadow reports, policy analyses and developing recommendations for which they actively advocate. For example, the NCEU Book of Recommendations for 2014-2015 provides an overview of the process in each of the negotiation chapters, and the state of affairs in Serbia following the screenings and civil society recommendations and contributions<sup>56</sup>. The “prEUgovor” coalition and Coalition 27 produce shadow reports on progress made in the negotiation chapters they moni-

<sup>56</sup> *Book of Recommendations for 2014-2015* - see more at: <http://eukonvent.org/wp-content/uploads/2015/08/Knjiga-preporuka-nacionalnog-konventa-za-WEB.pdf> (accessed on 14 October 2015).

tor<sup>57</sup>. This shows how important the role of platforms is for overall participation as joint initiatives lead to merging resources, better positioning and increased contribution of CSOs in the process.

### Communication and Cooperation with National and EU Institutions

When it comes to **cooperation with national institutions and accession negotiation structure** within the Serbian government the cooperation is **sporadic** and is **more the exception rather than the rule**. According to the results of the survey, cooperation is not based on equality of all sides and the initial push is given by CSOs. National institutions occasionally inform CSOs on the accession negotiation process (44% of cases), occasionally sending invitations for submission of comments, suggestions and proposals on documents related to accession negotiations (45% of cases), occasionally inviting CSOs to participate at meetings (42% of cases). When national institutions send out invitations to participate at meetings with all the relevant material that will be discussed,

<sup>57</sup> *Report on Progress of Serbia in Chapters 23 and 24, Coalition “prEUgovor”* - See more at: <http://www.bezbednost.org/All-publications/5503/prEUgovor-Report-On-Progress-in-Chapters-23.shtml> and *Civil Society Contribution to Serbia 2014 Progress Report, Overview of Chapter 27: Environment and Climate Change* - see more at: [http://glb.bos.rs/progovori-opregovorima/uploaded/civil\\_society\\_contribution\\_sr\\_fin.pdf](http://glb.bos.rs/progovori-opregovorima/uploaded/civil_society_contribution_sr_fin.pdf) (accessed on 14 October 2015).

those invitations are sent in timely fashion in only 15% of cases. It is striking that the role of CSOs at these meetings is **in most cases passive**, and their contribution is not taken into account. However, government authorities usually do not provide feedback in any case, irrespective of whether the CSOs contribution was taken into account, or not. Access to documents from these meeting is provided regularly in only 9% of cases, and not at all in most of the cases (20%).

Cooperation with relevant national institutions is described as **personalized** and its sustainability could not be predicted due to its vulnerability to changes in power and bureaucracy within relevant government bodies. An additional obstacle identified by the participants in research is the lack of capacities within national institutions. The general lack of knowledge on the process itself, of one's role and the work to be done, is present in particular within the ministries and then, though to a lesser extent, in other government agencies. This lack of knowledge is coupled with low capacities for problem-solving and, for that matter, qualitatively managing resources, and with the lack of technical skills of state employees. Another aspect to bear in mind is that **the lack of resources** prevents the CSOs located outside Belgrade to establish communication and cooperation with the national and the EU institutions. Organizations working at the local and regional level face major constraints to the active participation in monitoring Serbia's EU accession negotiations. For example, travel costs to attend explanatory screening and briefing meetings in Belgrade were not covered.

When it comes to **cooperation with the EU institutions**, much remains to be done in this area. Communication with the Delegation of the EU to the Republic of Serbia is inexistent in 48% of cases. Regular communication with the EU institutions was reported only in 30% of the examined cases. Occasional invitations to participate at meetings was reported in 42% of cases, while in 65% of cases contributions provided by CSOs were not taken into account by EU institutions. Limited access to the Delegation of the EU to the Republic of Serbia is due to the lack of resources of local and regional organizations. The same problem prevents CSOs from the entire country to establish cooperation with the EU institutions in Brussels. On the other hand, occasional visits of delegations from the European Commission to CSOs in Serbia happen on an annual level, but are too rare to fill in the existing gap. These visits additionally lack general transparency (criteria according to which CSOs are chosen), results and feedback.<sup>58</sup>

The overall findings of communication and cooperation with national actors confirm that both dimensions need improvement. Mechanisms for including CSOs in the accession negotiation process and decision-making at national level depend on two key aspects. First, on whether there is an institutionalized link with the negotiating structure. Second, on whether there is a favourable atmosphere for communication with civil society or cooperating individuals within certain government institution. At the EU level, despite the willingness from the EU actors to establish effective communication with the civil society, many CSOs, particularly those operating at local level, have difficulties in reaching them. Usually, this problem arises due to the lack of resources, while in some cases smaller CSOs have difficulties to position themselves as deserving of recognition in the eyes of the EU. On the other hand, platforms are in a much better situation. By gathering organizations from central and local level, both big and small, they are creating a much more favourable environment for communication with the EU actors. Additionally, communication with the EU actors can be improved by making alliances with civil society organizations operating at the European level. Collective mobilization within and across national borders can definitely lead to better visibility, and thus to better advocacy results.

### Access to Documents and Transparency of the Accession Negotiation Process

As regards **access to documents and other relevant information** of public concern, in most cases CSOs access these on the websites of national institutions (78%), through platforms disseminating these (52%), and finally on the websites of the EU institutions (47%). CSOs generally have difficulties in reaching the information they need, and they rated the **transparency of the process** with an **average grade of 2.82**, (please refer to Figure 2).

Although EU accession negotiations officially started in January 2014, there is still no official website of the Government of the Republic of Serbia dedicated to the process of Serbian accession to the EU. Representatives of the Negotiating Team repeatedly announced that the website will be created by the end of 2014, but this has not happened. On the website of the Serbian

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Society Empowerment in the EU Accession Process", DGAPanalyse, No.2, The German Council on Foreign Relations (DGAP), Berlin, 2015, page 6.

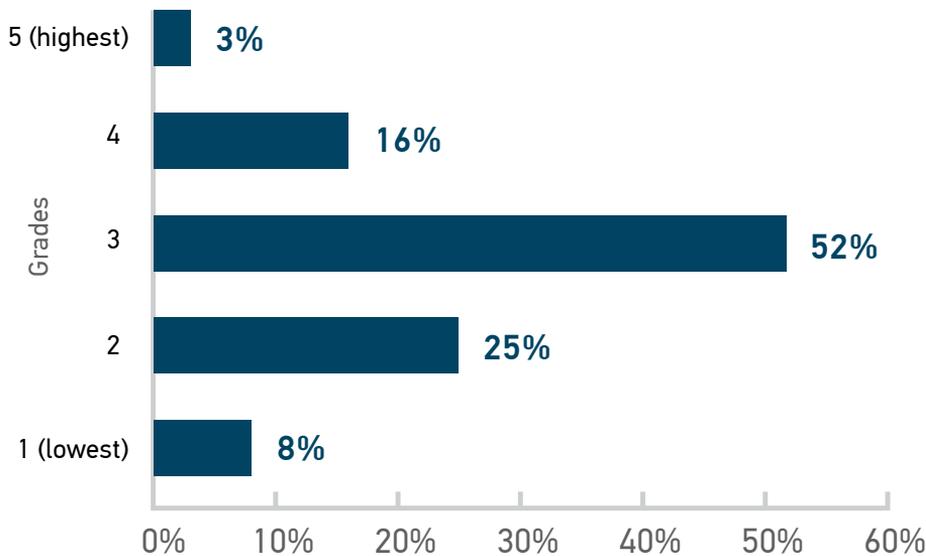


Figure 2 – CSOs' rating of the transparency of the process

Office for European Integration there is a section on “Negotiations with the EU”, dedicated to the process of Serbia’s EU accession negotiations in the following categories: documents, news and guide through the process of EU accession negotiations (online course). Although the aforementioned section is the only site that systematically publishes documents and information about the accession negotiations process, a thorough review revealed that the section is incomplete (missing documents produced in the screening process) and outdated (latest entry in the category “recent news” is from January 2015). There is no list of the members of the negotiating groups and the public does not know, by name, who is who in the negotiating process<sup>59</sup>. The only exception is the website of Negotiating Group 27 (Environment), launched in October 2015. This website contains all information regarding negotiation Chapter 27, such as news, documents and members with their contacts.<sup>60</sup> Even though it was scheduled to happen in September 2015, the appointed members of the Negotiating Team were not presented to the public.<sup>61</sup> It is important for civil society to know who participates in the meetings on behalf of the Republic of Serbia so that they are aware of who is responsible and whom to address for information on specific negotiation chapters.

59 On the website of the Serbian European Integration Office: <http://bit.ly/1Nbhbxv> (accessed on 14 October 2015).

60 The website of the Negotiating Group 27 (Environment) <http://www.pregovarackagrupa27.gov.rs/> (accessed on 14 October 2015).

61 On the website of Radio Television of Serbia: <http://bit.ly/1R9I0za> (accessed on 14 October 2015).

An interesting fact is that civil servants involved in the process of the EU accession negotiations stressed that the process is not transparent enough. Research on internal coordination in the negotiation process carried out by the German Agency for International Cooperation (GIZ), has shown that the negotiation process is transparent enough for those participating in it, but not for the general public and that civil society should be involved to a greater extent<sup>62</sup>. In an environment where there is a lack of transparency, the CSOs seek alternative paths to reach out for information, for instance, through partner organizations operating at European level that address their requests for information to the EU institutions.

The key characteristic of participation is that it can be fully exercised only in an environment of transparency. The documents and information related to the process are key tools for the work of CSOs. The absence of information immediately shrinks the space for their impact on and qualitative improvement of the process. Additionally, the practice of disseminating information to CSOs and citizens once the decision has already been made, or providing space for participation at the end of the process, is flawed, and it makes participation only a “cosmetic”, rather than genuine part of the process.

62 *Evaluation Report on Internal Coordination in Serbia's EU Accession Negotiations*, October 2014, Belgrade, Support to the EU Integration Process in the Republic of Serbia Project implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ);

## Overview of CSOs' participation in the EU accession negotiation process

So far, CSOs, mobilized around platforms or working individually, have had an opportunity to participate in the first phase of the process: **screening**. Within this subsection, each of the screening phases will be examined closely, because a significant improvement has to be made in the forthcoming phases, based on the experience acquired so far. This is particularly important because the civil society's participation and qualitative contribution to the process have been **more the exception than the rule**. The existing legal framework and mechanisms proved to be insufficient and neither applicable nor controllable in practice.

The European Commission and Serbia started the screening process, chapter by chapter, on 25 September 2013. Ever since the beginning, CSO participation in this process included: **monitoring of explanatory screenings, participation in the preparation of bilateral screenings for (some) negotiation chapters, participation in briefing meetings that followed bilateral screenings and participation in drafting the Action Plan for Negotiation Chapter 23** (Judiciary and Fundamental Rights), **developing the final version of the draft Action Plan for Negotiation Chapter 24** (Justice, Freedom and Security), and **participation in the consultation on the post-screening document for Chapter 27** (Environmental and Climate Change).

