



MAPPING STUDY OF CSOS IN BOSNIA AND HERZEGOVINA



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INTRODUCTION

Project ‘Capacity building of governments to include CSOs into the decision-making Bosnia and Herzegovina – EU4CS’, in accordance with its general goal, works to improve cooperation and dialogue between governments and civil society in Bosnia and Herzegovina and to provide support for inclusive social dialogue of social partners (employees, employers, governments) in relation to legislation (including identification of the need for new legal solutions), collective bargaining, drafting laws and monitoring the implementation of reforms. Additionally, the purpose of the project is to ensure that all actors can actively participate in the reform and policy-making process, for example through the establishment of an inclusive structured dialogue on reform priorities with the participation of an empowered civil society.

In accordance with above presented, the project EU4CS during 2022 researched status of civic society in BiH, in order to assess both - the legal environment in which civic society organisations (CSOs) operates as well as economic aspects and trends of CSOs’ work in BiH, as a ground for analysis and identification civic society development perspectives and potential challenges.

EXECUTIVE SUMMARY

Creation of this study has been requested by the Delegation of European Union in order to maintain existence of the periodical assessment of status of civic society in BiH, due to vibrant social and political environment, which can impact (positively and negatively) policy environment as well as work of the civic society organisations (CSOs).

Based on the facts identified in this study, it's possible to conclude that, civic society in BiH is nominally well developed (Laws on organizations and foundations are adopted and generally are in line with key international documents on human rights, there are large number of registered CSOs, several signed Agreement for cooperation among the authorities and CSOs etc.). However, there are specific issues that needs to be addressed on short term basis, in order to prevent potential backslide of reached degree in development of civil society in BiH. More precisely, legislative framework for work of CSOs in BiH is not restrictive in regards to development of civic society, but shortcomings in laws and by-laws as well as practice in implementation of the relevant legislation (especially related with data accuracy on registered CSOs and operational performance of CSOs) create space for different behaviour of CSOs in fulfilling legal obligations, which may negatively affect the image of the civil sector as unsettled and self-willed.

Accurate information of exact number of CSOs in BiH is hardly possible to determine and, despite relatively impressive formal figures on officially registered organizations, in reality, for the vast majority of CSOs it is not known whether they work or not. Data shows that 2/3 of all registered CSOs in BiH (according to available data) are not submitting their annual financial reports (which is legal obligation) and it's hard to assess their operational status.

Also, there are no precise data on the number of employed people in civil society - existing data indicate that share of CSOs’ labour force in total active citizens of BiH is less than 1%.

Due to

lack of adjusted forms and processes for financial management and reporting of CSOs, it's possible to identify only number of full-time employees in CSOs, while those engaged less than full time and others (e.g., volunteers) is not possible to recognise. Last but not least, total income of the CSOs represent less than 1% of BiH GDP (approx. 365 mil BAM) in situation where allocation of public BiH funds to CSOs suffers from lack of transparency. It's not possible to diversify exiting data on sources of donations received by CSOs (e.g., foreign,

domestic, public, private etc.), although donations represent 92% of all resources available to CSOs.

All of the above mentioned testifies the need for consolidation both the CSO's related legal framework and the work of CSOs themselves, as a prerogative to strengthening recognition of CSOs as credible partners to public institutions in the coming EU related reforms.

Key recommendations are targeting improvement of:

- content and implementation of CSOs' relevant legislation (particularly related with equalizing laws and by-laws - e.g., rulebook on keeping the register of CSOs) and establishing legal obligation for (a) maintaining accurate online data bases on existing CSOs as well as for (b) determining the operational status of CSOs, as a ground for initiation of dissolution process of CSOs (similar to Law's article regarding obligation of maintaining annual assembly meeting of CSOs).

Also, in regards to content of the relevant Laws, there is a need for clarification on potential conflict among different Laws in regards to ability of CSOs to perform economic activities, since this segment has a great potential for sustainability of the civic actors in BiH- e.g., Law on consumer protection in BiH limited CSOs that work in consumer protection area to engage in economic activity¹ and BiH Law on association and foundations states 'An association or foundation, can perform economic activities only if it is basic the purpose of such activities is the achievement of goals established by the statute' and also 'Associations or foundations may perform unrelated economic activities (economic activities that are not directly related to the realization of the basic statutory goals of associations and foundations) only through a specially established legal entity'².

- existing financial legislation relevant to CSOs in order to establish a modern ground for CSOs in performing their financial operations and reporting. Chart of Accounts as well as forms of the financial reports should be fully adjusted to work of CSOs and needs for establishing data basis necessary for supporting development of civic sector,
- transparent and competition-based allocation of public funds to CSOs. Existing estimation of 34,4% share of public funds in total revenue of CSOs in BiH is far from EU average (58%),
- effectiveness in usage of existing (and development of new) Agreements of cooperation among the public institutions and CSOs, since partnership among two sectors is essential for achieving desired improvements in regards to upcoming reforms in BiH but also further development of civic society.

CSOs' legal framework in BiH

Rights and freedoms, including freedom of association that citizens of BiH have been entitled to, by the constitutional provision is to be secured by the State of BiH as well as the Entities, free from discrimination on any ground. Further safeguard to exercise of these rights is the constitutional provision that outlaw any change of such state of affairs.

The above elaborated provisions make constitutional basis for legal regulations of associations and foundations that are to be regulated by the respected laws in the entities. Such solution is a result of a division of responsibilities/competences in a complex state in which the entities are entitled to enact laws in order to regulate the way of exercise of these rights and freedoms, including freedom of association. Scope and substance of the rights and

¹ Article 111 paragraph 2 of the Law on consumer protection in BiH - 'Consumer associations are non-profit and non-governmental organizations and cannot engage in economic activity'.

² Article 4 of Law on Associations and Foundations of Bosnia and Herzegovina - <http://www.mpr.gov.ba/biblioteka/zakoni/bs/Zakon%20o%20udruzenjima%20i%20fondacijama%20-%202032%20-%202001.pdf>

freedoms are laid down by the Constitution of BiH, international human rights instruments and the case law of the European Court of Human Rights.

In short, human rights of a democratic society and fundamental principles underpinning "third sector" – freedom of expression and the right to associate, organize, and advocate one's interests – are generally guaranteed and are being enforced in BiH.

Presence of four *Laws on associations and foundations* (on three institutional levels) in BiH does not represent a serious obstacle for work of CSOs in BiH since the content of those Laws (and their implementing by-laws) is generally the same. Consequently, a CSO registered in Brcko District, or in any of two entities or on the BiH level, can operate country wide (horizontally and vertically) without any formal challenges in regards to either realization of their activities or applying on public calls for financing their projects from public budgets on any government levels BiH.

Regarding the content of four Laws on associations and foundations which regulate operations of Civil Society Organizations in Bosnia and Herzegovina, it didn't change much during last decade and is still, en général, in-line with key international documents on human rights (i.e. European Convention on Human Rights and Fundamental Freedoms etc.) and is still affirmative for development of civic society. Existing difference among mentioned Laws on three different governments' levels exist particularly in areas related with registries of the CSOs (maintained in e-form or hard-copy format) and measures prescribed for preventing money laundering and financing terrorism. Although important, those differences are not representing substantial content with potential to upset the equal position and rights of CSOs registered on different levels in BiH, but still demand an action for equalization the content of the existing Laws and consequently practice of the relevant public bodies (e.g., relevant Ministry at BiH level, in line with legal provision, maintain an online registry of the registered CSOs while both entities, due to absence of legal requirements, maintain such registry only in hard copy).

Also, above mentioned Laws on associations and foundations in BiH pay limited attention to operational status of association and foundations. More precisely, scenarios covering situations when an association or foundation request dissolution of the organization (based on proposer decisions of the relevant organization's bodies) or when exist reasons for an organization to be subject of involuntary termination (due to violation of legislation) are well elaborated by the Laws. However, situation when an organisation de-facto is not operational (and there is no initiated dissolution process) is not regulated by the Laws. Consequently, majority of BiH CSOs are currently in 'foggy' status – e.g., they don't fulfil their annual obligation in financial reporting so their situation can be assumed as 'non-active' but there is no information that relevant authority can use for undertaking process of dissolution, so these CSOs remain in 'active' status although they are probably not active. Future revision of the Laws on associations and foundations should consider options for improvement.

In relation with topic of organizational dissolution it's important to underline also that analysed Laws do not pay sufficient attention to compensation for creditors during the process of organisation closure (either planned by organization itself or initiated by the competent institution). Since CSO cannot be subject of bankruptcy proceedings, relevant authority, within the dissolution process of the organization check existence of debts to public institutions (e.g., social and pension taxes etc.) only, while potential debts to other creditors (e.g., suppliers of different good and/services etc.) potentially will not be recognized in real time and process of dissolution can be completed without solving these issues.

In addition to Laws on associations and foundations, some other laws in BiH also impact operational environment of civic society organizations – particularly Law on tax on added value BiH and Law(s) on accounting and auditing of the RS and Federation BiH.

The content of Law on tax on added value BiH leave space for different interpretations of tax obligation in regards to grant support received by CSOs in BiH. Despite the fact that CSOs are implementing their projects and programs for the purpose of realization of their organizational goals as non-profits legal entities, views of BiH Administration for Indirect Taxation regarding the taxation of grants and donations to civil society organizations are that the burden of proofing is on the payer of indirect taxes, and the actual factual situation in each CSO can be determined only in the control procedure. In that process, authorized official (inspector) independently determines the facts and circumstances on the basis of which he/she applies the regulations, and decides according to his/her conviction which facts will be taken as evidence by a conscientious assessment of each piece of evidence.

As a consequence, there are cases recorded where inspectors act differently in the same legal matters³ which create legal uncertainty that may bring into question the functioning of civil society organizations, and even the survival of the non-governmental sector.

At the same time, there are different practices in the region – e.g., in Montenegro and North Macedonia, donations to CSOs are completely exempt from tax obligations.

Although have the same names, Laws on accounting and auditing of the Republika Srpska and Federation BiH, establish different ground for CSOs in performing their financial management and book-keeping. If based in the FBiH, CSOs will do their financial records according to the Chart of Accounts created only for associations and other non-profit organizations, while for CSOs in RS there are no separate chart of accounts created and they apply the chart of accounts created for profit-making enterprises. CSOs based in the Brcko District of BiH could, until recently, decide whether to apply the chart of accounts of the FBiH or the RS. Similar to this, forms (e.g., balance sheet and profit and loss form, cash flow form, etc.) to be used by CSOs in FBiH are also partly developed according to the needs of civic sector while in RS all forms are created for profit/business sector.

As a consequence, in BiH there are no in-depth data on source of funding of CSOs (disaggregation by (a) local: public-municipal/cantonal/entity/state level, public/private corporations, individual donations from persons, (b) international: EU funds, other governments, corporate, private/governments foundations etc.), on real number of employed/engaged labour force, on taxes paid etc. This lack of CSOs' needs tailored legal environment present an obstacle to development of civic society.

Mechanisms for cooperation among governments and CSOs

The process of European integrations in BiH, as rare joint objective of BiH citizens and authorities, requires creation of a qualitative partnership among the BiH institutions and CSOs. Both sides have common interests – progress in reaching EU standards in various sectors and development of all segments of public life, so that partnership, founded upon common values and mutual respect, seems to be a 'must have' option, in the building progressive BH society, as society of equal opportunities.

In this regard, implementation of the existing signed *Agreements on Cooperation between the BiH authorities and CSOs* on various government levels (BiH, RS and Canton Una-Sana) as well as of other institutional mechanisms (e.g., online consultation tools for decision making etc.) is very much needed as a ground for boosting progress of BiH reforms. Current lack of understanding of each of the parties about their roles in implementation the existing

³ https://euresurs-api.page-services.net/Content/Documents/Policy_brief_-_Obracun_PDV-a1621338931559.pdf

Agreements and usage of the other institutional mechanisms for cooperation needs to be overcome so indicators-based progress to be allowed and used as input for further operational planning in regards to strengthening cooperation among two sectors during implementation of the current and development of new public policies on various levels.

Law on consumer protection in BiH provide mechanism for direct participation of CSOs in decision making processes - the *Council for Consumer Protection*⁴ through which CSOs can propose to the Council of Ministers of BiH various public policies including but not limited to annual BiH program for consumer protection.

However, the process of nomination of CSOs' representatives in Council for Consumer Protection BiH is unclear. According to Law, BiH Council of Ministers name CSOs representatives from Union of consumer associations of BiH and consumer organization of both entities but there are no information about criteria to be fulfilled in this regard, which limits transparency of this process.

Similar to consumer protection, Law on Environment protection of Federation BiH prescribe establishment of *Advisory Council for the Environment* as scientific and professional support to the Federation BiH Minister of Environment and Tourism in area environmental protection, where representatives of two environmental protection CSOs are entitled to become members. In Republic of Srpska similar advisory body existed earlier but is removed after the National Assembly of the RS, adopted Amendments to the Law on Environmental Protection of the RS, which deleted Article 32, which defined the existence of the *Advisory Council for Environmental Protection in RS*, as consultative and advisory body (with representatives of CSOs and other stake holders) to the Government and to the minister responsible for environmental protection issues.

Distribution of public funds to CSOSs

According to survey conducted 2022 among the BiH authorities on all levels, out of 43,10% of all executive authorities in BiH (mayors of municipalities, ministries on BD, cantonal, entities and BiH level) who responded on the survey, less than ¼ (23%) of public authorities allocated public funds to CSOs only through public call/tender procedure; 34% of the authorities used mixed approach and allocated a part of the public funds to CSOs via public call while 43% of the surveyed institutions allocated all their available public funds to CSOs without using public call/tender procedure.

This big variety in practices of public institutions in allocating financial resources to CSOs represent an important issue related with development of enabling environment for work of CSOs in BiH. The fact that some civic sectors/CSOs are able to get financing from public budgets via non-transparent and non-competitive procedures undermines public perception of civic society – particularly related with their non-partisan status, crucial for CSOs' sustainability.

Practices in allocating public resources to CSOs are mainly regulated with internal acts of each institutions (e.g., Decisions on the criteria for the allocation of funds to CSOs), so each government level can individually decide (in line with its own interests – often related with political goals) on approach to be used in allocating resources for CSOs' projects and/or general operations costs. Lack of systemic policy which will ensure vertical unification of practices in providing resources to CSOs on all governments' levels represent an opportunity

⁴ Article 106 of the Law -

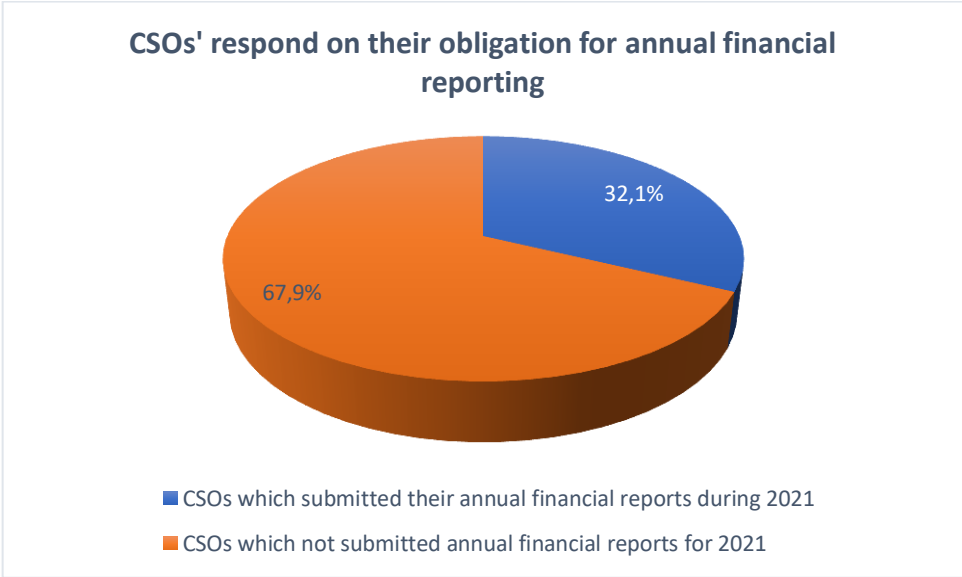
http://www.ozp.gov.ba/sites/default/files/dokumenti/Zakon_o_zastiti_potrosaca_u_BiH_bo.pdf

for making step forward on improving legal environment for financing CSOs from public budgets.

Operational and Economic status of CSOs'

Research and analysis of data on registered CSOs in BiH (available on <http://zbirniregistri.gov.ba/Home>) and data from annual financial reports which CSOs submit to relevant entities' institutions (Agency for intermediary, IT and financial services of RS, Financial and Information Agency of the Federation of BiH and Register of Financial Reports of Brčko District) show that civic society in BiH are facing significant issues considering their functionality and viability.

Despite the fact that all legal entities (including CSOs) in BiH are legally obligated to deliver its **annual financial report** to relevant public institution, data received from those institutions indicated that less than 1/3 of all registered CSOs in fact fulfil that legal obligation and submit their financial annual reports. That may mean two things – those CSOs does not have any financial flow and accordingly not deliver its report due to lack of resources to create and submit this report or those CSOs are not operational – not working in practice but their management didn't initiate process of dissolution in front of relevant authorities. Anyhow, the fact that 2/3 (approx. 17.000) of CSOs are not fulfilling their legal obligation regarding annual financial reporting demands adequate and immediate reaction (from institutions as well as civic sector itself), so accurate data about CSOs' operability in BiH to become available.



The **total income** of CSOs in Bosnia and Herzegovina, in 2021, was 363.5 million BAM. By observing the period since 2017, it can be concluded that there is a growth trend in the income of CSOs from 277 million BAM in 2017 to 363,5 million BAM in 2021, which represent increase of 31.2%.

However, total income of BiH civic sector in 2021 represent less than 1% of the BiH GDP for that year, which was 39.9 billion BAM.

In the same time, basic comparation with civic sector in Slovenia (neighboring country to BiH with similar socialistic background but also now EU member state) shows that total income of CSOs represented 1.91 % of Slovenian GDP in 2020. According to the major Johns Hopkins

International Comparative Study from 2013, the global average is 4.13 %, and the EU average is 3.8 %.

By observing absolute values of civic society income in those two countries, it's possible to see that BiH CSOs' total income represents approx. 21% of the total income of Slovenian CSOs (895 mil Euro) despite the fact that the total number of CSOs registered in Slovenia (27.670) is almost the same like in BiH (27.420), and BiH has bigger population (3.5 mil citizens) comparing with Slovenia (2 mil citizens).

According to the data analysed, there are two *main sources of income* for CSOs in BiH - donations - 92% and other income - 8%. Donations refer to foreign sources, public budgets from BiH (on different levels of government - municipalities, cantons, entities, state level), corporate and individual BiH donations, domestic budgets etc. On other side other income include sales of CSOs' own products and service etc.

Conducted survey on resources from public budgets available to CSOs during 2022 among the BiH authorities on all levels show that local resources/budgets within the 'donations' for CSOs represent approx. 125 million BAM (34,4%) while remaining resources are mostly coming from individual and corporate donations and international sources (e.g., only UNDP and other UN agencies affiliated with it, during 2021 collects 121 million dollars from other or secondary resources - donors who direct their donations to Bosnia and Herzegovina⁵, and some percent of those resources went to CSOs via various sub-grants, contracts etc.).

With mentioned 34,4% share of public funds in total revenue of CSOs, BiH is not comparable to other EU countries, where, according to the latest major Johns Hopkins International Comparative Study from 2013, the average share of funds from public sources in total CSO income is 58.0% (the global average was 32,2%). For example, during 2019, the share of public funds in Slovenian CSOs funding was 37.71%.

Presented figures for BiH, despite significant lagging behind the EU average, indicated significant challenges and potential issues for CSOs due to low transparency and competition within the processes of allocating resources to CSOs from public budgets in BiH.

On other side, *total expenditures* of CSOs in 2021 was at the level of 327 million BAM. Out of that total amount, about 200 mil. BAM or 61.3% represent costs of products and services generated by CSOs in carrying out their activities. Salary expenses are 86 million BAM, which is 26.3%, Material costs 8,5% , depreciation 2,7% and about 1.2% are taxes.

For comparison purpose, Slovenian CSOs during 2020, allocated almost half of their expenditure for the payment of services (45%), about a third (31,94 %) for labour costs, costs of materials 10,8% and other expenses 11,9%.

Similar to share of CSOs' total income in GDP of BiH, *number of people employed/engaged* in CSOs in BiH represent 0,9% of the labour force in BiH (1.39 million people who represent the labour force in Bosnia and Herzegovina - or the active population).

According to data from financial reports of CSOs, there are 3,323 full-time employees in the CSOs in BiH. Unfortunately, due to forms of financial reporting used by the CSOs, they are not reporting annually on any other category different from number of full-time employees, so it's not possible to identify total number of employees in civic sectors based on data from CSOs' annual financial reports. However, since huge number of CSOs are employing labour force on temporarily (less than a full-time) and on a volunteer basis, it's can be assumed that total number of employed people in civic sector is bigger than identified 3,323. In this regard,

⁵ UN BOSNIA AND HERZEGOVINA ANNUAL REPORT 2021, available at <https://bosniaherzegovina.un.org/en/186648-2021-un-bosnia-and-herzegovina-results-report>

based on earlier developed methodology⁶/ratio between full-time and part-time employees (two-thirds of registered workers are employed full-time, and one-third are employed part-time) it can be estimated that, in addition to 3,323 full-time employees in the BiH civic sector there are 1,630 part-time workers too.

The assumption for estimating the number of volunteers is similar – same study⁷ developed ratio which indicates that in CSOs, there are 2.37 volunteers per one full-time employee, on 3,323 full-time employees in 2021, there are additional 7,660 volunteers.

Again, in comparison, in Slovenia, during 2019, the share of persons employed in CSOs was also 0,92% (9,069 employees of the total active population of 980,880), and has been growing. The growth in the number of employees was recorded in the BiH civil sector (approx. 13% from 2017 to 2021) too. However, availability of data about employees in BiH CSOs provides limited insight in real figures, so strengthening of CSOs' performance in fulfilling obligation to submit annual financial reports as well as improving content of the annual financial report forms (to include figures on employees which work less than full time) is very much needed in the future in order to more accurately follow the status of civic sector.

⁶ IBHI study "Employment, provision of social services and the non-governmental (NGO) sector, status and perspectives for Bosnia and Herzegovina - Analysis and implications for policies (document 4: Report on detailed NGO survey)" https://www.ibhi.ba/Documents/Publikacije/2005/QS3%20NGO%20Sector_bos.pdf

⁷ Ibid

ANALYSIS OF LEGAL FRAMEWORK FOR CIVIL SOCIETY ORGANIZATIONS IN BOSNIA AND HERZEGOVINA

BRIEF INTRO

The paper analyses international and legal framework on various levels in BiH related with work and development of Civil Society Organizations (CSOs) in Bosnia and Herzegovina. The analysis is, actually threefold: first, it sets forth and examine in brief international documents pertaining to civic sector, second, it analyses in depth national legal documents relevant to the topic, while, where appropriate, it makes comparison with solutions related to CSOs in some neighbouring as well as some European countries. The paper ends up with conclusion and recommendations as to subject matter of the paper.

I METHODOLOGY AND RESEARCH

1.1 Methodology

As to the methodology, the research was based upon qualitative analysis of the BiH legislation on all government levels (including reports and papers of other actors in BiH) related to (CSOs), and also included international legal “environment” applicable to the scope of research. The research embraced a limited comparative research, as collection of techniques and approaches, address fundamental features of the CSO in some countries. The research applied content analysis as a technique for gathering and analysing the content (words, meanings, ideas, intentions, etc.) of legal and related documents governing CSOs. For the purpose of this paper, a following international definitions of civil society have been considered:

The EU considers civil society organisations to embrace a wide range of actors with multiple roles and mandates which includes all non-State, not-for-profit, independent and non-violent structures, through which people organise to pursue shared objectives and ideals, whether political, cultural, religious, environmental, social or economic or related to health [...] They include, but are not limited to: Non-governmental organisations, organisations representing indigenous peoples, women’s and youth organisations, diaspora organisations, migrants’ organisations, local traders’ associations and citizens’ groups, cooperatives, employers’ associations and trade unions (social partners), organisations representing economic and social interests, organisations fighting corruption and fraud and promoting good governance, civil rights organisations and organisations combating discrimination, local organisations (including networks) involved in decentralised regional cooperation and integration, consumer organisations, environmental, teaching, cultural, research and scientific organisations, universities, churches and religious associations and communities, philosophical and non-confessional organisations, the not-for-profit media and any non-governmental associations and independent foundations, including independent political foundations⁸.

Another definition of civil society, more narrow, is used by the USAID in their Final Report on civil society assessment: “*That space between individual and the state where citizens associate according to their own wishes, values, and interests.*”⁹

⁸ DG Near Guidelines for EU Support to Civil Society in the Enlargement Region, 2021-2027 une 2022, p. 6.

⁹ USAID BiH, *Final Report, Civil Society Assessment in Bosnia And Herzegovina Prepared for the United Stated Agency for International Development (USAID/BIH)*, 25 June 2005, p. 3.

1.2 Research

The research was conducted principally as a desk job, due to overall task, approach and analysis nature, and included but was not limited to the following:

1. Preparing background information on CSO state of affairs (legislation and docs gathering),
2. Desk and consultation research: legal framework
3. Situation Analysis of the CSOs sector in BiH
 - a. Research and analysis of the BiH legislation on all government levels related with CSOs - Laws on establishment and operations of CSOs (State, Entity, BD)
 - i. International Legal Context
 - ii. International aspect – the Dayton Constitutional Settlement
 - iii. Human Rights Perspective
 - iv. National legal framework
 1. Constitutional Basis (Freedom of Association)
 2. Applicable laws
 3. Associations and Foundations:
 - a. Definition
 - b. Performance of economic activities
 - c. Bans
 - d. Name and seat
 - e. Establishment and Cessation of operations
 - f. Activities of associations and foundations
 - g. Registration of national and foreign subjects
 - h. Bodies
 - i. Public interest and public authorisation
 - j. Property
 - k. Dissolution
 - b. Institutional mechanisms established for cooperation among government/s and CSOs – assessment of existing institutional mechanisms of cooperation with CSOs and assessing Government’s vision and strategies for civil society involvement in the process
 - c. Analysis of related and/or applicable legal acts and documents, being identified during the research if related with civic society legislation in BiH and
 - d. Analysis of EU annual progress reports on BiH for the segments relevant to civil society in BiH,
4. Data entry, synthesis, analysis, and producing a paper with analysis of researched findings and development of relevant recommendations where appropriate.

II INTERNATIONAL ACTS PERTAINING TO BIH CIVIC SECTOR

Based on the *Dayton Peace Accords* as an international treaty, the State of Bosnia and Herzegovina (BiH) - legally, politically and ethnically re-integrated in a form of the principle “one state - two entities - three nations. The internal institutional architecture includes "tripartite concept". More precisely, the state consists of two entities (the Republika Srpska and the Federation of Bosnia and Herzegovina), the Brčko District of Bosnia and Herzegovina (added to the structure after the Final Decision of the International Arbitration, which granted the District a rather independent status of a sui generis entity within the legal framework and constitutional arrangement of the State of Bosnia and Herzegovina)¹⁰ and 10 cantons within the structure of the Federation of Bosnia and Herzegovina. All the mentioned institutional

levels have legislative competences in connection with the adoption and implementation of the Law and by-laws that regulate the establishment and operation of CSOs.

Wide-ranging support for human rights protection including protection of human rights that fall under the realm of freedom of assembly and association in BiH is provided for by the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP).¹¹ The GFAP (colloquially also known as the *Dayton Peace Accords - DPA*) incorporated directly into the constitution of Bosnia and Herzegovina all the rights and freedoms provided for in the *European Convention on Human Rights and Fundamental Freedoms* (ECHR) and its protocols, as well as 15 other international human rights instruments.

The ECHR provides for *freedom of (peaceful) assembly and association* (Article 11). These two rights are sufficiently different¹² to be treated separately but they share the objective of allowing individuals to come together for the purpose of promotion and protection of their common interests. The Article sets up the legal grounds for the creation and operation of political parties and interest groups, propagation of ideals and political programmes but also allows for creation of CSOs. Article 11 Para 2 of the ECHR grants the state power to restrict the enjoyment of rights set forth in Paragraph 1 to certain categories of persons (members of the armed forces, the police or the state administration).

In the BiH newly introduced legal milieu, by virtue of Article II of the Constitution of BiH, it is possible to apply *directly* “the rights and freedoms set forth in the ECHR and its Protocols.” The Constitution of BiH gives those rights and freedoms “priority over all other law,” which was aimed at helping and accelerating the painful process of harmonising the national legal system with the European human rights standards.

In addition, Preamble of the Constitution of Bosnia and Herzegovina¹³ states the determination to ensure full respect of international humanitarian law in Bosnia and Herzegovina, and the commitment to start from the *Universal Declaration of Human Rights*, international treaties on civil and political, economic, social and cultural rights. Article 20. of the Universal Declaration of Human Rights states ‘Everyone has the right to freedom of peaceful assembly and association’.

In regards to EU integration processes of the candidate and potential candidate countries, European Commission established monitoring mechanism to be applied for each of the candidate and potential candidate country. More precisely, each year the European Commission adopts its “**Enlargement Package**”¹⁴ - a set of documents explaining its policy on EU enlargement. The core of this package is a Communication on enlargement, which takes stock of the developments over the last year. It examines the progress made by the candidate countries and potential candidates, the challenges encountered and reforms to be addressed and sets out proposals for the way forward. In addition to the main Communication, the package contains the Reports in which the Commission services present their detailed annual assessment of the state of play of the reform progress in each candidate country and potential candidate over the last year. These assessments are accompanied by recommendations and guidance on the reform priorities.

¹¹ Signed in USA, Dayton, Ohio, December 15, 1995.

¹² This is because the term “assembly” (people meeting and participating in the expression or exchange of ideas and opinions) characterizes a more informal grouping than does the term “association,” which is more formal and organized than an assembly.

¹³ https://www.ustavisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

¹⁴ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en

Considering BiH, within this monitoring mechanism, European Commission observe and analyse progress of the BiH against 33 chapters, including civic society (Cluster 1, The Fundamentals of the Accession Process - 2.1. Functioning of Democratic Institutions and Public Administration Reform - 2.1.1 Democracy) and provide BiH institutions with recommendations for improvement., which represent valuable input for both, BiH authorities and CSOs, in decision making processes.

EU Guidelines for EU support to civil society in enlargement countries¹⁵ has a purpose to facilitate support to civil society in order to strengthening involvement of civil society in the pre-accession process and contribute to deepening citizens' understanding of the reforms a country needs to complete in order to qualify for EU membership. Via this policy European Commission offer a combination of political and financial support where political support will encourage enlargement countries to make legislation more conducive for civil society. Also, Commission through set of objectives, results and indicators for EU support to civil society measuring the progress at country level as well across the enlargement region.

Also, a key human rights instrument relevant to the promotion and protection of civic space, the International Covenant for Civil and Political Rights (ICCPR) has been integrated into preamble of the Constitution of Bosnia and Herzegovina¹⁶, which – together with its First Optional Protocol (1966) – provides for the rights to freedom of opinion and expression, peaceful assembly and association, as well as participation in public life.

In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also contains provisions that are relevant to civic space, including provisions on non-discrimination (Art. 2), the right to join unions (Art. 8), the rights to work and education in general and the right to take part in social life (Art. 15).

Furthermore, human rights law, including through regional instruments, has also explicitly and further protected “groups most at risk” of marginalization or exclusion, especially women, persons with disabilities, children, migrant workers and their families. Several of these group-specific, legally binding instruments expressly address issues related to civic space: The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (1989) provide for the right of women to participate in political, economic and cultural life (Art. 3) and the right to participate in public affairs including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country (Art. 7); The Convention on the Rights of Persons with Disabilities and its Optional Protocol (2006) guarantee the rights to freedom of opinion and expression, access to information, and participation in political and public life (arts. 21 and 29); The Convention on the Rights of the Child (1989) recognizes the rights of the child to freedom of expression, association and peaceful assembly (arts. 13 and 15); and The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) provides for the right to hold opinions without interference, the right to privacy and the freedom to associate and to join any trade union (arts. 13, 14 and 26)¹⁷.