Despite the proclaimed "public ownership" over the process, this only applied to some extent to explanatory screenings. For example, live-streaming of the explanatory meetings were available, but only to those who stated their interest to participate in it, not for the broader public. The Office for Cooperation with Civil Society of the Serbian Government facilitated the process. However, documents related to the explanatory screening are no longer available to the public (agendas, minutes and presentations). They were available for download from the official website of the Serbian Office for European Integration until June 2015. Then they were removed at the request of the European Commission, with the explanation that additional checks of their content are required before going public. It is unknown whether any verification was done at all, and, if not, when it will be finished, so presentations remain unavailable until further notice. The only available documents are agendas and minutes from the explanatory screenings.<sup>63</sup>

While explanatory screenings had a participatory dimension, albeit a limited one, bilateral screenings were completely closed for the public, except in one case – **the preparations for bilateral screening of Chapters 23 included CSOs**. The Ministry of Justice, in cooperation with the Office for Cooperation with Civil Society invited CSOs involved in the areas relevant for Chapter 23 to submit reports from their own perspective on compliance with the EU *acquis* and to provide answers to specific questions of the European Commission. Preparations for other **bilateral meetings did not include the public and all presentations and documents that were presented** in Brussels by the Serbian government representatives **remained confidential**. However, the Office for Cooperation with Civil Society in cooperation with the Negotiation Team for Accession of Republic of Serbia to the EU, the Serbian European Integration Office, and relevant institutions for negotiation chapters, organized briefings with the CSOs that attended the live broadcast explanatory screening. The aim was to acquaint CSOs with the details of the meetings in Brussels. Participants rated these meetings as very successful and also as a good practice example of how to inform CSO representatives about the main conclusions. However, it is important to stress that some meetings took place months after the bilateral screening was held. Bearing in mind that not all documents from the bilateral screening were publicly available, the space for a reasoned debate was significantly narrowed. The presentations from bilateral screenings, the questions of the European Commission and the bilateral screening and briefing reports have not been published yet. The only exception is the website of the Public Procurement Office, where the documents from bilateral screening for Chapter 5 - Public Procurement (agenda and presentations) can be found.<sup>64</sup>

The next and final step in the process is the development of action plans, based on the screening reports, for meeting the benchmarks that will lead to the opening of negotiation chapters. So far, screening reports were published for only eight chapters<sup>65</sup>. Among these are the key Chapters 23 and 24, perceived as the toughest ones and the opening of which requires the development of detailed action

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Integration of the Serbian Government: <http://bit.ly/1M2MyQ0> (accessed on 14 October 2015).

<sup>64</sup> Available on the website of the Public Procurement Office: <http://bit.ly/1AGAuR8> (accessed on 14 October 2015).

<sup>65</sup> Screening Reports can be accessed on the website of the Serbian European Integration Office: <http://www.seio.gov.rs/> (accessed on 14 October 2015).

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<sup>63</sup> Available at the website of the Office for European

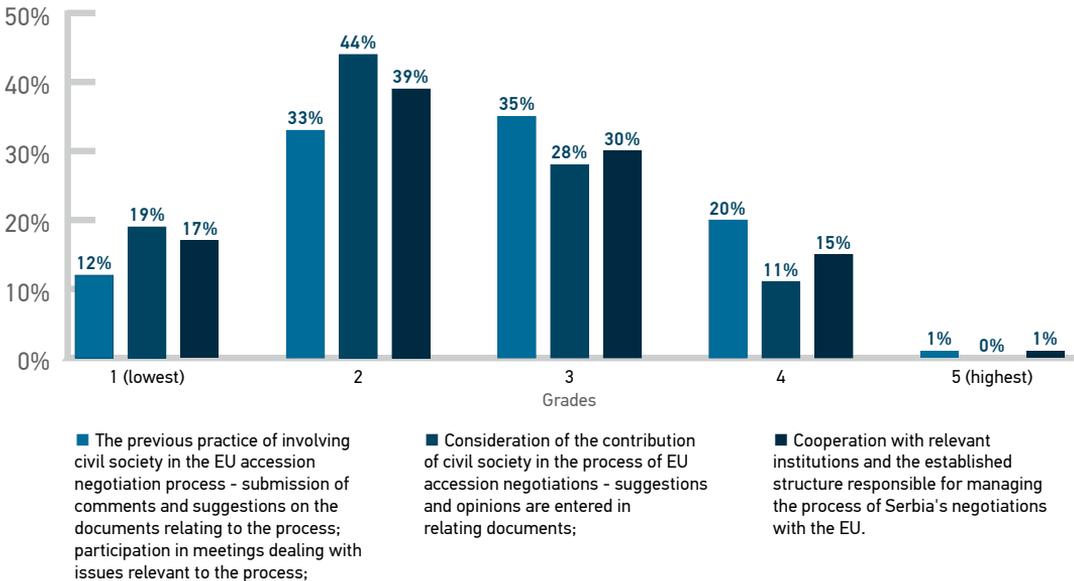
plans. By now, the CSOs participated in the drafting the Action Plan for Chapter 23 at the invitation of the Ministry of Justice. It should be highlighted that the Ministry of Justice organized a TAIEX expert mission with the aim of improving the methodology for the inclusion of civil society in the drafting of the Action Plan for Chapter 23. On this occasion, participants shared experiences and good practices in CSO involvement from the region. CSOs were not only involved in the preparation of the Action Plan, but also in commenting its first draft. The Ministry of Justice showed readiness to involve the CSOs in shaping public policy processes, in accordance with current European trends in this field, but this was not the case with the Ministry of the Interior when drafting the Action Plan for Chapter 24. More details on this can be found in the third section.

In the case of Chapter 27, the Ministry of Agriculture and Environmental Protection prepared a post-screening document, which presented a plan for the development and alignment of environmental protection with the EU *acquis*. The Ministry started with preparations in December 2014, but civil society was not included from the beginning. The document was presented to the interested public in July 2015,

and they were given seven working days to submit comments and suggestions. Therefore, adequate participation of civil society in drafting this document was prevented by late inclusion, the unavailability of information and relevant materials from the beginning and short deadlines for contribution.

The experience acquired so far clearly indicates that despite the self-proclaimed goodwill to build accession negotiations on principles of transparency and inclusiveness and to grant civil society a more prominent role in the accession negotiation process, in practice, positive examples where CSOs were actually consulted are rare. The space for their inclusion was small at the beginning and as time passes it is gradually shrinking further. This becomes even more apparent if we observe the changes made to the negotiating framework from August 2015. According to these changes, the negotiating positions will remain 'confidential' until the moment when the related negotiation chapter is opened. Only basic solutions contained in the negotiating position will be presented to the public concerned.

This leads us to conclude that participation and transparency are not getting any better, but rather



**Figure 3 – The CSOs’ rating of the current accession negotiation process in three key segments: CSOs participation, consideration of CSOs contribution by relevant institutions and cooperation with relevant institutions and accession negotiations structure**

worse, as the process progresses. However, bearing in mind the average rating by respondents in the survey of civil society's overall impact in the first two years of the accession negotiation process (please refer to the Figure 3), we can conclude that some progress was made, but that both state and non-state actors should first of all prevent civil participation progress from going backwards. For now, positive examples are rare and depend on factors, such as the willingness of the line institution to cooperate (as in the case of the Ministry of Justice in drafting the Action Plan for Chapter 23), rather than on the existing legal framework for decision-making and the commitments given within the accession negotiation process.

## CASE STUDY ON CSOs' PARTICIPATION IN DECISION-MAKING ON SERBIA'S EU ACCESSION NEGOTIATIONS PROCESS - CHAPTER 24: JUSTICE, FREEDOM AND SECURITY

Currently, there are a few cases where the CSOs' participation in decision-making on Serbia's accession negotiations process was evident. The case analysed is the case of CSO's participation in monitoring accession negotiations on Chapter 24, particularly regarding the transparency of the process of drafting the Action Plan for fulfilling the benchmarks for opening negotiations on Chapter 24.

This chapter, along with Chapter 23: Judiciary and Fundamental Rights (Chapter 23) are tackled with special attention in the negotiations process<sup>66</sup>. Currently, there are two CSO initiatives for monitoring accession negotiations in this Chapter. The first initiative is the PrEUgovor Coalition. The Belgrade Centre for Security Policy is the CSO that launched this initiative, and also a coordinating organization in the second initiative, the NCEU Working Group, dealing with Chapter 24. In fact, these two initiatives are mutually complementary and overlapping. According to its members, PrEUgovor is a Serbian EU accession negotiations monitoring platform only, unlike the NCEU Working Group. This means that the representatives of the Coalition do not actively meet and hold discussions with the representatives of the state.

### The Action Plan

The Chapter 24 screening report was published in July. As said, the working group immediately

started working on the Action Plan for fulfilling the benchmarks for opening Negotiation Chapter 24<sup>67</sup>. Subsequently, the Ministry of Interior, as the authority responsible for managing negotiations on Chapter 24, issued a press release declaring its willingness and readiness to involve CSOs in the drafting of the Action Plan. However, the meeting planned for the beginning of September could not be organized as the stakeholders could not agree on the exact date.

The first draft of the Action Plan was sent to the European Commission (EC) for review and comments on 8 September. CSOs were only notified that the first draft of the Action Plan had been published. Therefore, one of the key recommendations of the report published by the PrEUgovor Coalition in November is that civil society should be effectively involved in drafting the action plans for Chapter 24. In view of the way in which the first draft of the Action Plan was produced, PrEUgovor also questioned the effectiveness of the inclusion and participation of civil society under such circumstances<sup>68</sup>.

### Response

In December 2014, PrEUgovor filed a request for access to information held by the Ministry. This request was sent because of the lack of transparency in drafting the Action Plan and the lack of space for civil society inclusion in formulating the final version of the Action Plan. The Ministry responded that it is considering the inclusion of CSOs in the preparation of the second draft of the Action Plan, but only after the EC has submitted its review and comments. This means that CSOs were not granted the opportunity to fully participate in the entire process of creating an Action Plan from the very beginning.

As a direct and quick response to this decision, a joint meeting was organized with the NCEU Working Groups for Chapter 23 and Chapter 24. The meeting minutes reported that a request was made to the Government for allowing the participation of civil society in EU accession negotiations and considering proposals for improvements that the civil society provided in this context. Particular emphasis was laid on the

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<sup>67</sup> The Negotiation Group for Chapter 24 was formed in September 2013, but changes were needed as the new Serbian government was constituted in the meantime, on 26th of April 2014.

<sup>68</sup> Starting in September 2013, the Coalition began publishing its reports on accession negotiations on Chapter 23 and 24. The reports are published periodically, usually once a year.