The above-mentioned international mechanisms that have impact upon operations of civic sector were listed and short relevance description given, for the purposes of understanding legal framework of CSOs in the broadest possible sense.

¹⁵ https://www.eeas.europa.eu/sites/default/files/doc_guidelines_cs_support1.pdf

¹⁶ See preamble of the Constitution of Bosnia and Herzegovina

https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_srp.pdf

¹⁷ UNDP, *Legal Framework for Civic Space A Practical Toolkit*, New York 2021, p. 9.

III BiH LEGAL FRAMEWORK

3.1 Constitutional basis

Ever since the Constitution of the Federation of Bosnia and Herzegovina (Constitution of FBiH) came into force in one part of BiH (1994), various European human rights instruments have become binding for the institutions in the Federation of Bosnia and Herzegovina (FBiH). As far as Republika Srpska (RS) goes - as opposed to the State and the FBiH level - the international community did not impose its Constitution. So, on one side, the human rights standards from the BiH constitutions are applicable and binding also for the institutions of the RS while, on the other side, the Constitution of the Republika Srpska (Constitution of the RS) provides for its own catalogue of human rights as well as its own enforcement machinery. When it comes to BD level, the District has its own Constitution called Statute of the Brcko District of Bosnia and Herzegovina (Statute of the BD BiH). However, the BD BiH, as a specific "third Entity" is also under the authority the Constitution of BiH.

Legal position of the non-governmental organizations in BiH is to be looked at in the light of the provision of Article II of the Constitution of BiH. It reads as following: "Human Rights and Fundamental Freedoms - Human Rights. Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms"¹⁸

Additionally, provisions of the Constitution of BiH set the international standard called *direct applicability*: "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law".¹⁹ Among those freedoms, set forth in the "catalogue of rights", it is expressly stated that "All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 of Article II", listing, *inter alia*, freedom of expression and freedom of peaceful assembly and freedom of association with others.²⁰ It means that the freedom of association with other people is a constitutional right of all persons on the territory of BiH.

At this place a *non-discrimination clause* that holds prominent position in the human rights provisions of the Constitution is inevitably to be mentioned. Namely, the Constitution of BiH clearly states that the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to the Constitution of BiH shall be secured to all persons in BiH without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.²¹

The only limitation to exercising of freedom of association is envisaged in Article 11 Para 2 of the ECHR that reads as following:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or

¹⁸ Article II 1 of the Constitution of BiH.

¹⁹ Article II 2 of the Constitution of BiH.

²⁰ Article II 3 of the Constitution of BiH. Entity's Constitutions provide for the same freedom (Art. II A 2 of the Constitution of the FBiH and Art. 30-31 of the Constitution of the RS).

²¹ Article II 4 of the Constitution of BiH.

crime, for the protection of health or morals or for the protection of the rights and freedoms of others.²²

Freedom of association is provided for in a number of international instruments (agreements) that are included in Annex I of the Constitution of BiH. One has to bear in mind that Constitution states that "Bosnia and Herzegovina shall remain or become party" to these international agreements that are listed in Annex I to the Constitution.²³ A Party to an (international) agreement (treaty) has certain obligations to be fulfilled as well as certain rights in order to be able to fulfil those obligations. Accordingly, if BiH becomes Party to international agreements regulating rights of its citizens and other subjects on its territory to associate with others, the State has to have a legally guaranteed position to be able to secure those rights. In other words, the State, becoming a Party to international agreements is accountable to state of affairs and violations of human rights on its territory.

The Constitution also regulates that each Entity shall provide all necessary assistance to the government of BiH in order to enable it to honour the international obligations of BiH, provided that financial obligations incurred by one Entity without the consent of the other prior to the election of the Parliamentary Assembly and Presidency of BiH shall be the responsibility of that Entity, except insofar as the obligation is necessary for continuing the membership of BiH in an international organization.²⁴ Pursuant to Article III 2 (c) of the Constitution of BiH, the Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II of the Constitution, and by taking such other measures as appropriate.²⁵ No amendment to Constitution of BiH may eliminate or diminish any of the rights and freedoms referred to in Article II of the Constitution of BiH.²⁶

3.2 Applicable laws

The basic laws that are in force in BiH (listed herein below) govern the founding, registration, internal governance and dissolution of associations and foundations at respective government levels in BiH. Under these laws it is possible to register CSO with the competent institution. The laws are more-less harmonized with each other and meets basic international standards as well as regional best practices and, as such, they represent an important step forward in providing an improved environment for civil society in BiH. These laws are the following:

- *Law on Associations and Foundations* (State level, enacted in 2001²⁷);
- *Law on Associations and Foundations* (Republika Srpska level, enacted in 2001²⁸);
- *Law on Associations and Foundations* (Federation level, enacted in 2002²⁹);
- *Law on Associations and Foundations* ("Brcko District level, enacted in 2002³⁰).

There are other laws pertaining to civic sector having impact on work of CSO, such as:

- *Law on the Prevention of Money Laundering and Financing of Terrorist Activities*;

²² This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

²³ Article II Item 7 of the Constitution of BiH.

²⁴ Article III 2 (b) of the Constitution of BiH.

²⁵ Article III 2 (c) of the Constitution of BiH.

²⁶ Article X 2 of the Constitution of BiH.

²⁷ *Official Gazette of Bosnia and Herzegovina* No. 32/01, 42/03; 63/08; 76/11.

²⁸ *Official Gazette of the Republika Srpska* No. 52/01; 94/16; 76/11; 63/8.

²⁹ *Official Gazette of the Federation of Bosnia and Herzegovina* No. 45/02.

³⁰ *Official Gazette of the Brcko District of Bosnia and Herzegovina* No. 12/02; 19/07).

- *Law on consumer protection in BiH;*
- *Entities' Laws on Environment protection;*
- *Accounting and Audition Law of the Republic of Srpska, Federation of BiH, and Brčko District of Bosnia and Herzegovina,*
- *Law on Value Added Tax of Bosnia and Herzegovina, etc.*

3.2.1. LAW(S) ON ASSOCIATIONS AND FOUNDATIONS OF BOSNIA AND HERZEGOVINA

Considering objective limitations due to a very complicated constitutional structure of BiH, as well as the fact that solutions in all national sub-divisions are almost the same, the paper will explore the State level law, with reference to other levels solutions in case they constitute sharp departure from the State law provisions.

The *Law on Associations and Foundations of Bosnia and Herzegovina* regulates: founding, bodies and legal status of associations and foundations, registration, property, cessation and striking off the Register, status changes and other issues relevant to the work of associations and foundations which opt to register as associations or foundations at the level of Bosnia and Herzegovina pursuant to this Law. The Law regulates the registration of offices, representative offices or other organizational forms of foreign or international association or foundation which opt to register as associations or foundations at the level of Bosnia and Herzegovina pursuant to this Law. Provisions of this Law apply to the registration of sports associations of Bosnia and Herzegovina, unless otherwise provided in another law."³¹ This provision allows for possibility for associations and foundations from any part of the State to get registered at the state level and thereby become subject that can work throughout the territory of Bosnia and Herzegovina.³²

Definitions

Law defines associations and foundations as follows: An association is created by a common agreement in which a group of three or more physical or legal persons, in any combination, in accordance with Constitution and Law, voluntarily associates to further a common interest or public interest, and who do not intend to gain profit. An association becomes a legal person when it is registered as provided in this Law. Associations can enter into alliances or other forms of associations that connect their interests at the higher level. Higher level associations are entitled to all rights and freedoms that are being guaranteed to associations. Higher level associations and associations of higher level have right to freely associate and cooperate with international organisations established to improve the same rights and interests.³³ The very provision stresses non-profit nature of association, making very clear that fundamental purpose of establishing association cannot be making profit. On the other hand, the norm at the same time does not provide for ban to make profit, as it requires solely that the essential purpose of association shall not be profit making.

Foundation is a legal person without its own members, intended to manage specific property for the public benefit, or for charitable purposes. A foundation becomes a legal person of Bosnia and Herzegovina when it is registered as provided in this Law.³⁴

³¹ Article 1. of the *Law on Associations and Foundations of Bosnia and Herzegovina*.

³² In some states there are other forms that can serve as legal frame within which non-government organizations are being established and work. E.g. *Funds* (Croatian and Check Republic). It is a form that can exist no more than five years or *corporations for common good (benefit)*, that can be found in Hungary of Check Republic. In BiH, there is no possibility to register NGO in some other form than two non-profit organizations mentioned herein above, which to certain extent hinders establishment and work of such organizations.

³³ Article 2.

³⁴ *Ibidem*. Article 2 of *The Law on Associations and Foundations of Republika Srpska* states that association is defines association as any form of voluntary connection of three or more physical or legal persons, in all combinations, aiming improvement or implementation of certain common interest of aim, in accordance with

Physical and legal persons who are either citizens or residents of Bosnia and Herzegovina, or who are registered or live therein, shall be free to voluntarily associate into associations or foundations for any purpose in compliance with the Constitution and the laws of Bosnia and Herzegovina. Associations and foundations shall be free to carry out their activities in the entire territory of Bosnia and Herzegovina regardless of where they have their seat.³⁵ This provision clearly points out two characteristics of associations and foundations: *freedom of association* and *voluntary nature* of creation making guarantees both for residents of Bosnia and Herzegovina, registered or living in Bosnia and Herzegovina.

Performance of economic activities

An association or foundation may perform unrelated economic activities that are not directly related to the realization of main statutory goals of an association or foundation (non-profit activities). This „authorisation“ to perform *unrelated economic activities*, Law returns within the scope of non-profit law by provision that providing that profit gained by performing unrelated economic activities shall be used for the sole purpose of achieving goals provided for by Statute of association or foundation.³⁶ The following persons shall not directly or indirectly obtain profits or other financial benefits gained through the activities of associations or foundations: founders, association members, and members of managing bodies, responsible persons, employees or donors.³⁷

In the same time, the law does not treat performing of related economic activities (those economic activities that are directly related to the realization of the basic statutory goals of associations and foundations) as well as the disposal of the income generated in this sense.

Ban of anti-constitutional, anti-legal and political activities

Aims and activities determined by an association or foundation, and such, shall not contravene the constitutional order of Bosnia and Herzegovina, nor may they be directed at its violent destruction, stirring of ethnic, racial or religious hatred, or any discrimination

Constitution and Law, with no intention to generate profit. Foundation is defined as a legal person (entity) that does not have its members but has a purpose to manage certain assets in the public interest. Article 2. Of the *Law of Associations and Foundations of the Brcko District of Bosnia and Herzegovina* states that association is being formed by the joint agreement of three or more physical or legal persons, in all combinations, aiming improvement or implementation of certain common interest of aim, with no intention to generate profit. It cannot be established by the State, Entities, Brcko district, Cantons, Cities, Municipalities, State bodies, State companies, fund, or any other state institution or organization. Association gets status of legal entity by registering with the Court Register of the Brcko District. The same is provided for in Article 25. Of the *Law on Associations and Foundations of Republika Srpska*: “An association or a foundation may be entered into the registry book of associations and foundations kept by the district court on whose territory the association or foundation has its seat. Registration and dissolution of an association or foundation is conducted in accordance with the provisions of the non-litigious procedure. The registry shall be open to the public during the working hours. Anyone may request a copy of any entry from the registry or any document from the application file of the registered association or foundation. The request may be made personally or through the postal services. Notwithstanding the provisions of the previous paragraph, an authorized representative of an association or a foundation may request the registration court to prohibit disclosure of certain data entered into the registry if the disclosure of such data could undermine the personal integrity of the founders or members of the association or foundation. The court shall decide upon such a request in a separate decision. The decision shall be submitted to the Ministry of Administration and Local Self-Governance within eight days after the decision becomes final.” Foundation is a legal person established by one or more physical or legal persons with a purpose to manage certain assets in the public interest or charitable purposes.

³⁵ Article 3.

³⁶ Article 4.

³⁷ The limitation set out in the previous paragraph does not exclude reimbursing such persons for work or for expenses related to the realization of lawful aims and activities as determined by the statute of the association or foundation.

prohibited by law. The goals and activities of associations and foundations cannot be directed at overthrowing the constitutional order of Bosnia and Herzegovina, violation of guaranteed human rights or provoking and encouraging inequality, hatred or intolerance based on racial, ethnic, religious or other affiliation or orientation.

An association or foundation is obligated to submit a financial report to the competent authority in the seat of the association or foundation and the Ministry of Justice of Bosnia and Herzegovina for publication on the website of the Ministry, at the latest by 30 April of the current year for the previous business year.³⁸

In the course of post-conflict social and constitutional environment of Bosnia and Herzegovina, this provision is of ultimate importance, as it does not allow establishment of association or foundation based on ethno-national grounds. Legal guarantee that the goals and activities of a registered association or foundation shall keep out of politics is set forth by the Law, and the provision reads that “goals and activities of a registered association or foundation shall not include electioneering, fundraising for candidates, or financing of candidates or political parties.³⁹ This provision, in connection with the previous one, keeps activities of associations and foundations out of ethno-politics.

Performance of public competence

An association or foundation can be entrusted, by law or by delegation of the competent authorities, to perform public competence within its activities. This assignment shall not be made against the will of an association or foundation. If an association or foundation has agreed to perform public competence, it is obliged to ensure lawful and undisturbed performance of public competencies. Unless its statute provides to the contrary, the operation of a registered association or foundation shall be public.⁴⁰

Name and Seat

Every registered association or foundation shall have its full name and seat. In performing their activities, registered associations and foundations may use only their registered names. The name of a registered association or foundation must be in the three official languages of Bosnia and Herzegovina. An association or foundation may have a logo.

The name of association or foundation may be in a foreign language, which must be written in Latin or Cyrillic script in this case. The name or part of the name of a natural person may be inserted in the name of an association or foundation with his consent, or, if that person is deceased, with the consent of his heirs. The name or part of the name of a historical or important figure may be inserted in the name of an association or foundation with his consent, or, if the person is deceased, only if the name is used in an appropriate manner and with the consent of his heirs, if any. In the event that the name of an association or foundation is in a foreign language, in accordance with paragraph (5) of this Article, an official translation of the name in the official languages of Bosnia and Herzegovina shall be entered in the Register.⁴¹

³⁸ Article 5.

³⁹ Article 3.

⁴⁰ Article 13.

⁴¹ Article 7.

The terms written in one gender apply equally to male and female sex.⁴² The Ministry referred to in this Law shall be the Ministry of Justice of Bosnia and Herzegovina.⁴³ Associations and foundations are being registered and their work terminated following provisions of *Law on Administrative Procedure of Bosnia and Herzegovina*.

ESTABLISHMENT OF ASSOCIATIONS AND FOUNDATIONS

Founding of Association

An association may be established by at least three founders. The founders of the association may be natural persons who are citizens of Bosnia and Herzegovina or foreigners who have residence permit in Bosnia and Herzegovina or legal persons registered in Bosnia and Herzegovina. An association may be established by natural and legal persons jointly, provided that the number of founders may not be less than three." An association qualified for registration must be established by the enactment of a founding act.⁴⁴

Unless ratified by the association, acts committed in the period between the establishment and registration of an association may create obligations only for those persons who actually performed those acts. Only the association's highest managing body may ratify acts committed on behalf of the association prior to its registration.⁴⁵ Unless otherwise specifically provided in its statute, it shall be deemed that an association is established for an unlimited period of time. An association may be registered only if its inaugural assembly adopts a founding act and the statute, and appoints the managing bodies in accordance with this Law.⁴⁶

Public Interest Association

An association that is registered in the Register may implement programs and projects of public interest. Programs or projects of public interest adopted by the institutions of Bosnia and Herzegovina are considered rounded and thematically clearly defined activities whose implementation in the long or short run brings about distinctive social added value which increases the quality of life of individuals and promotes the development of the community. On the basis of public invitations to tender, the institutions of Bosnia and Herzegovina shall conclude agreements with associations on the implementation of programs or projects of public interest. Associations' activities of public interest are particularly considered activities of associations that contribute to the promotion of: human rights, rights of persons with disabilities, protection of children with disabilities, minority rights, equality by the fight against discrimination, protection from violence, activities for children and young people, combating various forms of addiction, development of volunteerism, humanitarian activities, social welfare, environmental protection, nature conservation, protection of human health, arts, education, culture and all other activities that, by their nature, can be regarded as activities in the public interest.