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<sup>66</sup> This new approach will be taken for all the Western Balkans countries. More: European Commission, *Enlargement Strategy and Main Challenges 2014-2015*, COM(2014)700 final, 8 October 2014, page 12.

request that the Ministry disclose the draft of the Action Plan for Chapter 24 and supporting documentation. On the other side, the Ministry issued a statement in which it denied the CSOs' dissatisfaction with the lack of transparency. At the end of the statement the Ministry expressed its willingness to cooperate with "all benevolent stakeholders in process of creating the Action Plan for Chapter 24" and its expectation that the cooperation with the CSOs gathered around the Convention would continue<sup>69</sup>.

At the very beginning of Serbia's EU accession negotiations process, the Ministry sent an e-mail reminder notifying the actors interested in monitoring Serbian EU accession negotiations on Chapter 24 about the following: "any information or data disclosed in the live broadcasting of the explanatory screening are to be considered as confidential for a period of one year, and as such should not be disclosed to third parties through public information channels". Later on, former Ministry State Secretary, described this as a "clumsy formulation" made by the Ministry official<sup>70</sup>.

The initiative for publishing the draft Action plan for Chapter 24 and supporting documents was launched on 25 December. The initiative received a broad support from CSOs in Serbia, not only members of prEUgovor and NCEU Working Groups (54 CSOs in total).

## Impact

Here, the CSOs' impact can be evaluated with the help of clear indicators of the undertaken activity. The "undertaken activity" is the initiative for the disclosure of the draft Action Plan for Chapter 24 and supporting documents. The second draft Action Plan and supporting documents on (at least), disclosed and publicly accessible on the Ministry's website, is the correlated indicator. "Supporting documents" are any documents containing feedback and related arguments provided in favour or against the adoption of the feedback, and the documents containing the methodology for estimating costs projected within Chapter 24.

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69 "MUP odbacuje navode organizacija civilnog društva u Srbiji", Press Releases, Interior Ministry of Interior website, Belgrade, Republic of Serbia, 24th of December 2014, [http://www.mup.gov.rs/cms\\_lat/saopstenja.nsf/arhiva-saopstenja-MUP-2014](http://www.mup.gov.rs/cms_lat/saopstenja.nsf/arhiva-saopstenja-MUP-2014) (accessed on 14 October 2015).

70 "Strogo kontrolisani skrining", Radio televizija Srbije, Belgrade, Serbia, 7 October 2013, <http://www.rts.rs/page/stories/sr/story/9/Politika/1411754/Strogo+kontrolisani+skrining!.html> (accessed on 14 October 2015).

The CSOs' initiative was partially successful. On 26 January, the Ministry published the second draft of the Action Plan for negotiations on Chapter 24, but in the English language only. However, supporting documents were not published. Another indirect impact of the initiative was a joint session of the NCEU Working Group and Negotiation Group for Chapter 24. At the session it was stated that the published second draft of the Action Plan is ready to be reviewed with other stakeholders<sup>71</sup>.

Subsequently, in March, the NCEU Working Group for Chapter 24 published its comments on the second draft of the Action Plan for Chapter 24. According to the members of the NCEU Working Group, only a part of the comments provided was adopted. However, the official feedback on these comments with detailed explanations as to why certain comments had been adopted or not has not been provided until this day.

## CONCLUSION AND RECOMMENDATIONS

The complexity of the EU accession negotiation process requires the recognition of the role of all stakeholders in the process that could contribute to the quality and effectiveness of negotiations in areas of their particular and joint interests. Thus, the involvement of the civil society is crucial and will lead to deeper and substantial transformation and democratization of the society. To meet this challenge, civil society in Serbia mobilized early on, which resulted in several platforms that aim to monitor and contribute to the quality of the process. One of those platforms, the National Convention on the European Union (NCEU), was officially recognized in the accession negotiation structure in August 2015, as a channel for communication and consultation between national institutions and civil society. Other platforms at the national and regional level are more oriented towards providing an evidence-based content for the accession process in particular issues/areas. Thus, there is a strong basis for civil society impact, which consists of the communication established with state actors, and of the external, impartial and expert monitoring assessment. Despite this, the process is still far from being "publicly owned", as the Gov-

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71 "Radna grupa NKEU i Pregovaračka grupa za Poglavlje 24 definisale preporuke za unapređenje pregovora", website of the National Convention on the European Union, Belgrade, Serbia, 11 February 2015, <http://eukonvent.org/radna-grupa-nkeu-i-pregovaraacka-grupa-za-poglavlje-24-definisale-preporuke-za-unapređenje-pregovora/> (accessed on 14 October 2015).

ernment proclaimed in its Opening Statement of January 2014. The experience acquired in the first phase of the process (screening) shows that positive examples depend on individual factors such as the willingness of the line institution to cooperate (as in the case of the Ministry of Justice in drafting the Action Plan for Chapter 23), rather than on the existing legal framework for decision-making and on the commitments undertaken in the accession negotiation process.

This research shows that it is crucial to keep on improving initial positive developments for civil society participation and avoid backslides, which most recently occurred in the domain of transparency (the Negotiating Positions for all chapters will remain confidential until the related chapter is opened), which had an adverse impact on the space for participation. Therefore, challenges in meeting transparency and establishing sustainable and substantial cooperation between civil society, the state and EU actors, remain crucial. Considering that the next key phase in the process is the opening of negotiation chapters, overcoming existing challenges will require prompt solutions and concrete steps. Accession negotiations present a window of opportunity for the civil society in Serbia. This window is still open, despite the fact that the accession negotiations structure has been finalized with the decisions made in August 2015. The window is still open for civil society to use the accession negotiation process to improve the overall participatory practice, provide a qualitative contribution to the process, improve the process of transformation of the state and society and gain sustainable position as a relevant actor in decision-making beyond the EU integration process. This opportunity needs to be further explored and exploited by the civil society itself. The merging of capacities, which has started, has to be accompanied by greater mutual solidarity and accelerated in addressing joint demands towards decision-makers, both at national and at the EU level. On their side, the national institutions and the accession negotiations structure, should make all relevant documents produced within the process public to allow interested parties to submit suggestions, comments and recommendations and to effectively monitor the process. In addition, all stakeholders should be regularly informed about the activities and dynamics of the process and all of them should have an equal treatment, with a special focus to the local level.

Therefore, there is a much broader space for civil society participation, than the one currently in

place, which provides an opportunity for various civil society initiatives yet to emerge. However, this space needs to be explored and fully exploited by all actors in the process, as it will benefit not only the implementation of EU-related reforms, but also civil society, in the long run, building its relevant and sustainable position in the overall decision-making process.

## Recommendations

### 1. Strengthening cooperation between CSOs and EU accession negotiation institutions and structures

- Based on the pluralistic nature of civil society, all platforms and all CSOs that are involved in monitoring and contributing to the process should be recognized by the national institutions and within the accession negotiation structure;
- CSOs need to be treated equally, and the first step that needs to be made is to cover travel costs of local CSOs to attend meetings and workshops related to accession negotiation process organized at the central level;
- Regular and timely consultations of national authorities and institutions with CSOs in the negotiation process should be provided in the various stages of the accession negotiation process, in line with the **Code of Good Practice for Civil Participation in the Decision-Making Process** and commitments undertaken within the accession negotiations process through adopted documents;
- Stipulate the obligation for national institutions to provide feedback on the CSOs' contributions within a reasonable timeframe (within two weeks of receipt of the contribution, whether in a direct meeting or online), through a designated person from the relevant institution;
- Designating resources (travel and accommodation costs) for CSOs from Serbia, from both central and local level, to attend annual meetings with representatives of EU institutions and other stakeholders at the EU level, which should be provided by the donor community and the EU on a competitive and transparent basis.

### 2. Improving transparency and enabling access to documents developed within the accession negotiation process

- Existing institutional and legal mechanisms for access to information, i.e. Law on Free Access to Information of Public Importance, need to be

observed and implemented to ensure a high quality of the civil society's contribution, and to enable citizens to understand the process and identify its main actors;

- Thus, relevant documents within the negotiation process should be made available to the public promptly, in order to allow interested parties to submit suggestions, comments and recommendations and to monitor the process.

### **3. Intensifying communication of the EU accession negotiations process with the public**

- Increase communication efforts of national institutions to explain the benefits and challenges of the EU accession process to citizens, in cooperation with CSOs;
- Official website of the Government of the Republic of Serbia dedicated to the process of Serbia's accession to the EU needs to be established to enable systematization, regular updates and flow of information, which should empower CSOs to exert a higher impact on improving the quality of the process;
- Media coverage of the negotiations process and actors should be regular and evenly balanced;
- CSOs and their platforms need to share all relevant information with other CSOs and with the public.

### **4. Reinforcing CSOs' capacities for monitoring the EU accession negotiation process**

- The CSOs' expertise needs to be improved, including their ability to create and use evidence-based arguments within a specific sector or a topic in order to regularly provide qualitative inputs to the process;
- The motivation of CSOs involved in monitoring the EU accession process should be boosted, due to the length and complexity of the process that should be kept high on the agenda;
- Mutual recognition, greater solidarity and continuous mobilization of CSOs and their platforms around shared topics and values is crucial in order to join capacities and resources and achieve better impact on the decision-making process;
- International CSOs' networks and CSOs operating at the European level should engage in exchanging experiences, providing information and advocating the EU institutions.



# EU ENLARGEMENT AND THE WESTERN BALKANS



## CHAPTER III

# ALBANIA, BOSNIA AND HERZEGOVINA, MACEDONIA AND KOSOVO

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\* With special thanks to Nataša Vučković for her linguistic support

## INTRODUCTION

This section of the Regional Policy Study deals with four countries of South East Europe that are in the early steps of their process of European integration. All Western Balkan countries have been recognized as “potential candidate countries” at the European Council in Thessaloniki in 2003. Since then, their progress in the Stabilization and Association Process (SAP) has started to diverge according to domestic dynamics, under a “regatta” approach. This section deals with the countries that have neither acceded to the EU (as Croatia has) nor yet opened accession negotiations (as Montenegro and Serbia have). It analyses them in decreasing order of European integration: candidate countries (Albania, Macedonia) and potential candidate countries (Bosnia and Herzegovina, Kosovo).

### LEGAL FRAMEWORK FOR PUBLIC PARTICIPATION IN DECISION-MAKING

#### Albania

Public participation in decision-making is not an explicit constitutional right in Albania, but it derives from a series of domestically and internationally recognized rights (freedom of expression, of association, of access to information, etc.). CSOs are regulated by the **Law on Non-Profit Organizations** (8788/2001) and the **Law on the Registration of Non-Profit Organizations** (8789/2001). The legal framework for CSOs is deemed favourable and in line with international standards; and registration procedures are simple and fast (a few weeks).<sup>72</sup> In 2009, the government set up the **Agency for the Support of Civil Society** (Law 10093/2009), under a GTZ project, to provide financial assistance to CSOs. In late 2013, the Ministry for

European Integration established a separate unit for co-operation with civil society. Consultation of civil society in the legislative process has been haphazard and insufficient, due to mutual mistrust between government figures and CSOs, and a lack of clear rules.<sup>73</sup> A specific **Law on Public Consultation** (146/2014) was recently passed, defining the procedural norms for the transparency and public participation in decision making, in particular concerning draft laws, strategic national and local draft bills, and policies of great public interest. It is harmonized with the EU association agreement, the EU *acquis*, and the EU Charter of Fundamental Rights. Consultation on issues of local government is further mandated by the **Constitution** (Art. 108(2)) and by the **Law on Local Government** (8652/2000), but it has remained ineffective due to a lack of detailed rules and of awareness and interest by citizens.