An association that has received funding for the implementation of programs or projects of public interest shall report to the donor of these funds and inform the public through its website. An association that has received funding for the implementation of program or

⁴² Article 7a.

⁴³ Pursuant to Article 33. of the *Law on Associations and Foundations*, the registration of national or international association and foundation established for the territory of the Republika Srpska is entered into the Registry Book of Associations and Foundations kept by the Ministry of Administration and Local Self-Governance.

⁴⁴ Article 9.

⁴⁵ *Ibidem*.

⁴⁶ Article 10.

project of public interest shall qualify for the tax, duties and other levies relief in the implementation of the programs or projects in accordance with special regulations. Upon the proposal of the Ministry, the Council of Ministers of Bosnia and Herzegovina shall enact a by-law that will regulate the criteria for the development and implementation of programs and projects of public interest that could be pursued by associations.⁴⁷

Charitable purposes association

A registered association shall be deemed to act for charitable purposes if it is established with the primary purpose to help persons and groups in need of assistance. Obviously, the crucial aim of such association must be assistance to the groups in need.⁴⁸ A registered public benefit association is entitled to receive tax breaks, custom exemptions and other benefits.⁴⁹ As far as organizational transformation is concerned, a registered association can only merge, separate or transform into another registered association or foundation. A registered public benefit association can only merge, separate or transform into another registered public benefit association or public benefit foundation.⁵⁰ As for the membership, a registered association may set forth its own membership criteria, subject only to the prohibition of discrimination set out in the Constitution and laws of Bosnia and Herzegovina.

Organs of association

A registered association may set forth its own membership criteria, subject only to the prohibition of discrimination set out in the Constitution and laws of Bosnia and Herzegovina. A list of members of association shall be kept electronically or in other appropriate way to include names and surnames of members, whether natural or legal persons, with their place of residence or seat; the date of joining and number of membership form of the association; type of membership in the association, in accordance with the Articles of Association; the date of termination of membership in the association. A list of members of the association must be made available to the competent authorities at their request.⁵¹ In the case of a foreign or international association, it is sufficient for the association to have documents and bodies, however named, that perform the functions defined by this law.⁵²

The assembly, as the highest body of an association, shall be competent to perform the following acts: Enactment of the statute, its amendments, and other acts determined in the statute.

Association may have a managing board.

⁴⁷ Article 13. In Slovakia, the managing body grants such status. On the other side, in the United Kingdom, this status is being determined by a specific body named the *Charity Commission*, while in Bulgaria, Hungary, Romania and Poland founded registration courts, with specific purpose to register associations. Benefits of the solution wherein it is being granted by the competent Ministry would be that Ministry has wide range of experience in the field, solution is a cheap one and stimulating to work coordination between the Ministry and other government bodies. Shortcoming would be the fact that the political influence may be imposed. On the other hand, if the status is being granted by the Court, a political influence is not the issue, and also an appeal procedure would be more effective, while transparency of the Registry is being ensured.

⁴⁸ Article 13.

⁴⁹ *Ibidem*.

⁵⁰ Article 14.

⁵¹ Article 15.

⁵² Article 17.

Foundations

Registering of Foundations

A foundation may be established by one or more natural or legal persons (hereinafter: the founders), while an association may be established by natural and legal persons jointly. The founders do not necessarily have to be nationals or legal persons of Bosnia and Herzegovina.⁵³

A registered foundation must have an act of establishment, a statute, and a managing board, or their substantial equivalents. In the case of a foreign or international foundation, it is sufficient for the foundation to have documents and bodies, however named, that perform these functions as otherwise described in this law.⁵⁴

Public Interest Foundations

A foundation that is registered in the Register may implement programs and projects of public interest. Programs or projects of public interest adopted by the institutions of Bosnia and Herzegovina are considered rounded and thematically clearly defined activities whose implementation in the long or short run brings about distinctive social added value which increases the quality of life of individuals and promotes the development of the community. Foundations' activities of public interest are particularly considered activities of foundations that contribute to the promotion of: human rights, rights of persons with disabilities, protection of children with disabilities, minority rights, equality by the fight against discrimination, protection from violence, activities for children and young people, combating various forms of addiction, development of volunteerism, humanitarian activities, social welfare, environmental protection, nature conservation, protection of human health, arts, education, culture and all other activities that, by their nature, can be regarded as activities in the public interest.

On the basis of public invitations to tender, the institutions of Bosnia and Herzegovina conclude agreements with foundations on the implementation of programs or projects of public interest.

A foundation that has received funding for the implementation of such programs or projects referred to in paragraph shall report to the donor of these funds and inform the public through its website. A foundation that has received funding for the implementation of such program or project shall qualify for the tax, duties and other levies relief in the implementation of the programs or projects in accordance with special regulations.

⁵³ Article 21. The Memorandum of Association of a foundation shall contain: names and surnames of founders, whether natural persons or legal persons, and their places of residence or seats; the name of the foundation; the seat and address of the foundation; the objectives and activities of the foundation; the amount of cash or other forms of property which founder invests, which may not be less than two thousand Convertible Marks; the name and address of the person authorized to register the foundation in the Register; the name and signature of the founder; number and date of the Memorandum of Association. When the founder of the foundation is a legal person, the Memorandum of Association of the foundation shall be signed by its representative who shall add the full name of the legal person to his signature and the stamp of the legal person (Article 23).

⁵⁴ *Ibidem*. The statute of a registered foundation shall include: the full name and, if such exists an abbreviated name and the seat of the foundation; the goals and objectives of the foundation; bodies of a foundation, the way of their election, the powers they have, the quorum and voting rules, terms of office, the person authorized to convene the steering board, the conditions and manner of dissolution or cessation of operation; the rules for management and use of the property of the foundation; procedures for amending the statute, as well as the authority and procedures for enactment of other general acts; conditions and procedures for the merger and division or cessation of the operation of the foundation, including all rules for voting that needs special quorum or qualified majority votes; criteria for disposition the property of the foundation in the case of cessation of its operations; the description of the form and the content of the foundation's seal (Article 24).

A registered foundation may be merged with or divided into another foundation. A foundation may establish its offices, representative offices and subsidiaries in accordance with the Articles of Association.⁵⁵

Charitable Foundation

A registered foundation shall be deemed to act for charitable purposes if it is established with the primary purpose to help persons and groups in need of such assistance.

Public benefit status is determined by the Ministry. The specific procedures for granting and denying the status of the foundation as one for the public benefit will also be set out in a separate regulation of the Ministry. Applications to receive the status of a registered public benefit foundation can be submitted at any time, in a manner prescribed by regulations of the Ministry. Denial of such an application is subject to review as hereinafter provided. A registered public benefit foundation is entitled to receive tax breaks, custom exemptions and other benefits.⁵⁶

Organs of the Foundation

The managing organ of a foundation is the managing board. The Statute of a foundation may also provide for other organs of the foundation.⁵⁷ The managing board of a foundation is responsible for implementation of the goals and objectives of the foundation, and it may also perform other tasks as determined by the statute and in accordance with law and shall have at least three members. The members of the managing board of a registered foundation need not be citizens of Bosnia and Herzegovina.⁵⁸

REGISTRATION OF ASSOCIATIONS AND FOUNDATIONS

National Associations and Foundations

Registration of associations and foundations is voluntary, except as provided in Article 29 of this Law, but registration must be accomplished in order for an association or foundation to gain the capacity of a legal person of Bosnia and Herzegovina. Registration, the filing of documents, and the cessation of operation of an association or foundation shall be done in accordance with this Law, other applicable laws of Bosnia and Herzegovina, regulations of the Ministry, and the Statute of the association or foundation. Where those laws and regulations contain conflicting provisions, the Ministry shall interpret the laws and regulations in a way that:

- a) Promotes the policy of transparency and public disclosure; and,
- b) Reduces the administrative burden for organizations and individuals, to the extent that this can be done while promoting transparency and disclosure.

If the applicable laws are in conflict and cannot be reconciled, the provisions of this Law shall prevail.

⁵⁵ Article 21.

⁵⁶ Article 21.

⁵⁷ Article 25.

⁵⁸ Article 26. Members of the organs of a foundation may not vote on issues in which they, their spouses or those related to them either by blood or by marriage up to the third degree, appear as an interested party, in issues relating to the matter that is under the control of the member in question, or in issues where the member in question has an economic interest. In addition, members of the organs have an obligation to ensure that all financial transactions of the foundation are concluded at fair market value, or under conditions that are more favourable for the foundation (Article 27).

The registration of an association is entered into the Registry Book of Associations. The registration of a foundation is entered into the Registry Book of Foundations. Both of these registry books shall be kept by the Ministry. The registry books shall be kept in accordance with the provisions of this Law as well as regulations prescribed by the Ministry.⁵⁹ In other sub-division laws, there are some differences as to this matter.⁶⁰

Public scrutiny

The registry books shall be open for public scrutiny. Inspection of any document or information filed in the registry books shall not be conditioned on the approval by the Ministry. No document or information filed pursuant to this law shall be designated as “confidential” or as a “business secret”. Every individual, either in person, or by mail, may request a copy of any entry from the registry or any document from the application file of a registered association or foundation. Fees for such copies shall not exceed normal amounts. The copies must be issued within fifteen working days from the day the request has been submitted.⁶¹

Ban of discrimination

It is ensured by provision of Article 30 of the Law, which reads as follows: „The name of an association or a foundation, if so envisaged by its statute, may be entered into the registry book in one or more foreign languages, provided that the name in the official languages of Bosnia and Herzegovina is entered first. Foreign associations or foundations may only use their registered names”. The same Article is a safeguard of unlawful competition stating that “When two or more associations or foundations register essentially the same names or logos, the Ministry shall issue a decision directing the subsequently registered association or foundation to apply for amendment to its registration within thirty days to change its name or logo. If such an association or foundation fails to proceed according to the decision, the Ministry shall suspend or revoke the registration, dissolve the association or foundation, and impose any other sanction provided by this Law.

Registration Procedure

An application for registration of association or foundation shall be submitted by a person authorized to submit an application for registration, appointed in the Memorandum of Association of the association or foundation, and shall contain:

- a) The minutes of the founding assembly of the association;
- b) Memorandum of Association;
- c) A list of founders;

⁵⁹ Article 28. However, copies of personal documents (identity cards, passports etc.) of founders and members of bodies of the association or foundation shall not be publicly available.

⁶⁰ According to Article 26. of the Federation Law, registry is kept by the Federation Ministry of Justice, if the Statute of the association of foundation provides that the association of foundation is going to undertake its activities in the territory of two or more Cantons. If the Statute states that activities are going to be undertaken in the territory of just one Canton, the Registry is kept by the Cantonal organ. Registry of all foundations and foreign non-governmental organization is kept by the Federation Ministry. According to Article 25 of the Republika Srpska Law, association of foundation is registered with the Municipal Court, following the seat of the association of foundation. According to Article 33 of the Republika Srpska Law, the central Registry of associations and foundations is kept by the Ministry of Administration and Local Self-Governance. The registration in the Brčko District of Bosnia Herzegovina, in Accordance with Article 2. Of the District Law is being done with the District Court Register.

⁶¹ Article 28.

- d) Certified copies of identity cards or passports of the founders or an extract from the Register of the founders if they are legal persons;
- e) Articles of Association (Statute) in two copies;
- f) a declaration given by the applicant under full moral, material and criminal responsibility that the association or foundation is not registered under the same name with another registration authority in Bosnia and Herzegovina;
- g) Decision on appointing bodies of the association or foundation;
- h) Name and address of the person authorized to represent the association or foundation;
- i) A copy of the logo of association or foundation, if any;
- J) Consent under Article 7(6) of this Law;
- k) Proof under Article 23(1) (e) in case of a foundation;
- l) Other evidence in accordance with the Articles of Association of association or foundation."⁶²

The form and manner in which the application is to be submitted shall be established by regulations of the Ministry.⁶³ Upon receipt of an application for registration or amendment of registration, the Ministry shall issue a receipt to the founders of an association or foundation. The Ministry has the duty to issue a decision on registration within 30 days after an application has been submitted. If the Ministry fails to issue a decision within 30 days after an application for registration or for amendment of registration has been submitted, such failure shall have the effect of denying the registration or amendment of registration.⁶⁴ The solution is provided for in the *Law on Administrative Procedure of Bosnia and Herzegovina*.⁶⁵

⁶² Article 31. Foreign and international associations, foundations and other non-profit organizations, as well as their branch offices, which are registered pursuant to this Law, may operate throughout the territory of Bosnia and Herzegovina, as well as legal persons of Bosnia and Herzegovina.

⁶³ *Ibidem*.

⁶⁴ Article 32. The decision on registration of an association or foundation shall contain: number and date; registration number; name and abbreviation, if any; address of the seat; description of the logo of association or foundation, if any; objectives and activities; names of persons authorized to represent the association or foundation in legal transactions; acquisition of legal personality. (Article 33).

⁶⁵ Article 234 of the *Law of Administrative Procedure of Bosnia and Herzegovina* (An appeal when the First-Instance Decision Was Not Issued within the Legal Period). The Article Reads as follows: "(1) If an appeal has been lodged by the party at whose request the first-instance authority did not take a decision within a legal period (Article 208, paragraph 1 and 2), the second-instance authority shall be required to immediately, and within three days from the date of receiving the appeal, request from the first-instance authority to immediately provide it with all case files and present in writing the reasons due to which the decision was not issued within the period. The first-instance authority shall be obliged to act on this request within the period set by the second-instance authority, provided that this period may not exceed five days. If the second-instance authority finds that the decision was not issued within the period due to justified reasons or due to a party's failure, it shall set a period to the first-instance authority for taking a decision, which may not exceed 15 days, and return to it all case files for decision taking. (2) If the second-instance authority finds that the reasons due to which the decision was not taken within the set period are not justified, it shall resolve the matter on the basis of the case files and issue its decision, if possible, and if it is not possible to resolve the matter on the basis of the case files, it shall carry out the procedure by itself and resolve the matter by its decision. Exceptionally, if the second-instance authority finds that the procedure will be more expeditiously and more cost-effectively carried out by the first-instance authority, it shall order this authority to do this and provide the second-instance authority with collated information within a specified period which may not exceed eight days and the first-instance authority shall be obliged to act as per this request. Once the first-instance authority provides the requested information and evidence, the second-instance authority shall immediately resolve the matter. A decision of the second instance authority taken under this provision shall be final".