#### Macedonia

The **Constitution** of the Former Yugoslav Republic of Macedonia ensures the indirect participation of its citizens in the decision-making processes by listing fundamental freedoms, such as the right to free elections and referendums. Moreover, there are explicit provisions for the engagement of citizens in the public life in articles 23 (“every citizen has the right to take part in performance of public office”), 24 (“has a right to petition state and other public bodies, as well as to receive an answer”) and 115 (“in units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance”). The **2001 Ohrid Framework Agreement** reinforced the constitutional power of the local authorities, in conformity with the EU Charter on local self-government. The **Law on Local Self-Government** envisages several forms of participations of citizens in the decision-making process, which differ in their implementation from municipality to municipality. There are some positive examples, but these are too often motivated by external donors and stakeholders. In 2007, the **Law on Volunteering** entered into force, followed by the 2012 Strategy for the Promotion and the Development of Volunteering. In 2010, the **Law on Associations and Foundations**, which defines the (fiscal) benefits of the Organizations of Public Interest, was drafted. In 2011, the **Code of Good Practices for the Participation of CSOs in Policy Creation** was adopted, promoting four forms of CSO involvement

<sup>72</sup> *Albania Revised Needs Assessment Report*, TACSO, Tirana, December 2014, pages 8-10.

<sup>73</sup> *Albania Revised Needs Assessment Report*, TACSO, Tirana, December 2014, page 19.

(information, consultation, dialogue, and partnership). Together with it, the ENER online register of law was created.<sup>74</sup> In 2012, the second Strategy Plan for the Cooperation of the Government with the Civil Society Organizations 2012-2017 was adopted together with an Action Plan.

## Bosnia and Herzegovina

The legislative framework in Bosnia and Herzegovina (BiH) is fragmented among the different levels of government (State, Entities and Brčko District, Cantons, Municipalities). **The Constitution of BiH** does not explicitly mention the participation of citizens in decision-making processes, but this derives from other rights such as the freedom of expression, association, right to free elections, and to referendum. **The Constitution of Republika Srpska** has the same indirect guarantees. Moreover, it states in Art. 33 that “every citizen has the right to participate in the management of public affairs and to have equal access to public services”. **The Constitution of the Federation of BiH** does not contain any specific provision to enable citizens to participate in the decision-making process. The Constitution of Republika Srpska, in article 20 (and following) explicitly mentions the freedom of speech, expression, and information, but according to the CSO-drafted Alternative Progress Report, the work of CSOs is openly threatened by the RS government with its discretionary ban of associations, and limitations to their freedom (e.g. the draft Law on Public Gathering).<sup>75</sup> Bosnia-Herzegovina was the first country in the region to adopt Rules on Public Consultation in the Decision-Making Process in 2006 (later amended in September 2014).<sup>76</sup> The 2007 Cooperation Agreement between the Council of Ministers BH and the Non-Governmental Sector in Bosnia and Herzegovina was largely not

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<sup>74</sup> ENER (<https://ener.gov.mk/>) is the electronic register of regulations in Macedonia. It was created to ensure transparency and involve citizens in the decision-making process. Yet, the management of the legislative process (as in August 2015, when more than 400 new laws were voted within 48 hours) questions its reason of being.

<sup>75</sup> Initiative for Monitoring of European Union Integration of Bosnia and Herzegovina, *Alternative Progress Report 2015: Political Criteria*. Human Rights Paper No. 13, Sarajevo: Sarajevo Open Centre, July 2015, [http://eu-monitoring.ba/site/wp-content/uploads/2015/07/Prelom-alternativnog-izvjestaja\\_ENG\\_finalna-verzija-za-web.pdf](http://eu-monitoring.ba/site/wp-content/uploads/2015/07/Prelom-alternativnog-izvjestaja_ENG_finalna-verzija-za-web.pdf) (accessed on 14 October 2015).

<sup>76</sup> Ministry of Justice, Public Consultations, 12 November 2015, <http://goo.gl/GE2JGj> (accessed on 14 October 2015). Regulations on Consultations in Legislative Drafting, *Official Gazette of BiH*, No. 81/06 and 80/14, <http://goo.gl/2dhTF2> (accessed on 14 October 2015).

implemented. It is currently under revision and a new agreement is expected in March 2016.

## Kosovo

The second chapter of the **Constitution** of Kosovo provides for the protection of fundamental rights and freedoms, including freedom of expression, of association, the right to disseminate and receive information, and the right to access public documents. **The Rules of Procedure of the Government of Kosovo** mandate public consultation for all draft bills, providing sufficient information and time for CSOs to reply with genuine recommendations and comments (and then be notified during governmental meetings), and giving feedback on the consultation results. It also commits the government to collaborate with CSOs (associations, professional chambers, CSOs) to discuss their ideas and initiatives, as well as calling upon them to take part in governmental meetings. **The Rules of Procedure of the Assembly of the Republic of Kosovo** allows (without mandating it) the invitation of CSOs, also to present evidence and documents at Committees, and the organization of public hearings. In 2014 the Assembly recruited an NGO Liaison Officer. **The Law on Local Self-Government** foresees that every municipality hold a public meeting at least twice a year, open to anyone interested, and that citizens be informed on any important plan or programme of public interest. **The Law on Freedom of Association of Non-Governmental Organizations** sets out the establishment, registration, internal management, activity, dissolution, and removal from the register of legal entities organized as CSOs in Kosovo. It requires institutional support for CSOs, which has to be made public, while protecting them from undue interference in their activities. In 2013, the Government, municipalities, and civil societies adopted a Strategy Paper for Cooperation which, as well as several articles of the law, still need to be put into practice.

## Comparative assessment of the legal framework

A glimpse of the legal framework concerning civic participation in decision-making can be appraised from the **Table 1** below. In all countries, civic participation in decision-making is protected by legal rights and only indirectly by Constitutional rights, except in specific cases, mostly related to local authorities (Albania, Macedonia). The most advanced legal framework appears to be the one in Albania, where specialized legislation covers CSOs

	Albania	Macedonia	BIH	Kosovo
<b>Constitutional rights</b>	Indirect (only 108.2 on local government)	Indirect (art. 23, 24, 115) + Ohrid Agreement	Indirect and fragmented (state + entities)	Indirect
<b>Legal rights</b>	Yes	Yes (but draft laws threatens them)	Yes (though fragmented) but recognition remains discretionary	Yes (Government's & Assembly's Rules of Procedure)
<b>Specialized laws</b>	Laws on NGOs; Law on Public Consultations; Law on Local Government	Law on NGOs; Law on Self-Government; Law on Volunteering;	Regulations on Consultation in Legislative Drafting	Law on NGOs; Law on Self-Government
<b>Protocols for Government/CSO cooperation</b>	No	Strategy Plan for Cooperation; Code of Good Practices	2004 and 2007 Cooperation Agreements	Strategy Paper for Cooperation
<b>Specialized institutions</b>	Agency for the Support of Civil Society	No	No	No
<b>CSO register</b>	Yes	Yes	No	Yes

**Table 1 – Overview of legal framework which enables public participation in decision-making**

and public consultations, and a specialized agency is tasked with co-operation with civil society. In Kosovo and Macedonia, specialized laws are present and co-operation is managed through governmental strategies, but there is no specialized agency. The legislative framework in Macedonia is complete, but hostile draft laws and the deterioration of the political climate risk are hampering civil society participation. Bosnia and Herzegovina was the first country in the region to adopt Rules on Public Consultation in the Decision-Making Process in 2006 (later amended in September 2014); yet it remains the country with the most critical situation concerning the legal framework, with participation rights fragmented among entity lines. Moreover, the lack of a public register and clear guidelines makes it so that recognition of CSOs remains discretionary, and draft laws (particularly in Republika Srpska) have been reported as threatening citizens' desire to participate.

## **PRACTICES OF PUBLIC PARTICIPATION IN DECISION-MAKING IN THE EU INTEGRATION PROCESS**

Civil society organizations, as part of the democratic process, interact with political parties, in-

terests groups, and state institutions (government and legislature) to provide citizens with another point of access to have their views and interests taken into consideration in the decision-making process. As a precondition, state authority and civil society have to agree on the rules of participation, trust each other, and commit to the process.<sup>77</sup>

Participation of civil society may take place all along the process: from agenda setting through policy shaping, decision-making, monitoring to reformulation of policies. First of all, the push from below may be instrumental in bringing some issues into public focus and making them part of the political and legislative debate (agenda setting). Second, the organized civil society may participate directly in the process of policy drafting; e.g. by taking part in oral or written consultations before policy measures are drafted (policy shaping). Third, CSOs may take part together with executive and legislative authorities in deciding which measures should be taken to address a specific issue

<sup>77</sup> Code of Good Practice for Civic Participation in the Decision-Making Process, International Non-Governmental Organizations Conference, Council of Europe, CONF/PLE(2009)CODE1, 1 October 2009.

(decision-making). Finally, civil society may be instrumental in the post-adoption phase, monitoring the implementation of the measures taken and proposing amendments when they prove ineffective or to counter eventual side-effects (monitoring and reformulation).

Additionally, the level of participation of CSOs may vary at each step. The minimal level of participation in decision-making is through *information*; i.e., the one-way flow of information from public authorities on the drafting or reviewing phase of a public document – a precondition for meaningful deeper forms of participation. A step forward is the process of *consultation*, through which authorities not only inform civil society about legislative developments but also ask them for their opinion in the form of comments, contributions and suggestions, which are then taken into consideration in the finalization of the policy. A stronger form of participation is *dialogue*, implemented through public hearings and targeted meetings, where the initiative may come from either side, while co-operation is based on mutual interests and joint objectives. In its most powerful form, it may involve regular and frequent joint meetings to develop the core of the legislative strategies, ending with a joint document of conclusions. Finally, the deepest forms of participation is *partnership*, in which the parties have joint responsibilities in each step of the legislative process, and CSOs may be delegated specific tasks and allocated resources for their services. Additionally, the strategy of *advocacy* may be considered as a way for CSOs to push public authorities to afford them participation in the decision-making process. Advocacy, again, may be used at any stage of the legislative process, from agenda setting (to push for the consideration of one specific issue), through policy-drafting (to influence the contents of the policy), to law adoption and post-adoption monitoring and amendment proposal.