If, during the registration process, the Ministry establishes that the Statute of the association or foundation does not fulfil the requirements set forth in the *Law of Associations and Foundations of Bosnia and Herzegovina*, or that the application for registration is not complete, the Ministry shall notify the applicant to that effect and shall state the reasons for not effecting registration. If the applicant fails to remove these deficiencies within the prescribed period, the Ministry shall issue a decision rejecting the application for registration and shall state the reasons for rejection.⁶⁶

If the Ministry establishes that goals and activities of the association or foundation are in contravention with Article 5 of this law⁶⁷, the Ministry shall issue a decision refusing the application for registration and shall state the reasons for refusal.⁶⁸ A decision of the Ministry may be appealed against to a 2nd instant body. The appeal shall be lodged within 15 days of the receipt of the decision.⁶⁹ Appellate Commission shall decide on appeals provided for in Article 35 of the Law. Commission shall be appointed by the Council of Ministers. Commission has three members and is of permanent character.⁷⁰

Appeals provided for by Article 35 of this Law are filed with the Ministry. Upon receiving the appeal, the Ministry shall examine the timeliness of the appeal and it shall examine whether it has been lodged by an authorized person. If the Ministry establishes that the appeal has not been submitted within the time limits prescribed or that it has been lodged by an unauthorized person, it shall make a decision to reject the appeal. If the Ministry does not reject the appeal on grounds set out by Article 38 (3) of the Law, it shall forward the appeal to the Commission together with the case materials. When deciding on the appeal, the Commission may: reject the appeal; deny the appeal and affirm Ministry's decision, quash Ministry's decision partially or in its entirety, reverse the decision.⁷¹

The Commission shall reject the appeal if the Ministry failed to do so pursuant to Article 38(3) of this Law. The Commission shall deny the appeal if it determines that the procedure before the Ministry had no deficiencies and when the appeal is ungrounded. The Commission shall quash the decision fully or partially when it establishes some of the irregularities listed in the Article 36 of this Law and will refer the case back to the Ministry for another deliberation. The Commission shall reverse the decision if the facts of the case merit a decision different from the one brought by the Ministry.⁷² The Commission shall decide on the appeal within 30 days of receiving the appeal.⁷³ Appeals against the decision of the Commission shall not be allowed, but the administrative appeal may be brought before the Court of Bosnia and Herzegovina.⁷⁴

Registered associations and foundations have a duty to apply to the Ministry for amendment of registration whenever there is a change in any of the information specified in Article 33(1) under subsections c), d) and f) of the Law, within thirty days of the day the change has

⁶⁶ Article 34. The solution is provided for to facilitate registration and is being in favour of simple registration procedure, giving the opportunity to a applicant (party to a procedure) to add missing data to the application.

⁶⁷ Article 5 reads as follows: "Associations and foundations shall be independent in determining their goals and activities in compliance with the Constitution and the law. The program and activities of an association or foundation may not contravene the constitutional order of Bosnia and Herzegovina, nor may they be directed at its violent destruction, stirring of ethnic, racial or religious hatred, or any discrimination prohibited by law".

⁶⁸ Article 34.

⁶⁹ Article 35

⁷⁰ Article 37.

⁷¹ Article 39.

⁷² Article 40.

⁷³ Article 41.

⁷⁴ Article 42.

occurred. The Ministry shall issue a decision on the application in accordance with Article 32(1) of the Law.⁷⁵

Decisions allowing, rejecting, denying, suspending or revoking the registration of any association or foundation, and any decision dissolving any association or foundation shall be published in the Official Gazette of Bosnia and Herzegovina, on the website of the Ministry, too.⁷⁶

Foreign Associations and Foundations

Registration rules and procedures set forth in this Law shall apply also to foreign and international associations, foundations and other non-profit organizations as well as their branch offices located or conducting activities in Bosnia and Herzegovina. Foreign and international associations, foundations and other non-profit organizations, as well as their branch offices, which are registered pursuant to this Law, may operate throughout the territory of Bosnia and Herzegovina, as well as legal persons of Bosnia and Herzegovina.

At the time it applies for registration in the territory of Bosnia and Herzegovina, a foreign or international association or foundation, or other non-profit organization shall submit to the Ministry an application for registration containing the following:

- a) Proof that the organization has a status of a legal person in another jurisdiction;
- b) A statement describing the activities of the organization to be undertaken in Bosnia and Herzegovina;
- c) The name, address and telephone number of its home office and its main office in Bosnia and Herzegovina, if any;
- d) The name and title of the person in charge of the organization's main office in Bosnia and Herzegovina; however, if the organization does not have a main office in Bosnia and Herzegovina, then the name, address and title of the person responsible for the organization's operations in Bosnia and Herzegovina; and
- e) The name, address, title and telephone number of a person in Bosnia and Herzegovina who is authorized by the organization to be its legal representative in Bosnia and Herzegovina.⁷⁷

Property of Associations and Foundations

Property

⁷⁵ Article 43.

⁷⁶ Article 44.

⁷⁷ Article 45. According to Article 36 of the Federation Law, a foreign and international NGOs can be registered with the Federal Ministry. Their bodies can have seat and undertake activities in the Territory of the Federation, upon registration, if they obtain consent from the Federation Government and if its activities are not in contravention with constitution, law and international treaties. According to Article 34 of the Republika Srpska Law, its provisions are being applied on foreign association of foundation or other international organization, unless otherwise provided by law. This law, as well as Brcko District Law, requires some other documents to be presented by the association or foundation in order to get registered (e.g. decision that NGO is registered in the country of origin, document on opening an office, branch office or other organizational form in BiH, name and address of person authorized to represent the organization, seat and address in BiH).

The property of an association or foundation may include:

- a) Membership fees for associations;
- b) Voluntary contributions and gifts from public institutions, physical and legal persons, both domestic and foreign, in cash, services or property of any kind;
- c) Subventions from and contracts with the state, public institutions, physical and legal persons, both domestic and foreign;
- d) Revenue from interest, dividends, and profits generated from the capital, rents, fees and similar sources of passive revenue, and
- e) Revenue acquired from the realization of the goals and objectives of an association or foundation, as defined by its Statute.

If the founders of an association or foundation are public authorities, they may not participate in public tenders with their programs and projects for allocation of public funds, but they are funded from other sources instead, in accordance with this Law.⁷⁸

Scrutiny

Associations and foundations shall keep business books and submit financial statements in accordance with regulations governing non-profit organizations accounting. An association or foundation shall submit an annual financial report to the assembly or steering board, as defined by the Articles of Association. The financial report shall be kept on file by the association or foundation for at least five years, unless a longer period is determined in a special regulation. An association or foundation shall make available to the public all information regarding the work and activities of the association or foundation, in accordance with the applicable legislation. The liability for obligations of an association or foundation shall be limited to its entire assets. The assets of association or foundation may be subject to bankruptcy. Bankruptcy proceedings shall be carried out by the competent court in whose territory the seat of the association or foundation is located, in accordance with special laws. Members of association or a competent body of association defined as such by the Articles of Association shall supervise the work of the association. If irregularities are found in the implementation of the Articles of Association of association, a member of the association or the competent body shall indicate this to the Assembly. If the warning is not considered by the Assembly within 30 days of submitting a written warning and irregularities are not removed, a complaint may be lodged to the court, in accordance with Article 15 (3) of the Law. The competent bodies of foundation defined as such by the Articles of Association shall supervise the work of the foundation. If irregularities are found in the implementation of the Articles of Association of the foundation, the competent body of foundation shall indicate this to the steering board of foundation. If the warning is not considered at a meeting of the steering board within 30 days of submitting a written warning and irregularities are not removed, a complaint may be lodged to the court. The Administrative Inspection of the Ministry may conduct inspections of the work of associations and foundations registered in accordance with this Law, which inspections relate to the following questions:

- a) whether an association or foundation reports amendments to the Articles of Association, objectives and activities, the name, address of the seat, persons authorized to represent and dissolution of the association or foundation;
- b) Whether an association or foundation uses in legal transactions the information not entered in the Register;
- c) Whether an association or foundation uses the name under which it is entered in the Register;

⁷⁸ Article 46.

- d) Whether assemblies of the association or meetings of the steering board of the foundation are held;
- e) Whether associations or foundations submit financial reports under Article 5(5) of this Law to the Ministry;
- f) Whether an association keeps a list of members of the association in the manner prescribed in this Law and
- g) Whether an association or foundation has ceased to act in accordance with Article 51a of this Law.

In the process of inspection of the work of an association or foundation, an inspector is authorized to take the following measures:

- a) Order the elimination of the identified deficiencies or irregularities within a specified period;
- b) Issue a ticket;
- c) Notify the State Investigation and Protection Agency in case of suspecting the crime of money laundering or terrorist financing.

An inspector shall immediately notify the registration authority of the measures taken for the purpose of entering the record in the Register. The legality of the association or foundation respecting the activities of the association or foundation shall be supervised by the level of government that is responsible for monitoring the situation in the particular business activity according to the registered seat of the association or foundation.⁷⁹

Organs of a registered association or foundation have a duty to manage the property of an association or foundation in a responsible, diligent and lawful manner, and in the best interest of the association or foundation.⁸⁰

DISSOLUTION OF ASSOCIATIONS AND FOUNDATIONS

Dissolution

Dissolution of association and foundation may occur in two manners: voluntary, by decision of its organs and involuntary, by force of law (*ex lege*).⁸¹ Unless otherwise provided by its Statute, a decision to dissolve voluntarily requires a qualified majority of two-thirds of the votes of association's members, or two-thirds of the votes of foundation's managing board. In case of voluntary dissolution of a registered association or foundation, the association or foundation shall adopt a liquidation plan consistent with its Statute and this Law.⁸²

An association or foundation shall be considered to have ceased to operate when

- a) a period twice as long as the period set by the Articles of Association of the association or foundation for holding an assembly of the association/a meeting of the steering board of the foundation has passed and the assembly/the meeting of the steering board has not been held;
- b) the number of members of association fell below three and the competent body of the association has not made a decision on new members joining the association within three months of the occurrence of these circumstances;
- c) The number of members of the Steering Board of the foundation has fallen below three;
- d) It is not possible to change the Articles of Association of the foundation.

⁷⁹ Article 47.

⁸⁰ Article 48.

⁸¹ Article 49.

⁸² Article 50.

Within 30 days of association's or foundation's cessation of operations, a person authorized to represent the association or foundation shall submit to the Ministry a request with evidence of the dissolution of the association or foundation. Sanctions and cessation of operation and involuntary termination of an association or foundation shall be made by a request of the Ministry. Prior to a decision imposing sanctions, cessation of operation or involuntary termination, the Ministry shall give notice of the violations to the association or foundation. The notice shall describe the possible sanctions laid out in Article 53. The Ministry may allow the association or foundation to remedy the violation and/or may provide for sanctions as set out in this Law.⁸³

In accordance with the law, CSOs cannot be the subject of bankruptcy proceedings.

Since existing legislation do not provide basis for determining whether CSOs registered at the state level are active or not, this issue should be addressed (e.g., maybe via internal procedures of BiH Ministry of Justice⁸⁴).

Distribution of Property upon dissolution

An association or foundation that does not have a public benefit status shall, upon dissolution and cessation of operation and after its debts are settled, distribute any remaining property and assets as determined in its Statute, or to another registered association or foundation which has been granted a public benefit status. A registered association or foundation that has been granted the status a public benefit status shall, upon dissolution and after its debts are settled, distribute any remaining property and assets to another registered association or foundation of public benefit, whose aims and objectives are similar to those of the dissolving organization. This rule shall also apply to any association or foundation which has received state funds, public donations, or tax or fiscal benefits under any laws. In case of involuntary dissolution, the Ministry shall determine the distribution of any remaining assets, according to the principles of this Article. Publication in the "Official Gazette of Bosnia and Herzegovina" of a decision of the Ministry on involuntary dissolution and distribution of assets shall constitute notice to all potential beneficiaries for purposes of seeking review of the Ministry's decision.⁸⁵

3.2.2. LAW ON PREVENTION of MONEY LAUNDERING

The most important for the operations of CSOs seem to be Article 4 of the *Law on the Prevention of Money Laundering and Financing of Terrorist Activities* which states that "Measures for detecting and preventing money laundering and financing of terrorist activities shall be carried out according to this Law, when conducted by persons under obligation as listed below..." Under these persons under obligation, the Law considers also "Legal and natural persons performing the following activities: receiving and/or distributing money or property for humanitarian, charitable, religious, educational or social purposes". Article 6 (Customer Due Diligence CDD) reads as follows:

A person under obligation is obliged to undertake a customer due diligence of a client when: a. Establishing a business relationship with a client; b. Performing transaction in the amount of 30,000 KM or more,

⁸³ Article 51. In the Federation of BiH, competent court is Supreme Court of the Federation, while in the Republic of Srpska it is the Court that an association or foundation is registered with. In Brčko District, it is a Basic Court.

⁸⁴ *Analysis of the state of non-governmental organizations and the use of existing cooperation mechanisms with BiH institutions and international organizations* – Kult 2021, p. 40.

⁸⁵ Article 52.

regardless of whether the transaction was made in one operation or in several obviously related transactions; c. Existence of doubt in the validity and adequacy of previously received information about the client or the beneficial owner; d. Existence of doubt of money laundering or financing of terrorist activities in terms of transaction or client, regardless the amount of transaction.

In fact, as the Law *implicite* puts legal obligation upon CSOs, the whole law is applicable to work of the CSOs, which constitutes obligation to operational side of the CSOs in regards to implementation of measures, actions and procedures in the financial and non-financial sector that are undertaken with the aim of preventing and detecting money laundering and the financing of terrorist activities⁸⁶(article 1).

Also, the Law prescribe procedures of relevant authorities in conducting supervision of actors obliged to implement the measures, actions and procedures to prevent money laundering and financing of terrorist activities. Content of this processes is in line with recommendation 8⁸⁷ of the Financial Action Task Force (FATF), which refers to non-profit organizations, and which suggests countries to review the adequacy of laws and regulations related to non-profit organizations that the state has identified as being susceptible to terrorist financing abuse.

However, realization of this measures by relevant BiH authorities should be carefully monitored in order to avoid/reduce misusing confronting Money Laundering and Financing of Terrorist Activities for reducing freedoms of civic sector in BiH.

3.2.2. OTHER RELATED LAWS WHICH IMPACT STATUS AND PERFORMANCE OF CSOS

Some other Laws in BiH on various ways treats CSOs, their role and status. More precisely, some of those Laws define specific obligatory mechanisms for involvement of CSOs in decision making processes thus providing them with an opportunity to fulfil their mission more effectively. Also, some Laws proscribe basic rights of civic society I way different from existing Law(s) on associations and foundations in BiH, which deserve further attention.

Law on consumer protection in BiH

In regards to CSOs' legal status and scope of activities, *Law on consumer protection in BiH* limited CSOs that work in consumer protection area to engage in economic activity⁸⁸. Since BiH Law on association and foundations states 'An association or foundation, can perform economic activities only if it is basic the purpose of such activities is the achievement of goals established by the statute' and also 'Associations or foundations may perform unrelated economic activities (economic activities that are not directly related to the realization of the basic statutory goals of associations and foundations) only through a specially established legal entity'⁸⁹, obviously there is a need for clarification on potential conflict among those two

⁸⁶ Article 1 of BiH Law on Prevention of Money Laundering and Financing of Terrorist Activities

⁸⁷ FATF in 2012, adopted recommendations that countries should implement in order to combat money laundering and the financing of terrorism, as well as the financing of the proliferation of weapons of mass destruction - [https://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate))

⁸⁸ Article 111 paragraph 2 of the Law on consumer protection in BiH - 'Consumer associations are non-profit and non-governmental organizations and cannot engage in economic activity'.

⁸⁹ Article 4 of Law on Associations and Foundations of Bosnia and Herzegovina - <http://www.mpr.gov.ba/biblioteka/zakoni/bs/Zakon%20o%20udruzenjima%20i%20fondacijama%20-%202032%20-%202001.pdf>

Laws in regards to ability of CSOs or foundations to perform economic activities, since this segment has a great potential for sustainability of the civic actors in BiH.

Also, Law on consumer protection in BiH provide mechanism for direct participation of CSOs in decision making processes via Council for Consumer Protection in Bosnia and Herzegovina⁹⁰ which performs tasks within its competences, and in particular:

- proposes to the Council of Ministers of Bosnia and Herzegovina for approval the annual state program for consumer protection and monitors its execution;
- determines the basis of consumer protection policy;
- directs the scope of activities that are financed or co-financed from the budget of Bosnia and Herzegovina.

However, the process of nomination of CSOs' representatives in Council for Consumer Protection BiH is unclear. According to Law, BiH Council of Ministers name CSOs representatives from Union of consumer associations of BiH and consumer organization of both entities but no information about criteria to be fulfilled in this regard, which limits transparency of this process.

Entities' Laws on Environment protection

Law on Environment protection of Federation prescribe establishment of Advisory Council for the Environment to provide scientific and professional support to the Federal Minister of Environment and Tourism and the Government of the Federation of Bosnia and Herzegovina in the area environmental protection⁹¹. A two representatives of environmental protection associations, appointed by the network of Aarhus Centres in Bosnia and Herzegovina, based on the written consent of at least five associations of citizens promoting environmental protection registered in the territory of the Federation of Bosnia and Herzegovina are entitled to become members of the Advisory Council for the Environment in Federation BiH.