In the four countries analysed, notwithstanding a more or less complete legislative framework (see §2.b), practices of participation vary widely and remain mostly sporadic and ad hoc, often triggered by international impulse rather than by endogenous democratic processes. This is also due to the weaknesses of the civil society sector itself.

In **Albania**, the organized civil society sector remains underdeveloped, with 1,651 CSOs registered with tax authorities in 2011,<sup>78</sup> of which only around

450 are active, mainly concentrated in Tirana and in the major cities across the country, mostly with a limited membership base, a generalized profile, and the frequent reputation of being linked to political parties. The budgetary resources of CSOs remain dependent on foreign donors (mainly the EU through the IPA Civil Society Facility), though their contributions are decreasing, while domestic sources of funding (both public and private) remain limited. Nonetheless, there exists a core of specialized and sustainable CSOs.<sup>79</sup> Cooperation between the government and the CSO sector is managed by the Agency for the Support of the Civil Society, which provides grants and contracts for services. Civil society participation in policy-making remains limited and with little impact, due to a lack of attention by the public administration, and the lack in the abilities of CSOs to engage in meaningful advocacy activities – apart from their often contentious political affiliations. Positive cases are due mainly to bottom-up requests to participate from interested CSOs, while a systematic framework for cooperation is still lacking. Consultation activities are sporadic and often ineffective, mostly linked to pressure from international donors and agencies.<sup>80</sup> Even at local level, where it is provided for by law, citizens' participation has been hampered by a lack of clear rules and the lack of citizens' awareness about their own rights and of the responsibilities of local authorities.

In **Macedonia**, in 2012, there were 3,732 registered associations/foundations, predominantly concentrated in urban areas. Generally, the personnel of CSOs are non-professionals or volunteers and untrained; thus, CSOs hardly apply strategic planning or management. The CSOs in Macedonia have modest finances and depend on international donors, whereas only 10 organizations receive 1.5 million MKD per year by the Government<sup>81</sup>. The government of Macedonia officially committed to many important steps for the development of the civil society, such as the upgrade of the legal framework, the participation of the civil society sector in the decision-making process, and the creation of favourable conditions for financial sustainability.

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for Europe and Eurasia Office of Democracy (USAID), Governance and Social Transition, 2012.

<sup>79</sup> *Albania Revised Needs Assessment Report 2014*, TACSO, pages 21-22.

<sup>80</sup> *CSOs Sustainability Index for Albania 2012*, United States Agency for International Development Bureau for Europe and Eurasia Office of Democracy (USAID), Governance and Social Transition, 2012.

<sup>81</sup> Interview with civil society activist, August 2015.

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<sup>78</sup> *CSOs Sustainability Index for Albania 2012*, United States Agency for International Development Bureau

However, not only are most of the strategies, action plans and codes insufficiently implemented, but CSOs also expressed concern for the deterioration of the climate in which they operate. *De facto* funds were only given through non-transparent allocation to CSOs whose members are registered as VMRO supporters. Moreover, there is an increasing politicization of the public administration, with new draft laws presenting a threat to CSOs' independence, such as the Law on the Prevention of the Conflict of Interest and the Law on Lustration, later dismissed in September 2015 upon EU pressure<sup>82</sup>. Furthermore, the control of the government over the media results in a negative portrayal of civil society and international donors. Over the past few years, in fact, the government has shown increased hostility towards civil society and foreign donors, with foreign-funded CSOs accused of being a fifth column for "Soros"<sup>83</sup>, aimed at destabilizing the country, as during the May 2015 protests. The government also fostered the growth of a parallel system of pro-government, politicized CSOs (GONGOs) led by VMRO-DPMNE members<sup>84</sup>.

In **Bosnia and Herzegovina**, a fragmented legal framework contributes to hindering citizens' participation. CSOs face unclear norms and different tax burdens, and there is an overabundance of associations with similar purposes and overlapping memberships. Bosnia has no unique CSO register, making it difficult to assess the real number of existing and active associations (approximately 10,000).<sup>85</sup> Moreover, the recognition of the association is *de iure* discretionary and the status can be revoked any time. Thus several associations work without being registered. The CSOs are weak, due to limited technical skills, low organizational capacities, insufficient promotion of activities, low

participation/active membership, prejudice among the authorities and mistrust of the population. CSOs confirm that consultations are sporadic, even for the drafting of new laws, and that participation often has no impact, since CSOs' recommendations are finally not taken into account.<sup>86</sup> According to the 2012 *Report on Citizens' Participation in BiH*,<sup>87</sup> citizens in selected municipalities of RS genuinely want to participate more actively in civil society through the use of existing tools for citizen initiatives. The respondents to the survey believe that citizens should be consulted about government activities and engaged in the decision-making processes. The protests in early 2014 and the Plenums boosted the activities of the CSOs, although with limited response from authorities.

In **Kosovo**, notwithstanding several laws and documents designed to spur public participation in decision-making, implementation remains vague and *ad hoc*, with a lack of effective participation in the context of a weak civil society. As of 2011, an estimated 90 per cent of draft laws and policy documents were drafted without civil society participation.<sup>88</sup> Only 30% of CSOs declared they were regularly invited for consultations on draft bills in their field of expertise. There is no standard selection mechanism for the appropriate representation of civil society, and open nomination procedures are not common. Consultations mostly happen upon the initiative of the civil society, and take the form of written comments in the final phase of drafting, often without enough information, time, or feedback on the input. Other types of consultation, from a public discussion of the initial concept to the involvement of expert groups and the participation in working groups, are still uncommon. This is especially the case in policies with a strong political or economic interest, as for the recent Amnesty Law or the Law on Banks and Law on Microfinance, adopted without any consultation, despite repeated requests from civil society. Positive cases (the elaboration of the Strategy Paper for Government - Civil Society Cooperation; the Law on Tobacco Control; the National Strategy for European Integration; the Law on Legislative Initiative) are more the exception than the rule.

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82 Sinisa Jakov Marusic, "Macedonia Scraps Controversial Lustration Law, Balkan Insight", 14 July 2015 <http://www.balkaninsight.com/en/article/macedonia-scraps-lustration-calls-it-success> (accessed on 14 October 2015).

83 E.g., a libelous publication by a Macedonian mainstream newspaper <http://vecer.mk/makedonija/ova-se-slugite-na-korupcijata-sorosoidi-mestat-seks-feri-i-sudski-odluke> (accessed on 14 October 2015).

84 Meri Jordanovska, "Uncivil society: the politicisation of Macedonia's NGOs, Balkan Insight", 10 December 2013 <http://www.balkaninsight.com/en/article/uncivil-society-the-politicisation-of-macedonia-s-ngos> (accessed on 14 October 2015).

85 Active CSOs (those having submitted their yearly financial reports to the tax administration in 2014) where around 7,000 in FBiH and around 3,000 in RS. The total number of CSOs registered at all levels is of 21,126. Data from the BiH Ministry of Justice.

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86 Interview with Transparency International BiH, 13 August 2015.

87 *Izveštaj o stanju učešća građana u BiH*, Centri civilnih inicijativa, Banja Luka, 2012.

88 European Commission, *Kosovo Progress Report 2011*, SEC(2011) 1207 final, 12 October 2011, page 7; *Nations in Transition*, Freedom House, Kosovo, 2015, page 287.

## CASE STUDIES OF NATIONAL EXPERIENCES

One sectoral case study for each country (two for Kosovo) has been selected according to the relevance of public participation in decision-making and its importance for the EU accession process. These include the territorial reform in Albania, the reform of the National Youth Strategy in Macedonia, the Structured Dialogue on Justice in Bosnia and Herzegovina, and the Law on Tobacco Control and the National Council for European Integration in Kosovo.

### Albania

**The Law on Territorial and Administrative Reform** (115/2014) reduced the number of municipalities from 373 to 61 to increase their efficiency, their financial sustainability and their capacity to provide services. The territorial division of Albania, as defined by Law 8652/2000, included 12 counties, 65 municipalities and 308 rural communes. The inefficiency of local public services and the failure of decentralization reforms were attributed to administrative fragmentation, and a cross-party consensus emerged for a territorial reform.<sup>89</sup> The process leading to the reform was meant to be inclusive, thanks to a nation-wide consultation. Yet, the opposition did not participate in the vote in Parliament and (unsuccessfully) challenged the reform in court.

The legal framework in Albania (the Constitution, the European Charter of Local Autonomy, and the Organic Law 8652/2014 on Local Government) stipulates that specific public consultation should be undertaken in regard to local government matters. The administrative reform process thus includes several phases of public participation, following the recommendations of the Council of Europe,<sup>90</sup> and thanks to the financial assistance of foreign donors

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<sup>89</sup> Half of the municipalities were found unable to make any capital investment. In the smallest ones, most of the budget expenses were related to human resources and administrative costs. See Kurti, Orsiola and Azizaj, Evelina, *Reorganisation of Local Government in Albania: Democratic Dimensions of Territorial Consolidation*. Tirana: Institute for Democracy and Mediation, Policy Paper no. 4, February 2014, <http://goo.gl/ykApW0> (accessed on 14 October 2015).

<sup>90</sup> Committee of Ministers of the Council of Europe, *Recommendation on the processes of reform of boundaries and/or structure of local and regional authorities*, Rec 12 (2004) <https://goo.gl/pk2VhP> (accessed on 14 October 2015).

through the STAR project.<sup>91</sup> Civil society, interest groups and enterprises were consulted through public meetings, studies, and a national survey.

Starting with a National Conference (17 October 2013), technical criteria were drafted and adopted by an *ad hoc* Parliamentary Committee on 28 April 2014, following consultations with representatives of local authorities and their associations in public meetings across the country, as well as with 1,218 citizens in 13 meetings, which were broadcast online and covered by the press. The first round of consultation mainly aimed to inform and raise awareness, targeting CSOs too, and attracted strong public interest and support to the reform and decentralization process, also highlighting the need to respect cultural criteria and minority rights.<sup>92</sup> Then, in early May, the *ad hoc* Parliamentary Committee held 8 public hearings, with 75 participants from local authorities, civil society, international organizations and independent constitutional bodies, which were then broadcast online and on TV. A first draft of the administrative reform plan, in two versions envisaging 39 and 47 municipalities respectively, was adopted by the Committee on 22 May 2014. Written opinions by local authorities on the first draft were collected between 23 May and 22 July, in accordance with Art. 68 of Law 8652/2000.

A second round of consultation was organized with the help of four CSOs (Urban Research Institute, Partners Albania, IP3, and Konfindustria), selected by the UNDP according to their territorial presence, competences and expertise. In May-June 2014, 1,785 citizens took part in 37 local meetings and in 5 national meetings to discuss the first draft of the law. A study on the opinion of 145 enterprises was carried out by Konfindustria, the national business association. A nation-wide survey was conducted, pursuant to Art. 67 of Law 8652/2000, as a means of consultation of the communities, with 16,000 citizens polled. Following the two-month consultation process, the *ad hoc* Parliamentary Committee adopted the final map of the territorial administrative reform.