In this regard, the situation in the Republic of Srpska is even worse. According to the Law on Environmental Protection of the RS (Official Gazette of the RS, no. 71/2012 and 79/2015), Article 32 defined the existence of the Advisory Council for Environmental Protection and prescribed Advisory Council as consultative and advisory body to the Government and to the minister responsible for environmental protection issues where representatives of associations and foundations for environmental protection (among other members) have been named as members of the Council.

However, the National Assembly of the RS, at its tenth regular session and its multi-day session on July 2, 2020, with 52 votes "for", none "against" and 7 "abstentions" voted the Law on Amendments to the Law on Environmental Protection of the RS, which deleted mentioned Article 32.

Law on Accounting and Auditing

Civic Society Organizations as non-profit organizations registered as legal entities in Bosnia and Herzegovina, are obliged to apply the applicable accounting regulations of the entity or Brčko District, depending on their headquarters in Bosnia and Herzegovina. Laws on accounting and auditing of entities prescribe the application of International Accounting

⁹⁰ Article 106 of the Law -

http://www.ozp.gov.ba/sites/default/files/dokumenti/Zakon_o_zastiti_potrosaca_u_BiH_bo.pdf

⁹¹ Article 25 of Law on environment protection in Federation BiH -

https://www.fmoit.gov.ba/upload/file/2021/Zakon%20o%20zastiti%20okolisa%2015_21.pdf

Standards ("IAS") for all legal entities, including CSOs. Pursuant to the provisions of the aforementioned laws in the field of accounting, CSOs based in Bosnia and Herzegovina are obliged to keep accounting records.

CSOs based in the Federation Bosnia and Herzegovina, keep bookkeeping according to the Accounting plan for non-profit organizations, which was prescribed by the Association of Accountants, Auditors and Financial Workers of the Federation of Bosnia and Herzegovina, and which was published in the "Official Gazette of the Federation of Bosnia and Herzegovina", number 10/2007.

In the Republic of Srpska, there is no special chart of accounts for CSOs and other non-profit organizations, so CSOs based in the Republic of Srpska apply the chart of accounts developed for business enterprises, which was adopted in an abbreviated form by the Ministry of Finance and which was published in "Official Gazette of the RS" number 120/06, which was additionally elaborated by the Association of Accountants and Auditors of the Republic of Srpska.

CSOs whose headquarters are on the territory of the Federation of BiH, which keep bookkeeping according to the specially prescribed Chart of Accounts for non-profit organizations, are obliged to prepare and submit their financial reports to the Agency for Financial and Information Services (AFIP Sarajevo or FIP Mostar) on special prescribed forms of financial reports, where part of those forms are specially designed for non-profit organizations. In the Republic of Srpska, a set of forms of annual reports for CSOs is prescribed by the unique Rulebook on forms of balance sheets and income statements for business companies, other legal entities and entrepreneurs, and therefore, in the RS there are no differences between the forms of Balance Sheets and Income Statements submitted by business companies and forms for CSOs.

Law on Value Added Tax in Bosnia and Herzegovina

Turnover of goods and services that are directly related to the services provided by humanitarian, charitable and similar organizations, associations and other non-profit organizations to their members for the membership fee, in accordance with the regulations governing these activities, is exempted from paying VAT in BiH if provided such exemptions do not lead to distortions of competition on the market. The provision related to "disruption of competition on the market" implies that the CSO operates in accordance with its goals, and that otherwise taxable sales are provided in a volume that corresponds to the needs of meeting the goals.

Majority of CSOs are not liable for VAT, and thus have the status of final consumer. In this context, the CSO does not have the right to deduct input VAT, e.g., VAT charged to him by suppliers, and thus charged VAT represents an expense. CSOs can generate income through the performance of economic activities. If CSOs earn annually up to 50,000 BAM (about 25,000 EUR) for providing services, they are excluded from paying VAT.

IPA funds and funds of some other donors (based on bilateral agreements among BiH and respective countries/donors) are excluded from VAT, which is not the case with all foreign sources.

Attitudes of the Indirect Taxation Administration of BiH regarding the taxation of grants and donations to civil society organizations are based on the provisions of Article 61, paragraph

(1) of the Law on Indirect Taxation Procedure ("Official Gazette of BiH", no. 89/05 and 100/13), according to which the burden of proof is on the payer of indirect taxes, and the actual factual situation can be determined only in the control procedure. Therefore, the inspector is the body that conducts the procedure and for which the principle of independence in decision-making applies, according to which the authorized official in the administrative procedure independently determines the facts and circumstances on the basis of which he applies regulations and general acts, whereby a conscientious assessment of each piece of evidence separately and all pieces of evidence together decides which facts to take as evidence based on his belief.

Based on the above, it is concluded that the Indirect Taxation Administration of BiH in each specific case determines the factual situation through an authorized official, because laws, by-laws and general acts are applied directly in relation to the specific case of each of them. association or foundation.

Indirect Taxation Administration of BiH in each specific case determines the facts through an authorized official, because laws, by-laws and general acts are applied directly in relation to the specific case of each association or foundation. Due to the different normative character of grants and donations in terms of taxation, numerous dilemmas arise, especially in the application of the law in practice by inspection, tax and other competent authorities and institutions. There have been recorded cases where the aforementioned authorities and institutions act differently in the same legal matters, even within the authority and institution itself, which results in legal uncertainty that may call into question the functioning of civil society organizations, and perhaps the survival of the non-governmental sector⁹².

3.3 Established institutional mechanisms for improving cooperation between the BiH public institutions and Civic Society Sector

Agreement on Cooperation between the BiH Council of Ministers and the BiH Non-Governmental Sector signed at the end of 2017⁹³, but three years later implementation of this Agreement is still a challenge⁹⁴. to be more four more BiH public institutions signed Agreement of cooperation with CSOs. More precisely:

- BiH Institute for standardisation signed Agreement of cooperation with CSOs of students from various universities on improving ability of students to read and use BAS standards within their education process and also on strengthening participation of students in developing new BAS standards in BiH,
- Ombudsman for consumer protection in BiH and CSOs active in area of consumer protection signed Agreement for improving protection of consumers all over BiH via strengthening relevant legislation and their implementation in practice,

⁹² https://euresurs-api.page-services.net//Content/Documents/Policy_brief_-_Obracun_PDV-a1621338931559.pdf

⁹³ The signatory parties to the agreement, among other things, confirm their commitment to cooperation in fulfilling the conditions for full membership of Bosnia and Herzegovina in the European Union. The agreement also foresees the strengthening of the capacity of the Sector for Legal Aid and Development of Civil Society of the Ministry of Justice of BiH and the establishment of an advisory body of the Council of Ministers of BiH for cooperation with non-governmental organizations.

⁹⁴ Majority of CSOs is not informed about existence of the signed Agreement and/or not sure about the content of the Agreement – page 21 of the report 'Analysis of the state of non-governmental organizations and the use of existing cooperation mechanisms with BiH institutions and international organizations' available on <https://www.mladi.org/phocadownload/MPBIH%20ANALIZA.pdf>

- Ministry of Interior of Republic of Srpska and CSOs for protection of interests of youth signed Agreement on strengthening cooperation for improving safety of youth on the internet and
- Government of Una-Sana Canton and number of CSOs from Una-Sana Canton signed Agreement in order to improve general engagement of civic society/public in decision making processes in USC but also for improving overall coordination within the civic sector in order to act as more efficient partner in adopting new public policies in USC. Also, within this document Government and CSOs agreed on establishing close cooperation for monitoring/assessing realisation of the Agreement.

Improved number of established institutional mechanisms among the public authorities on various levels in BiH and CSOs is an indicator of progress in strengthening awareness of the public bodies on the need for improving cooperation with CSOs for better quality of public policies (against real needs of citizens) and growing interest of both sides for cooperation – particularly within the EU integration process.

IV CONCLUSIONS AND RECOMMENDATIONS ON OVERALL CSOS' LEGAL ENVIRONMENT

4.1. Conclusions

Legal framework for the activities of Civil Society Organizations in Bosnia and Herzegovina is, *en général*, satisfactory. The laws in force constitute solid basis for establishment and work of the CSO in Bosnia and Herzegovina as they are in harmony with majority of fundamental principles that civic sector in countries having developed civil society as well as long democratic tradition of institutional work of NGO sector have.

Before the armed conflict that broke out in former Yugoslavia, including Bosnia and Herzegovina, political system and society were shaped up as a social state and socialist/communist regime, although it was not rigid form of communist rule that was feature that might have been spotted in other Eastern European states at the time. Amid described political, legal and social environments, CSOs were phenomena that almost did not exist, apart from some charitable organizations that had played ephemeral role in any kind of government-society dialogue. After the conflict, among the hundreds of legal, political and civic sector measures imposed and/or introduced by the key international community players, CSOs were announced and lunched within the pos-conflict peace and state-building measures seen as tool of both society and state democratization. Therefore, the above-mentioned international mechanisms that have impact upon operations of civic sector were listed and short relevance description given, for the purposes of understanding legal framework of CSOs in the broadest possible sense.

Yet, it seems that there is a need for higher level of specialization while making regulations for registration and operation of a specific organizations, associations and foundations of the non-governmental sector. It may be carried out introducing new explicit provisions that would additionally strengthen institutional framework of the non-governmental sector within a society. It would enable the full swing of the CSO development, within the structure of democratic development of the entire society.

On the other hand, apart from laws that regulate status and operations of the CSOs, there are laws that put CSOs in obscure position, putting them in a position of a tax payer, which is

totally unacceptable and disconformity with their legal status and nature as non-profit organizations.

The forthcoming European integrations that are put before the BiH authorities as indisputable goal in this and most probably next decade require creation of a new quality of the partnership between the State and CSO. These two sectors have common interests – transparency of activities and dedication to development of all segments of public life, so that partnership, founded upon common values and mutual respect, seems to be a *must have*, in the building healthy BH society, a society of equal opportunities, no matter they operate within government or non-government sector. In this regard, a full implementation of the existing *Agreements on Cooperation between the BiH authorities on various levels and CSOs is very much needed*, which are a solid foundation for directing such cooperation at all government levels in Bosnia and Herzegovina, starting with local communities, across the Entities and District, all the way through the State level? If implemented, they will allow public authorities to undertake more proactive role in promotion of civic sector, charitable and volunteer social activities in all spheres of life in BiH, especially via direct cooperation of these two sectors, for the benefit of all citizens of Bosnia and Herzegovina.

Above expressed conclusion on CSOs relevant legislation in BiH confirm the European Commission report cited in this paper, “the overall legal and regulatory framework for civil society in Bosnia and Herzegovina is broadly in line with the EU acquis [...] the legislation on freedom of association is broadly in line with standards and generally upheld.” As far as transparency goes, a Report states that a framework for the transparent and impartial distribution of public funds to associations is needed across the country.

4.2. Recommendations

Since observed legal framework for CSOs in BiH is generally in-line with key international documents on human rights (i.e. European Convention on Human Rights and Fundamental Freedoms etc.) and represent affirmative framework for development of civic society in BiH, only some recommendations are related with the need for improving content of various relevant Laws while most of them are focusing implementation of the existing Laws and improvement of relevant by-laws in this regards, as follows:

- Laws on associations and foundations in BiH and relevant by-laws needs to be revised and harmonised so legal obligation for maintaining digital registries of associations in BiH should be established on all levels; current existing CSOs online registry on BiH level which contain aggregated data on registered CSOs on all levels should be accordingly and regularly updated.

Also, mentioned laws should pay attention to 'non-active' operational status of CSOs, in order to establish legal ground for recognizing such status of CSOs as well as for undertaking legally prescribed measures for solving status of those CSOs.

Finally, during needed revisions of the content of mentioned Laws, sufficient attention to compensation for creditors during the process of closure of the CSOs (either planned by organization itself or initiated by the competent institution) should be performed. Credible demands by providers during closure of the CSOs needs to be institutionally recognised, and legislative improvement in very much needed to allow this.

Above proposed policies' improvements need to be conducted in close co-operation with CSOs (via existing institutional cooperation mechanisms) in order to protect CSOs' non-partisan and non-profit status in BiH.

- Law on tax on added value BiH (and/or relevant rulebook for implementation of the Law) needs to be improved and remove the space for different interpretations of tax obligation of CSOs in regards to implementation of grant support by various local and international donors, while those projects are representing realisation of statutory activities of CSOs. Possibility of Indirect taxation authorities (inspectors) to individually decide on obligation of CSOs to pay indirect tax or not regarding realization of donors' support for their projects, should be solved in line with positive practices from neighbouring countries, since current situation is generating legal uncertainty for CSOs and can jeopardize existence of civic sector in BiH.
- Laws on accounting and auditing in Republic of Srpska, need to be improved and Chart of Accounts (as well as other forms - balance sheet, profit and loss form, cash flow form etc.) for CSOs only to be created, so CSOs in RS can stop with current practice to annually report on their performance on forms and charts created for for-profit companies. This action will harmonise CSOs' financial accounting framework among the entities in BiH but also improve affirmative framework for work of civic society in Republic of Srpska.
- Existing lack of efficient implementation of signed Agreements of cooperation among public institutions and CSOs does not prove their purpose and create an illusion of cooperation among two sectors so this needs to be overcome through concretisation of the Agreements (e.g. via development of the annual action plans for implementation of the Agreements or similar) and further development of various forms and models of civic actors' participation in creating, implementing and evaluating public policies.
- The priorities of public and civil sector cooperation should be set in accordance with the negotiation chapters of the EU and BiH once BiH receives the status of a candidate for EU membership.
- Transparency and impartial distribution of public funds to CSOs need to be improved across the country. More specifically, legal frame and practice of BiH authorities on different levels in BiH in allocating funds to CSOs needs to be improved so public calls/tender procedures with earlier defined processes/forms/criteria to be used as much as possible.

LEGAL AND OTHER SOURCES

a) International instruments

1. International Covenant for Civil and Political Rights (ICCPR), with its First Optional Protocol (1966)
2. International Covenant on Economic, Social and Cultural Rights (ICESCR)
3. Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (1989)
4. Convention on the Rights of Persons with Disabilities and its Optional Protocol (2006)
5. Convention on the Rights of the Child (1989)
6. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

b) Constitutions

1. Constitution of Bosnia and Herzegovina
2. Constitution of Federation of Bosnia and Herzegovina
3. Constitution of Republika Srpska
4. Statute of the Brčko District of Bosnia and Herzegovina

c) Laws:

1. Law on Associations and Foundations of Bosnia and Herzegovina
2. Law on Associations and Foundations of the Federation of Bosnia and Herzegovina
3. Law on Associations and Foundations of the Republika Srpska
4. Law on Associations and Foundations of the Brcko District of Bosnia and Herzegovina
5. Law on the Prevention of Money Laundering and Financing of Terrorist Activities;
6. Accounting and Audition Law of the Republic of Srpska,
7. Accounting and Audition Law of the Federation of BiH,
8. Accounting and Audition Law of the Brčko District of Bosnia and Herzegovina
9. Law on Value Added Tax of Bosnia and Herzegovina
10. Law on consumer protection in BiH
11. RS and Federation BiH Laws on Environment protection

d) Publications

1. Brcko Arbitration, Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area, Final Award, Arbitration for the Brcko Area, the Federation of Bosnia and Herzegovina v. The Republika Srpska, March 1999.
2. Agreements on *Cooperation between the BiH Governments* (BiH Council of Ministers, BiH Institute for standardisation, BiH Ombudsman for consumer protection, RS Ministry of Interior and Government of Una-Sana Canton) *and Civic Society Organizations (CSOs)*,
3. Analysis of the state of non-governmental organizations and the use of existing cooperation mechanisms with BiH institutions and international organizations – Kult 2021 (<https://www.mladi.org/phocadownload/MPBIH%20ANALIZA.pdf>)
4. Mapping Study of CSOs in Bosnia and Herzegovina – EPRD, 2016 (<http://europa.ba/wp-content/uploads/2016/11/Mapping-study-of-CSOs-in-BiH.pdf>)
5. Civil Society Assessment in Bosnia and Herzegovina prepared for the United State Agency for international development (USAID/BIH)
6. UNDP Handbook on Non-Government Organizations in Bosnia and Herzegovina
7. Legal Framework for Civic Space A Practical Toolkit, UNDP, New York 2021.
8. Policy Dialogue between Government Institutions and Civil Society Organisations in Bosnia and Herzegovina, Kronauer Consulting, 2015.
9. Slijepčević, T. IBHI Policy brief: The Role of Civil Society in the Process of European Integration. IBHI, Sarajevo, 2011.
10. Dmitrović, T. IBHI Policy brief: Advantages and Possible Forms of Partnership between the Public, Private and Civil Sectors. Sarajevo, 2010.
11. Dmitrović, T. IBHI Policy brief: Actual Influence of Civil Society in BiH. Sarajevo, 2011.
12. DG Near Guidelines for EU Support to Civil Society in the Enlargement Region, 2021-2027 june 2022

ANALYSIS OF ECONOMIC ASPECTS AND TRENDS OF CIVIC SECTOR IN BOSNIA AND HERZEGOVINA

I Introduction

After the war, civic sector in BiH was mainly oriented towards reconstruction, restoration, building of institutions. However, as time goes on, the civic sector is increasingly required to be focused on economic, social, political, cultural and many other problems that exist in the society. This is especially relevant for the situation where the public sector is not efficient and does not deliver public services in the best way.

This analysis examines economic aspects of CSOs' work in BiH including but not limited to real number of CSOs in BiH, their geographical coverage of BiH, overall income/costs generated, labour force engaged and other aspects of CSOs' work.

Key findings served as ground for identification of important issues to be recommended for addressing in the near future, so to contribute not only to improvement of CSOs' effectiveness in BiH but also to overall viability of civic sector in BiH.

II Methodology and data

This research and analysis is based on several sources of secondary data.

First of all, there is data from the electronic register of civic organizations, which can be found on the following website: <http://zborniregistri.gov.ba/Home>. However, bearing in mind that this is the total number of registered CSOs with basic and no financial data, another source of secondary data was necessary.

In this regard, as second source of data were used public agencies for financial services of both entities and similar institutions in Brčko District, to which CSOs' are submitting their annual financial reports. According to relevant laws. More specifically, data has been acquired from Republic of Srpska Agency for intermediary, IT and financial services (APIF - <https://www.apif.net>), Financial-Intelligence Agency of Federation BiH (FIA - <http://fia.ba>) and the Register of Financial Reports of Brčko District (<http://df.bdbih.gov.ba>) based on classification of activities - 94.99⁹⁵.

In all three parts of BiH, there is a different system of financial reporting for the civic sector, so the charts of accounts were different too. This represented a certain difficulty, because it was necessary to make the data comparable.

The methodology is based on common methods of statistical analysis and data interpretation, including total values, average values, various post-calculated variables and so on.

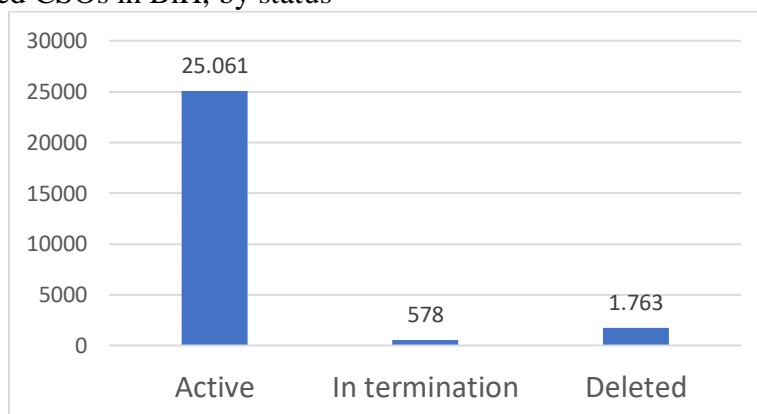
⁹⁵ Harmonized regulations on the classification of activities at all levels of Bosnia and Herzegovina and comparable to the International Standard Industrial Classification of all economic activities ISIC Rev. 4.

III Analysis of registered CSOs in BiH

3.1 Total number of registered CSOs in BiH

In total, 27,402 CSOs are registered in BiH. Out of that total number of registered organizations, slightly more than 25,000 are considered active in the register, 578 are currently in termination and 1,763 organizations have already ceased operations and are in the process of being deleted from the register.

Chart 1 Registered CSOs in BiH, by status



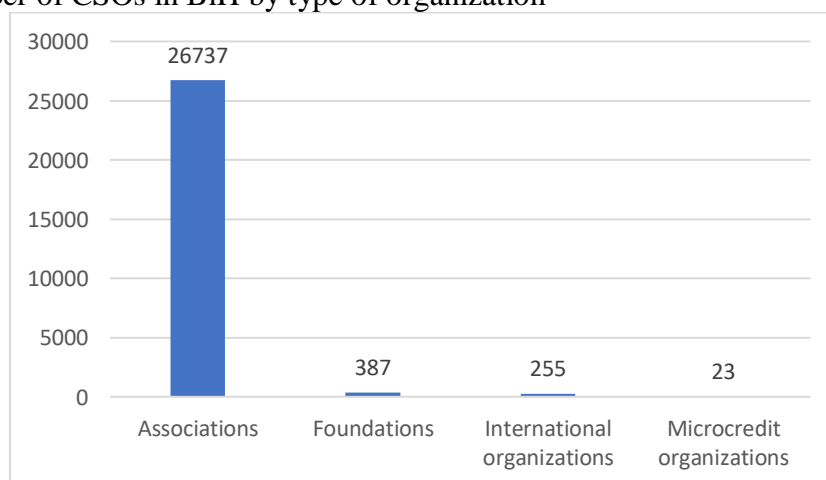
Source: <http://zbirniregistri.gov.ba/Home>

If this number of CSOs is compared with neighbouring countries, it's possible to conclude that, for example, Serbia (which has a much larger number of inhabitants) has just over 35,000⁹⁶ CSOs. However, when later will be discussed total number of really active CSOs which participate in the development and democratization of society, these numbers can be challenged from the aspect of benefit for society and operability of civic sector.

3.2. Number of CSOs in BiH by type of organization

Most of 26,737 CSOs are registered as citizens' associations. Relatively small numbers are foundations, international organizations and microcredit organizations. We can say that the citizens' association is the main type of organization in the civic sector.

Chart 2 Number of CSOs in BiH by type of organization



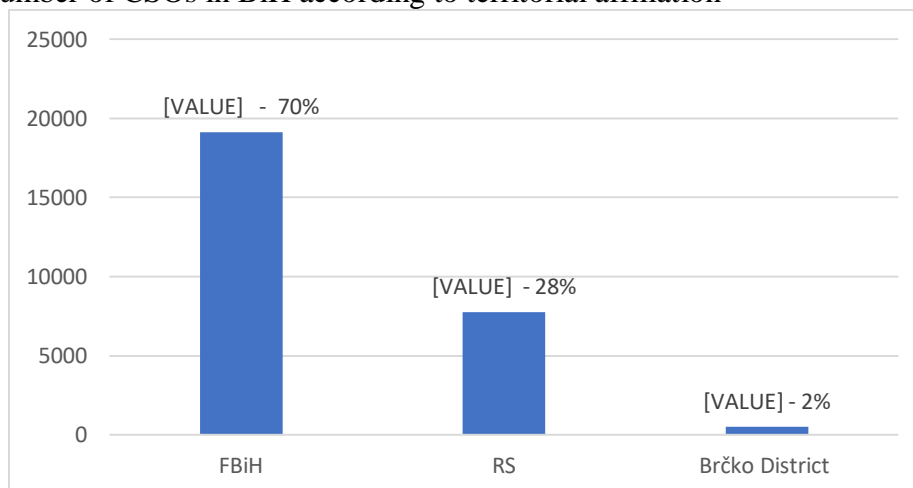
Source: <http://zbirniregistri.gov.ba/Home>

⁹⁶ Data for Serbia are based on the following register: <https://www.apr.gov.rs/регистри-.25.html>

3.3. Number of CSOs in BiH according to territorial affiliation

Considering place of registration, the majority of CSOs are registered in the Federation of Bosnia and Herzegovina. Over 70% of them operate in this entity, about 28% in Republika Srpska and 2% in Brčko District.

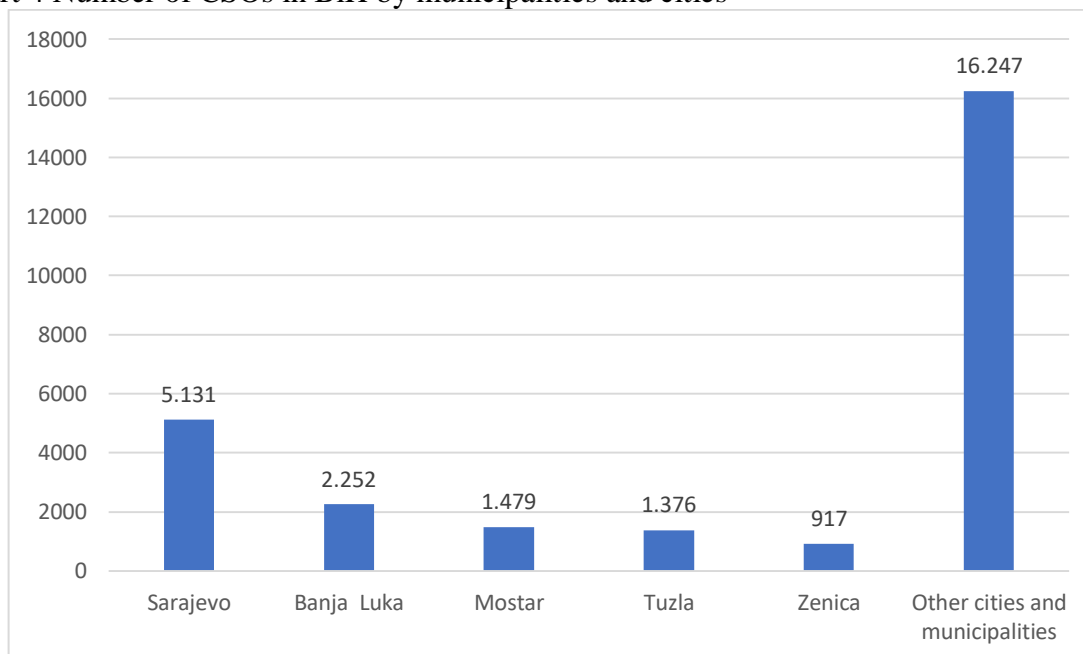
Chart 3 Number of CSOs in BiH according to territorial affiliation



Source: <http://zbirniregistri.gov.ba/Home>

When consider number of CSOs per large cities in BiH, obviously the largest cities - Sarajevo, Banja Luka, Mostar, Tuzla and Zenica have about 40% of all CSOs. The other 60% are registered in all other municipalities and cities.

Chart 4 Number of CSOs in BiH by municipalities and cities



Source: <http://zbirniregistri.gov.ba/Home>

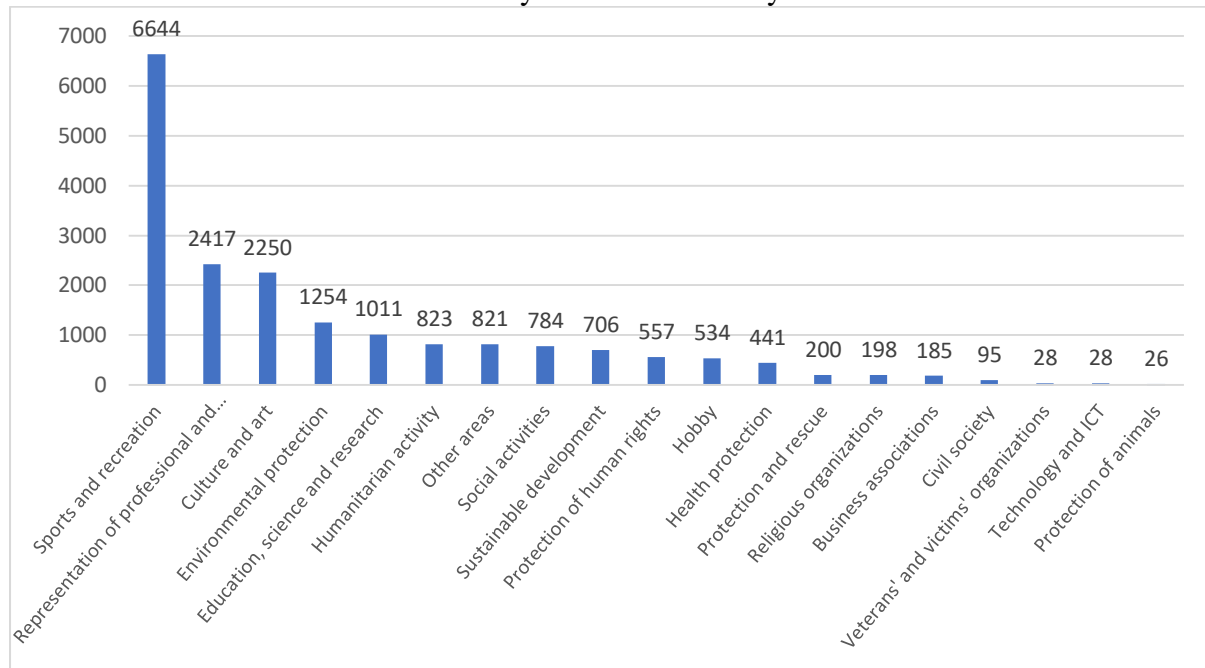
Consequently, activities of CSOs are mainly focused on urban areas/large cities, while smaller areas and rural areas are largely neglected. Since rural areas in BiH are the ones with a lot of problems, high poverty, lack of infrastructure and problems with vulnerable categories this

geographical arrangement of CSOs does not contribute in responding on societal needs across the BiH.

3.4. The number of CSOs in BiH by the area of activity

Despite the public opinion about CSOs as mostly engaged in social and socio-economic issues, in reality, according to the field of activity, the most BiH CSOs operates in field of sports and recreation - 6,644.

Chart 5 The number of CSOs in BiH by the area of activity



Source: <http://zbirniregistri.gov.ba/Home>

This category includes sports associations such as sports clubs, recreation centres and associations, federations for certain sports, etc. In the second place there are organizations that represent different professional and business interests such as unions of different kind of workers, unions of employers, different associations of producers of different things etc. In third place is the field of culture and art - 2250 organizations. Therefore, this sector (cultural and artistic CSOs) include various associations for nurturing certain types of art (theatre, music, fine art, literature, etc.), associations for the preservation of culture and tradition and other similar organizations are represented here.