The consultations highlighted a wide support by citizens and enterprises for the administrative

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<sup>91</sup> Donors included the governments of the United States, Sweden, Switzerland, Italy, Netherlands, Austria, the Council of Europe, the OSCE, and the UNDP.

<sup>92</sup> Ministër Shteti për Çështjet Vendore, *Report On consultation tour "Administrative and Territorial Reform in Albania"*, 2013.

reform (more than 90%) and an overall acceptance of the 39/47 municipalities draft map, though some pleaded for a higher number of units to avoid too drastic a reduction in the number administrative units. It was also highlighted that the administrative reform should be accompanied by a greater devolution of powers to local authorities, though this was not included in the reform and the authorities of local authorities remain unclear. The national survey reported a 67% approval rate for the administrative reform. Following consultations, and pressure by the coalition party representing the Cham minority (PDIU), the reform draft was modified into a 61 municipality version.

The reform was then passed into law. Notwithstanding the consultation process, the opposition did not participate in the vote and expressed serious disagreement. It also appealed to the Constitutional Court, claiming that the process was in breach of Art. 108(2) of the Albanian Constitution, which foresees that the borders of local authorities cannot be changed without a referendum, which had not been envisaged in the consultation process. The Court ruled that the consultation was in compliance with Art. 108(2) of Law 8652/2000 on Local Government, which provides several methods for surveying the opinion of the population: open meetings, public consultations, public hearings, certified surveys, local referendum, or others. Not all of them have to be used at once, although the more methods used, the more reliable the results, according to the Court.

The consultation process in the administrative-territorial reform in Albania can be deemed as a good example of public participation in decision-making. The extensive legislative framework (Art. 108(2) of the Constitution, Law 8652/2000 on Local Government, Law 146/2014 on Public Consultation), makes it a very relevant case due to the specific legal base for the consultation process. As a result of the specific nature of the territorial-administrative reform, (pointing to diffuse interests in society), local authorities, individual citizens and businesses became key stakeholders in the consultation process, rather than CSOs. Instead, the latter were sub-contracted as service providers and employed to help reach out to citizens.

Nevertheless, the process had at least two flaws. First, it was funded and designed through an international project, with little domestic input. It is debatable whether, in the absence of the STAR project, any meaningful consultation would have

been carried out by the Albanian authorities alone. CSOs acted as service providers to the government and the international project, running the consultation activities, without any perceivable added value in the process. It remains to be seen whether a meaningful consultation process will be carried out in relation to future reforms, including the on-going judiciary reform, in accordance with Law 146/2014 on Public Consultation.

Second, the process did not take sufficient consideration of the need to reach an *ex ante* political consensus on the procedure and the outcomes of the consultation. The opposition withdrew from the *ad hoc* parliamentary committee when it realized that it did not enjoy a general veto power, thus losing the opportunity to influence the outcome of the process. Local administrations held by the opposition also boycotted the written opinions on the proposed administrative changes, which were criticized as at risk of gerrymandering in favour of the party in power. The opposition agreed to take part in the local elections only after the ruling of the Constitutional Court, and their outcome was generally in favour to the governing party. It is thus unclear if the changes between the first draft map of reform and the final one were driven by bottom-up local concerns highlighted during the consultation process, as claimed by the party in power, or by political interests, as claimed by the opposition – or by both. The negative vote in Parliament and the legal challenge by the opposition managed to cast a shadow over the overall legitimacy of the process.

## Macedonia

The revision of the **National Youth Strategy** in 2015 is a positive example of public participation in decision-making in Macedonia. Yet, the political crisis in the country has led to a lapse in the process, as of May 2015. The analysis focuses on the participation of local organizations and individuals in this process, which aims to be as transparent, participatory and youth-led as possible to “ensure that the Strategy truly reflects young people’s needs and priorities”<sup>93</sup>.

In 2005, Macedonia gained the status of EU Candidate Country, with the possibility to participate in the instruments of the EU Youth Pact. In the same year, Macedonia started developing its first National Youth Strategy. Through this strategy, Macedonia

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93 UNDP in FYROM, “A Model of Youth Inclusion: Preparing the New National Youth Strategy”, 5 February 2015 <http://goo.gl/nVU2ke> (accessed on 14 October 2015).

aimed to align with, among others, the European Charter on the Participation of Young People in Local and Regional Life, the White Paper on European Youth Policies of the European Commission (EC), and the European Youth Pact. Since 2008, Macedonia is also member of the EU Youth Strategy and its successor Erasmus+.

The first National Youth Strategy, released in 2009 together with an Action Plan, was developed by the Agency for Youth and Sports (a state body reporting directly to the Prime Minister), together with a number of youth associations united under the Coalition of Youth Organizations (SEGA),<sup>94</sup> and covers a ten-year period. A new Law on Youth was due in 2011, but massive protests by local youth groups prevented its promulgation<sup>95</sup>. Moreover, these protests, together with the recommendations of the Council of Europe,<sup>96</sup> created the momentum to establish a National Youth Council in 2013, modelled on the European Youth Council and on Local Youth Councils that already exist in some municipalities as spontaneous grassroots organizations. However, as remarked by grassroots activists, the activities of the National Youth Council are invisible to the broader public (its official website<sup>97</sup> had been offline for several months in 2015), and often hindered by the Government itself.

Since February 2015, the National Youth Strategy has been undergoing a process of revision, promoted and coordinated by the Agency for Youth and Sports and the UNDP. Unlike in 2009, when the umbrella organization SEGA was tasked with ensuring the participation of the civil society, the 2015 Strategy provides for more direct tools for the participation of CSOs and citizens. Since the beginning of 2015, both individuals and organiza-

tions (governmental and non-governmental) could subscribe on the official website<sup>98</sup> in order to take part in the drafting of the new National Youth Strategy, by choosing their own area of interest. The various thematic working groups (education, employment and promotion of employment, sport, life quality, health and prevention, youth participation, youth information, culture, local youth work) started meeting on a regular basis in February 2015. Moreover, the meetings were live-streamed and the meeting minutes published on the website, with the possibility to comment online.<sup>99</sup> This followed the UNDP philosophy of fostering the widest possible inclusion; since October 2015, the list has been available on the National Youth Strategy's website.

Macedonia experienced a political crisis and mass mobilization in May 2015, with street protests by both the government coalition and the opposition. Under the circumstances, the revision of the National Youth Strategy was put on hold during the summer. Thematic meetings restarted in September, with regional debates and a final debate with 120 participants. A draft has been submitted to all stakeholders for a last revision.<sup>100</sup> Despite the fact that the process of revision of the National Youth Strategy was designed to be as participatory and youth-led as possible, as presented by the UNDP, activists raised concerns that the government might reject this donor-driven strategy *in toto*, due to the increasing politicization of the debate and governmental hostility towards non-aligned CSOs.<sup>101</sup> Overall, although well-designed, the process seems to have lacked the needed political sustainability.

## Bosnia and Herzegovina

**The Structured Dialogue on Justice** is a bilateral exercise between the EU and Bosnian authorities that has been going on since 2011, focusing on the reform of the judiciary, war crimes trials, and rule of law. It has reached its eighth session and involves routine meetings between national and European civil servants, open to representatives of lawyers' and magistrates' professional organizations. It is a forum with both transgovernmen-

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<sup>94</sup> SEGA is an umbrella organization established ad-hoc in 2004 "to contribute to the development and the implementation" of the Strategy and the Action Plan. It consists of 15 full members and 14 associate members. [http://www.sega.org.mk/web/index.php?option=com\\_content&view=article&id=376&Itemid=106&lang=eng](http://www.sega.org.mk/web/index.php?option=com_content&view=article&id=376&Itemid=106&lang=eng) (accessed on 14 October 2015).

<sup>95</sup> Siniša Jakov Marušić, "Macedonia Shelves Controversial Youth Law", *Balkan Insight*, 31 October 2011, <http://www.balkaninsight.com/en/article/macedonia-withdraws-youth-law-amid-criticism> (accessed on 14 October 2015).

<sup>96</sup> Siniša Jakov Marušić, "Macedonia Plans 'Communist-Style' Youth Groups", *Balkan Insight*, 22 August 2011, <http://www.balkaninsight.com/en/article/politics-threatens-macedonian-youth-activism> (accessed on 14 October 2015).

<sup>97</sup> Official website: <http://www.nms.org.mk/> (accessed on 14 October 2015).

<sup>98</sup> Official website: <http://strategijazamladi.mk/> (accessed on 14 October 2015).

<sup>99</sup> The limited online participation in the process may be due to the high participation rate in the meetings.

<sup>100</sup> Република Македонија Национална стратегија за млади, <http://goo.gl/I7zu78> (accessed on 14 October 2015).

<sup>101</sup> Interview with civil society activist, August 2015.

tal and deliberative characteristics, as it brings together representatives with different legitimacy, and seeks to foster consensus at the domestic level to get Bosnia to “speak with one single voice” to the EU. The formal involvement of civil society representatives in two areas of discussion, anticorruption and fundamental rights has proven to be one of the most innovative elements of the Structured Dialogue.

The idea of a forum for political dialogue, launched in 2008, became topical in 2011, in order to defuse the threat of a referendum in Republika Srpska (RS) on the legitimacy of the state courts and the powers of the High Representative. The head of the European External Action Service, Catherine Ashton, flew to Banja Luka on 13 May 2011 and met with RS President Milorad Dodik, allowing for a retraction of the referendum threat in exchange for a consultation process on justice and home affairs which would involve the EU and the national and local authorities of Bosnia – thus following a typical EU strategy of depoliticization through technicalization. Although intended as a national consensus-building mechanism, the dialogue involved a relevant EU role in setting the agenda, drafting recommendations, and providing follow-up. According to observers and participants alike, the biggest achievement of the dialogue has been to ensure the agreement of all actors (national and local authorities, professional representatives, civil society groups) to discuss the perceived problems of Bosnia on an equal footing and without preconditions. The Structured Dialogue has been hailed as an example of a non-bureaucratic, political approach to solving a politically complex situation.<sup>102</sup> With it, the EU created a domestic instrument for consensus-building while providing the services of a third-party, interested mediator, while the EU Delegation assesses the progress in between sessions and coaches its participants<sup>103</sup>

Following the street protests of February 2014, and the failure of Bosnia and Herzegovina to implement the judgment of the European Court of Human Rights in the *Sejdic-Finci* case, requiring

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<sup>102</sup> “The dialogue has gained such a level of leverage amongst the participants that no other alternative for reaching consensus on demanding issues of judicial reform now exists”. Galicic, Drino, *EU conditionality and governance complexities in the Western Balkans: towards mutual accommodation or maintaining the status quo?*, Graz, Univ., Diss., 2014, page 184.

<sup>103</sup> Interviews with the officer of a diplomatic mission in Sarajevo, and with an officer of the EU Delegation in Sarajevo, November 2014.

constitutional amendments, Bosnian CSOs pleaded for a reform of the Dialogue, to also involve civil society as a third party.<sup>104</sup> Among other actions taken to shift the main EU priority in Bosnia to socio-economic issues, in its Conclusions of April 2014, the Council of the European Union responded by committing itself to “support broadening the Structured Dialogue on Justice to other rule of law issues, and in particular to anticorruption issues”.<sup>105</sup> The EU Delegation thus selected six CSOs deemed to have the necessary expertise to contribute to the process,<sup>106</sup> and invited them to take part in the next sessions of the Structured Dialogue on the new agenda items.

The first Structured Dialogue plenary session, based on the broadened agenda, was held on 13-14 May 2014 in Sarajevo, and included rule of law issues such as “anti-corruption; anti-discrimination; prevention of conflict of interest; measures to strengthen integrity, accountability and efficiency of police forces”, while maintaining the reform of the judiciary among “the main priorities of the Structured Dialogue”.<sup>107</sup> The rule of law issues included under the broadened agenda were discussed in view of the need for an inclusive process to prepare the new 2015-2019 anticorruption strategy. The EC declared that it “shares the concerns expressed by representatives from civil society organizations” in the plenary session, as regards the need to start from “a comprehensive qualitative analysis of the implementation of the current strategy, a thorough corruption risk assessment, as well as available sector reform”.<sup>108</sup>

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<sup>104</sup> Sarajevo Open Centre, “CSOs appeal to the BH institutions and EU to make the Structured Dialogue on justice more transparent and efficient”, 2014 <http://soc.ba/en/civil-society-organisations-appeal-to-the-bh-institutions-and-european-union-to-make-structured-dialogue-on-justice-more-transparent-and-efficient/> (accessed on 14 October 2015).

<sup>105</sup> Council of the European Union, “EU Foreign Affairs Council conclusions on Bosnia and Herzegovina”, Luxembourg, 14 April 2014, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142215.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142215.pdf) (accessed on 14 October 2015).

<sup>106</sup> The CSOs involved were: Sarajevo Open Centre (SOC); Association for Democratic Initiatives (ADI); Helsinki Committee; Transparency International (TI BH); Account; Centre for Investigative Journalism (CIN).

<sup>107</sup> European Union Delegation to Bosnia and Herzegovina, *Plenary meeting of the “Structured Dialogue on Justice and Additional Rule of Law Matters between the European Union and Bosnia Herzegovina”. Recommendations by the European Commission*. Sarajevo, 13-14 May 2014. Ref. Ares(2014)1639230 – 20/05/2014

<sup>108</sup> Ibid.

The formal involvement of civil society representatives has proven to be one of the most innovative elements of the Structured Dialogue. In the words of one of the convenors of the dialogue, they have found themselves “sitting at the same table with the authorities, discussing the priorities, laws, and strategies, that until now had only been discussed between EU and national authorities”.<sup>109</sup> The CSOs involved confirmed this<sup>110</sup> and highlighted “the opportunity to give public recommendations in front of domestic institutions” as the most relevant aspect of the dialogue<sup>111</sup> though they complained that other items on the agenda remained outside the bounds of public discussion, and that their speaking time was limited. They pleaded for a stronger involvement of CSOs as a third party to the Dialogue between EU institutions, BiH institutions, and BiH civil society.<sup>112</sup> Others complained that CSOs could only perform an “observer’s role” due to the impossibility to access or submit documents for consideration, and that their interventions were acknowledged but did not have an impact on the final recommendations of the session.<sup>113</sup>

Unfortunately, the May 2014 session of the Structured Dialogue remained a unique case. The next sessions were suspended due to the electoral campaign and the late formation of BiH’s governments. Then, a new plenary session was scheduled for 13 July 2015, but it had to be called off at the last minute due to flaws in the process leading to it. The same day, RS President Milorad Dodik reiterated his 2011 call for a referendum on the state-level judiciary, and had it approved by the RS Assembly. This, as well as the entry into force of the EU/BiH Stabilization and Association Agreement on 1 June 2015, requires a different setup for the future sessions of the Dialogue.

Overall, the participation of CSOs in BiH’s Structured Dialogue on Justice remained sporadic and linked only to the May 2014 session. The jury is still out on its impact – as on the impact of the Dialogue in general – since no legislative initiative stemming from the Dialogue has reached parliamentary procedure yet. The main advantage of the Structured

Dialogue has been to provide CSOs with a platform to directly address their recommendations to state authorities in the presence of the EU, thus reinforcing accountability and monitoring. Yet, the inclusion of civil society was only possible through a rather heavy involvement of the EU, in terms of both facilitation and mediation throughout the whole process. This limits the exportability of the format to other sectors or issues, and also raises questions as to the sustainability of the process, in case the EU pressure for inclusion subsides.

## Kosovo

Citizens’ participation in policy-making in Kosovo remains more the exception than the rule. The analysis focuses on two cases of relevant public participation in the decision-making process – one that could be hailed as a good practice (the 2013 Law on Tobacco Control) and one that could be termed as flawed instead (the National Council for European Integration). Other instances, such as the 2011 reform of the Law on NGOs and the 2013 drafting of the Government Strategy for Cooperation with Civil Society,<sup>114</sup> have also proven an intermediate level of participation and the growing relevance of the CSO sector in Kosovo.

The case of the **2013 Law on Tobacco Control** demonstrates the growing capabilities of Kosovo CSOs to effectively shape the legislative process and achieve change. The Kosovo Assembly approved a Law on Tobacco in 2007, regulating import, production and advertising, and limiting the use of tobacco in public spaces. Yet, its implementation remained partial. The law allowed for multiple interpretations and ambiguity (providing for 30% of public spaces where smoking could be allowed) and did not clearly define the responsibilities and authorities of executive bodies. Moreover, its provisions did not comply with the guidelines of the WHO’s Draft Convention for Tobacco Control. The failure of 2007 spurred a reaction from the civil society. The Kosovo Advocacy and Development Centre (KADC) set up a wide Anti-Tobacco Coalition (ATC) in September 2011, including involving government ministries and institutions (Health, Education), international organizations (WHO, UNICEF), and professional health and civil society organizations, to initiate the amendment process, thus

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<sup>109</sup> Interview with an officer of the EU Delegation in Sarajevo, 28 November 2014.

<sup>110</sup> Interview with Sarajevo Open Centre. Sarajevo, 19 December 2014.

<sup>111</sup> Interview with Transparency International BiH, 13 August 2015.

<sup>112</sup> Ibid.

<sup>113</sup> Interview with Centre for Investigative Journalism, 6 August 2015.

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<sup>114</sup> Kosovo Government Strategy for Cooperation with Civil Society 2013-2017, <http://goo.gl/oF7n3F> p. 11-14. TACSO, “The First Kosovo Government Strategy for Cooperation with Civil Society is Adopted”, 9 July 2013, <http://goo.gl/tLhVhK> (accessed on 14 October 2015)

ensuring impact in the policy-making process. The coalition managed to counter lobbying attempts by the tobacco industry by providing MPs with scientific information and highlighting the industry's interests in an inefficient legislative framework. Closed-door hearings with stakeholders and CSOs at the Parliamentary Committee were reported through Twitter so that citizens could participate in the debate. Fifty-six CSOs supported KADC's public appeal to MPs to approve the draft Law on Tobacco Control to protect the health of Kosovo citizens; KADC then pleaded to the Head of State to sign the approved law without delay. The Law finally entered into force on 22 May 2013, providing for 100% smoke-free public spaces in compliance with WHO guidelines and with EU standards.<sup>115</sup>

On 27 March 2012, Kosovo established a **National Council for European Integration**, chaired by the Head of State, as a high-level national political coordination mechanism tasked with advising, guiding, and monitoring the country throughout the elaborate reforms for EU accession. As a nationwide consensus-building mechanism beyond partisan politics, the National Council included members of the Parliament, the Government, municipalities, CSOs, trade unions, the business community and academia, aiming to ensure the direct and full involvement, as well as the political coordination and the systematic consultation of state and non-state actors in the European integration process of Kosovo. In May 2012, the National Council mandated the Ministry of European Integration to establish a Task Force for European Integration, gathering state and non-state experts in thematic round-tables, in order to draft the National Strategy for European Integration (with the support of a GIZ project under bilateral German assistance). A year later, following consultations with 1,000 Kosovar participants and experts, the Task Force handed the Draft Strategy "Kosovo 2020" to the Head of State, identifying the goals and challenges for the country's European Integration.<sup>116</sup> The National Council adopted the Strategy in October 2013.<sup>117</sup> Yet, the National Council has been criticized since its inception. A report by

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<sup>115</sup> "What was the role of the civil society in the new law on tobacco control", KCSF, <http://www.kcsfoundation.org/?page=2,145> (accessed on 14 October 2015).

<sup>116</sup> MEI, "President Jahjaga received the Draft National Strategy for European Integration", Press Release (no date), <http://www.mei-ks.net/en/news/president-jahjaga-received-the-draft-national-strategy-for-european-integration> (accessed on 14 October 2015).

<sup>117</sup> National Strategy for European Integration, Kosovo Presidency, <http://www.president-ksgov.net/?page=2,141> (accessed on 14 October 2015).

Kosovar Civil Society Foundation (KCSF) defined it as "complicit in dysfunction".<sup>118</sup> The CSO described it as "divided, side-tracked by political exigencies, managed ineffectually, and opaque in its operations and communications", pointing to its unclear mandate, partial participation, inefficient management, and inability to work to set a strategic direction for the country's European integration process. Two years later, KCSF's basic recommendations remain unaddressed by the National Council, even when it comes to publishing the names of the members of the Council and the minutes of the meetings on its website. The National Council appears as just another talk-shop that uses participation by opposition leaders and civil society to lend legitimacy to government action without any substantive impact, and as such a glaring example of a flawed practice of public participation in decision-making in Kosovo.

The two examples presented herein show how bottom-up public participation in decision-making on a specific issue takes a different shape in Kosovo, as opposed to when it is managed top-down by an open-ended body with unclear objectives. The case of the Law on Tobacco Control highlights how a bottom-up, endogenous mobilization may be successful when it is able to transcend barriers and cooperate strictly with governmental bodies and international organizations to achieve a specific policy objective. On the other hand, the flawed example of the National Council for European Integration also shows how requirements for consultation of non-state actors may be twisted by politicians to bolster their legitimacy without providing efficient avenues for participation. Another reason for concern is that this process was only possible through external financing, thus raising doubts about the capacities of national institutions to entrench a sustainable and standard methodology of public participation in decision making.

## CONCLUSIONS

The table below depicts the types of participation of CSOs, in the different legislative phases, as they appear from the country case-studies that are analysed above. Case studies were selected to cover a wide range of mechanisms and instances of public participation in domestic decision-making. The four countries at hand have very different

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<sup>118</sup> "Complicit in dysfunction. Analysis of the National Council for European Integration's Performance in Kosovo", KCSF, Pristina, September 2013.

baselines, and also different national governance features. No single policy sector could be identified for a comparative analysis of each country, thus minimizing the influence of intervening variables. Hence, by choosing to present case studies from different issue areas in different countries, the study does not intend to produce comparative results. Yet, it allows us to present a broad picture of the different public participation mechanisms in the countries at hand, and to highlight several factors that appear to be of relevance for their success, notwithstanding the differences in governance mechanisms and issue areas.

Public participation, in the cases selected, most often takes the form of consultation and dialogue in the policy drafting phase (please refer to Table 2). Only on a few occasions CSOs were able to directly influence the agenda-setting and bring an issue to the attention of legislators. Some cases highlight a top-down approach, with different methods of public participation, all limited to the policy drafting phase cases, (Albania, Kosovo European Integration Council). Others fostered a bottom-up civil society mobilization approach instead, throughout the legislative process, from agenda-setting to the final adoption, also coupled with confrontational methods of advocacy, in order to push the public authorities to open up the decision-making process and respond to citizens' expectations (e.g. the Law on Tobacco Control in Kosovo). In terms of the depth of the involvement of civil society in the process, the chosen methods are often of an intermediate depth (consultation and dialogue). Overall, public participation in the region remains episodic, and frequently dependent on international

resources and expertise rather than internalized in the domestic processes.

Three elements in particular seem to remain problematic for most of the cases at hand. The first concerns domestic sustainability. All cases included an element of involvement of international agencies, either as mere donors (Kosovo's European Integration Council), or as carriers of specific methodologies (Albania, Macedonia), or even deep involvement, as in the case of the EU acting as a facilitator and mediator in Bosnia and Herzegovina. This raises doubts about the sustainability of the overall process and the interests, resources, and capacities of national governments to implement meaningful public participation mechanisms by themselves, even when required by the national legislative frameworks.

The second problematic element concerns the political sustainability. All cases highlight the risks of premature politicization of the issues at stake, and of the lack of a cross-party domestic consensus on the reforms debated through or with civil society involvement. Political confrontation has stopped the process in Macedonia, and risked to squander its results in Albania. In Bosnia, it still threatens to hamper the outcomes of the Structured Dialogue on Justice, and in Kosovo it highlighted the mere window-dressing nature of the National Council for European Integration. In all the cases under study, the need to achieve a cross-party consensus on the reforms and on the mechanisms of civil society participation in decision-making, well ahead of the start of the process, emerges thus as a key factor of long-term sustainability of their outcomes.

	Agenda setting	Policy drafting	Decision making	Monitoring and reformulation
Information		ALB		
Consultation		ALB KOS (EU Council)		
Dialogue	BIH	ALB; BIH; MAK KOS (Tobacco) KOS (EU Council)		
Partnership		KOS (Tobacco)		
Advocacy	BIH KOS (Tobacco)	KOS (Tobacco)	KOS (Tobacco)	KOS (Tobacco)

Table 2 – Overview of public participation phases

Finally, a further element of reflection is the nature of the participation of civil society organizations. While in the case of Kosovo's Tobacco Law they led the main efforts, and in BiH's Structured Dialogue they brought their own views to the table, in the other cases their role remains more nuanced. In Albania, CSOs merely acted as service providers for the government and the international project, without any perceivable added value, while in Macedonia their input was fully recognized throughout the process. This might mask the distinction between low versus high politics areas: governments may be more open to accept CSOs' contributions in the first ones (e.g. health and consumer safety, youth issues) rather than in the latter (justice reform, administrative setup). Yet, the current enlargement strategy frontloads the need for reforms in highly sensitive domestic policy areas, including justice and home affairs, thus requiring a more open approach to civil society by national governments throughout the policy spectrum. This is a striking note that requires a more in-depth look in the future.



# CONCLUSION

A developed civil society is one of the prerequisites and standards for democracy and a stable political system. Cooperation of public authorities with citizens and civil society in the creation, implementation and monitoring of public policies is one of the fundamental characteristics of a state that serves its citizens. Every country in the Western Balkans going through the transition process should enable participation of civil society in the decision-making process. This study confirms that the EU integration process offers a unique window of opportunity for civil society participation. If used appropriately and fully exploited, it can yield two-fold results. First, it can lead to better implementation of the EU acquis and a substantial and sustainable transformation of the state and society. Second, it can support sustainable embodiment of democratic mechanisms and practices in the work of institutions and in the decision-making process. Specifically, participation in the EU accession process would foster better involvement of CSOs in the overall decision-making. Moreover, the EU integration process could contribute to the creation of a better environment for the development and activity of civil society. Therefore, the improvement of participatory practices will lead not only to the improvement of the overall transformation, but also position civil society as a relevant actor in the decision-making process.

In the accession negotiation process that Serbia and Montenegro are currently engaged in, the space that national institutions provide to the civil society, and the level to which civil society is consulted are formal and mainly serve the purpose of satisfying basic standards. However, it is important not to let the government co-opt civil society through procedures of formal recognition and formal involvement, as has arguably been the case in Montenegro. CSOs cannot simply act as

service providers, or as elements of legitimization of governmental action, even in those “high politics” issue areas where governments are not as willing to hold their actions up to scrutiny. Instead, civil society’s vibrancy and pluralism should be cherished throughout the process. When it comes to Western Balkan countries that have not been able to open accession negotiations yet, experiences from Serbia and Montenegro should be used to improve the mechanisms and practices for civil society involvement in the policy-making process. What this study showed is that the four countries, which have not yet entered the accession negotiation process, have very different starting levels in the EU integration process and different domestic governance features. Only on a few occasions CSOs were able to directly influence the agenda-setting and bring an issue to the regulatory attention of public authorities. Therefore, countries that still lag behind can draw on the experiences of Montenegro and Serbia to make the EU integration process in the current and forthcoming phases more inclusive, transparent and accountable.

On the one hand, this study shows that WB countries have established different mechanisms and practices for civil society involvement in the policy making process, and that achievements and results vary from country to country, and from one policy area to another. Nonetheless, some general conclusions can be drawn from the research. National authorities and institutions should hold regular consultations with relevant stakeholders for decision-making purposes in the various stages of the EU integration process. Relevant documents within the legislative process should be made public, to allow interested parties to submit their suggestions, comments and recommendations and monitor the process. All stakeholders should be regularly informed about the activities and dynamics of the process. The EU accession negotiations process and its implications should be communicated to the public more effectively. The key findings of this study and its recommendations indicate that much remains to be done if a sustainable and meaningful involvement of civil society in the decision-making process is to be achieved.

A fully developed legal framework and procedural rules for public participation in decision-making, harmonized with the EU acquis and international best practices, are the first step to ensure that CSOs can act. While a developed legal framework is a precondition, it also runs the risk of remaining a dead letter never implemented in practice. To

avoid this, public participation must be managed with continuity, moving beyond sporadic actions and emergency solutions that fail to deliver on sustainability. To ensure a high quality civil society contribution, and enable the citizens to understand the process and identify its main actors, institutional and legal mechanisms for access to information and documents created during the negotiations process should be observed and implemented. The unhindered flow of information to citizens and CSOs should ensure that citizens are better informed about the accession process. Making sure that the legislative process is transparent (e.g. by publishing online all draft laws, committee minutes, etc.) will enable the civil society to get involved and make its own contribution.

Also, it is important to make sure that CSOs are involved in all stages of the legislative process, from agenda setting through to monitoring and evaluation, rather than only being called upon in the final phase of policy-drafting. Establishing mechanisms to keep the policy agenda open to inputs from civil society and integrate civil society in the post-adoption monitoring of implemented legislation is imperative. Taking into account the complexity of the EU accession process, it is crucial that organizations actively participate and influence the content of the document from the earliest stages of the process. This could be achieved through different models of involvement, (with or without direct participation in the negotiation structures), depending on the national framework and the chosen accession negotiations structure. In any case, CSOs should have a dual role in the EU accession negotiations process on membership in the EU: the first role being expert-advisory, which means that organizations and individuals from civil society provide support to the state negotiation structure in areas of their expertise, and the second role being supervisory-informative, which means monitoring the negotiations process and informing the public about it. So, stronger forms of civil society participation in decision-making in the EU integration process in the WB countries (from consultation to dialogue and partnership) should be established, in parallel to the increase in cooperation and communication between CSOs and public institutions.

Making resources available to CSOs is crucial to enable them to perform their role and take part in the decision-making process. CSOs' capacity-building remains necessary in most countries of the region to ensure that civil society can self-

organize around common interests. At the same time, the process should remain open and responsive to the needs of those living outside decision-making centres, particularly in local communities with fewer skills or resources that might not find a channel of organization and representation within civil society. CSOs should establish themselves based on their specific mobilization expertise and capacities, to provide a further avenue for the expression of the people's common interests and views. Working on issue-specific topics and gathering wide coalitions of actors in favour of a specific policy, even applying advocacy and confrontational strategies when needed, is a more promising way for CSOs to achieve an impact in domestic decision-making.



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# ABBREVIATIONS

**ATC** – Anti-Tobacco Coalition

**CEDEM** – Centre for Democracy and Human Rights

**CEMI** – Centre for Monitoring and Research

**CRNVO** – Centre for Development of Non-Governmental Organizations

**CSF** – Civil Society Facility

**CSO** – Civil Society Organisations

**EC** – European Commission

**ENER** – Electronic Register of Regulations in Macedonia

**EU** – European Union

**GIZ** – German Agency for International Cooperation

**GTZ** – German Technical Cooperation Agency

**HRA** – Human Rights Action

**IPA** – Instrument for Pre-accession Assistance

**JCC** – Joint Consultative Committee

**KADC** – Kosovo Advocacy and Development Centre

**KCSF** – The Kosovar Civil Society Foundation

**LGBT** – Initialism that stands for lesbian, gay, bisexual, and transgender

**MP** – Member of Parliament

**NGOs** – Non-governmental organizations

**NCEU** – National Convention on the European Union

**OCCS** – Office for Cooperation with Civil Society

**PDIU** – The Party for Justice, Integration and Unity

**Q&A** – Questions and Answers

**RARIS** – Regional Development Agency for Eastern Serbia

**SAP** – Stabilization and Association Process

**SEGA** – Coalition of Youth Organizations

**SEIO** – Serbian European Integration Office

**TAIEX** – Technical Assistance and Information Exchange Instrument

**TACSO** – Technical Assistance for Civil Society Organizations

**UNDP** – United Nations Development Programme

**UNICEF** – The United Nations Children's Fund

**VMRO-DPMNE** – Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

**WHO** – World Health Organization

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