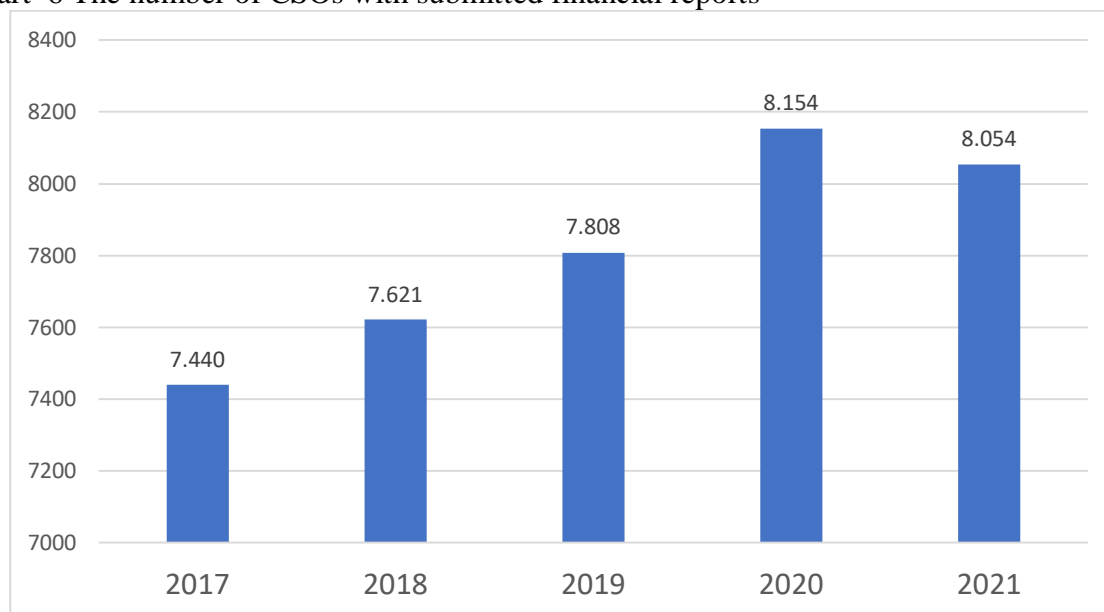
In the three largest groups (sport and recreation), there are no CSOs that deal with classic activities in the development of civil society and the overall socio-economic development of the country. This speaks in favour of the fact that the role of the civic sector in the development of civil society in BiH is still far from well developed. This structure is still much more similar to the structure of such organizations that existed during socialism (sports, unions and culture, without enough political and civil, social activism). Therefore, there is a dominant role of sports and culture without a sufficient level of social activism.

IV Analysis of financial reports of CSOs in BiH

4.1. Number of CSOs which submitted their financial reports

According to the data from relevant entities and Brčko District institutions, percent of CSOs which deliver their annual financial reports (accounts) is surprisingly low. Out of 27,402 CSOs registered, only 8,054 CSOs fulfilled their legal obligation and deliver their annual financial reports.

Chart 6 The number of CSOs with submitted financial reports



Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

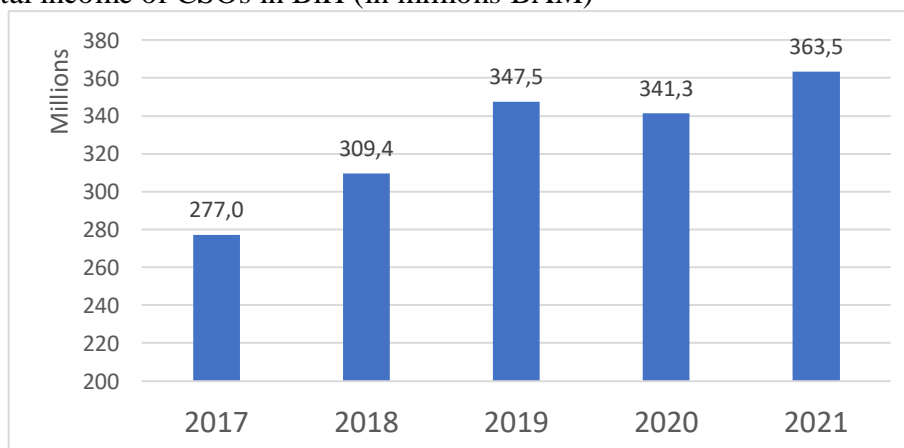
If CSOs that deliver their annual financial reports are considered as 'active' (meaning operational, with cash flow and implementation of their statutory activities), then only 29.4% of the total number of registered CSOs delivered their annual financial reports and can be considered as active. Since 578 of them have ceased to operate and 1,763 organizations have already ceased to operate and are in the process of being deleted from the register, the rest of approx. 17,000 organizations actually exist only on paper, so they have no financial flows, neither revenues nor expenditures and it's possible to conclude that those CSOs do not perform any socially significant work.

This research couldn't explore further the reasons why those CSOs didn't deliver their annual financial reports, and they only can be assumed - lack of financial resources lack of people engaged (usually volunteers) etc. Whatever the reason(s) was, the fact that such large number of CSOs do not fulfil their legal obligations open up a number of questions both for the relevant institutions that deal with the supervision of legislation implementation, and also for the institutions that are responsible for the development of civil society and/or for strengthening the partnership among two sectors, important for decision-making processes at all levels in Bosnia and Herzegovina.

4.2. Total income of CSOs in BiH

The total income of CSOs in BiH, in 2021, was 363.5 million BAM, as presented in the graph below.

Chart 7 Total income of CSOs in BiH (in millions BAM)

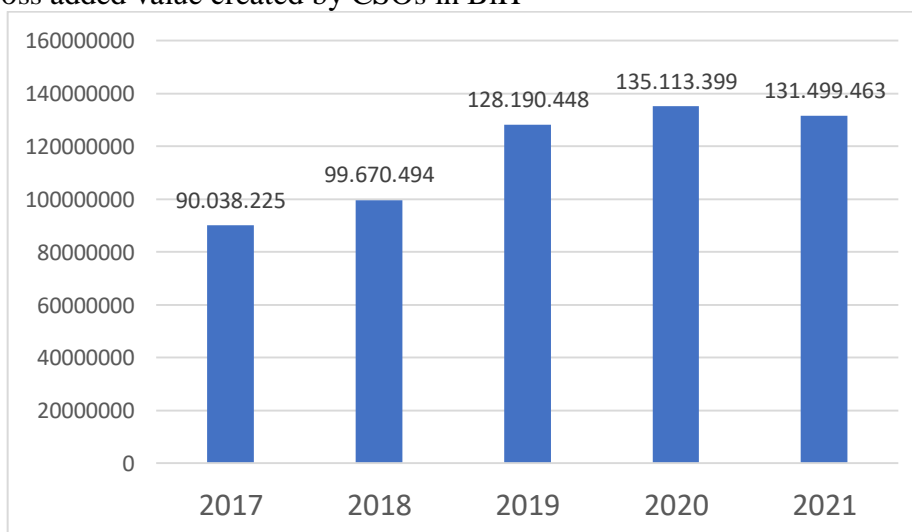


Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

Also, in the above graph, we see a stable growth trend (except slight decrease in 2020) in the income of CSOs, so from 2017 to 2021, the total income increased by 31.2%. This indicates that there is a dynamic in the development of the civic sector and that this sector is growing noticeably (still not to forget that those are data for approx. 30% of the total CSOs in BiH). However, if compared total income of the civic sector from 2021 to 39.9 billion BAM, which is the size of BiH GDP, the share of CSOs' income in BiH GDP is 0.9%.

If share of value added created by the CSOs, within the GDP of Bosnia and Herzegovina, is calculate with gross value added⁹⁷, then the graph below shows that the share of gross value added of the civic sector in GDP is 0.3%.

Chart 8 Gross added value created by CSOs in BiH

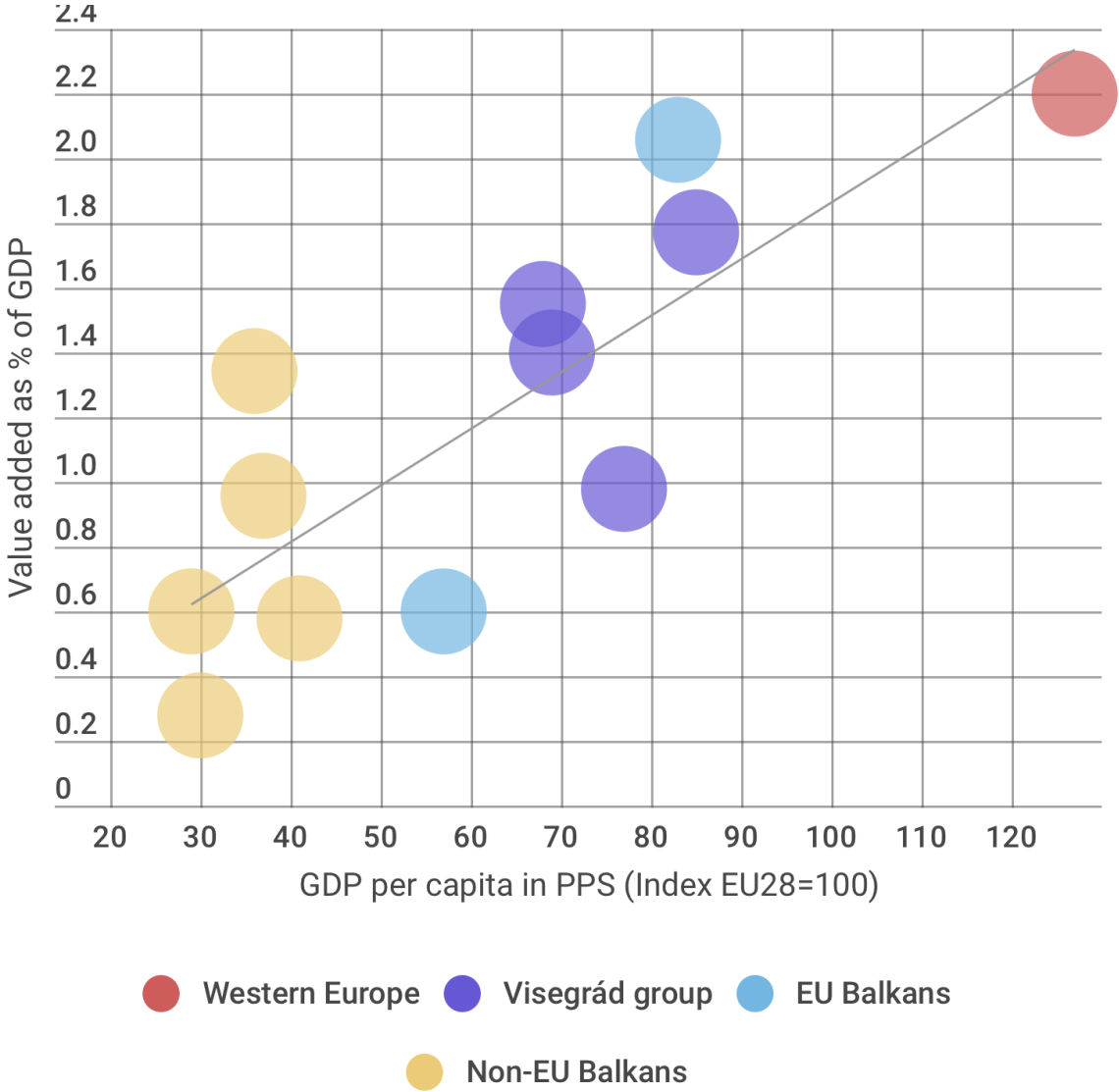


Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

⁹⁷ Gross added value is calculated according to standard methodology as the sum of incomes, so operational profit, total wages and depreciation are added

In the next graph, this share is compared with the share of other countries in their GDP. As presented, the Balkan countries that are not in the European Union have the lowest score in terms of the share of value added created by the civic sector in relation to the total GDP. The countries of Central Europe, the so-called Visegrad Group, are already doing much better than the Balkan countries. We see that the level of Western Europe is significantly higher than all these countries.

Chart 9 The comparison of value added as % of GDP by groups of countries

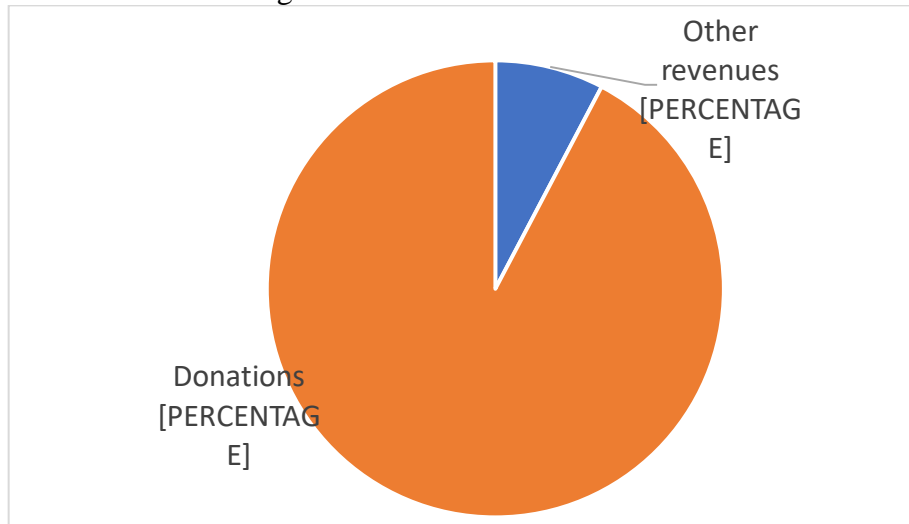


Source: Vandor P, Traxler N, Millner R, Meyer M. Civil society in Central and Eastern Europe: Challenges and opportunities. Erste Foundation; 2017

4.3. Sources of CSO's funding in BiH

According to data analysed, the majority of the income of domestic CSOs comes from donations - 92%, and other (mostly sales of own products and services) income is about 8%. It's assumed that donations refer to both foreign sources and domestic budgets of different levels of government, from municipalities, cantons, entities, to the state level, since current forms of CSOs annual financial reports do not offer any diss-aggregation of those data during reporting processes.

Chart 10 Sources of CSO funding in BiH



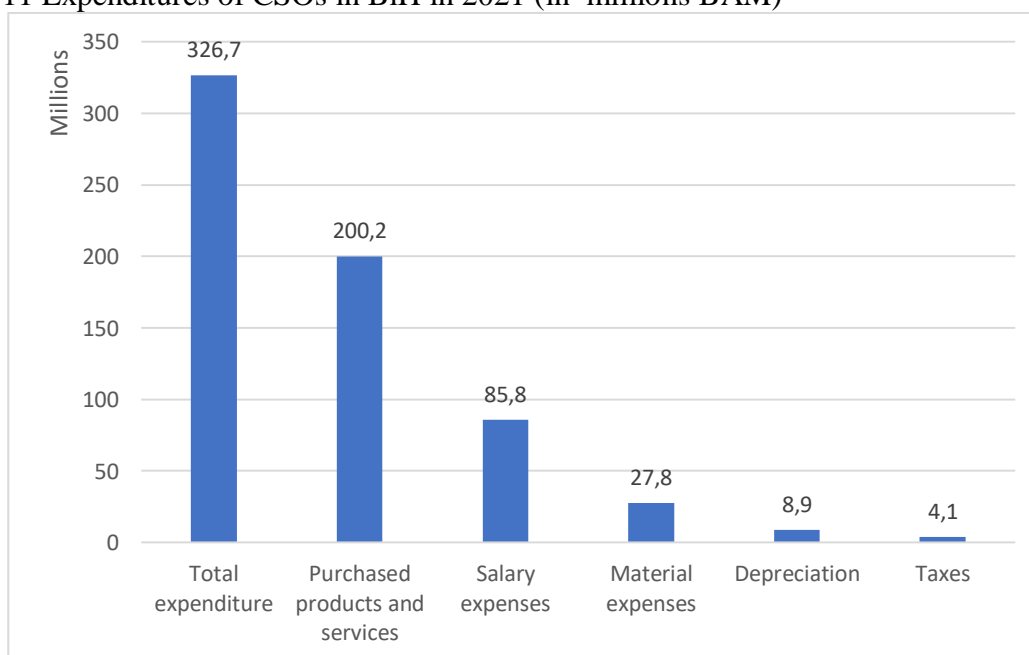
Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

As for some kind of transition in funding sources, it would be natural for there to be a transition in Bosnia and Herzegovina from foreign sources of donations to domestic budget funds. However, financing from domestic sources is still a significant problem because it is characterized by all the weaknesses that the public sector in Bosnia and Herzegovina has, namely non-transparency, a significant degree of corruption, non-compliance, fragmentation and so on. In such a situation, when foreign donor funds are largely taken over by large international organizations, and the system of financing with domestic funds is insufficiently organized, it is no wonder that we have lack of development and stagnation in the domestic civic sector in Bosnia and Herzegovina.

4.4. Expenditure structure and taxes of CSOs in BiH

Total expenditures (presented on chart 11 below) in 2021 are at the level of 327 million BAM. Out of that total amount, approx. 200 mil. BAM or 61.3% represent costs of the products and services procured by CSOs in carrying out their activities. Salary expenses are 86 million BAM, which is 26.3%. Material costs are about 28 million BAM, depreciation about nine million and about four million BAM are taxes.

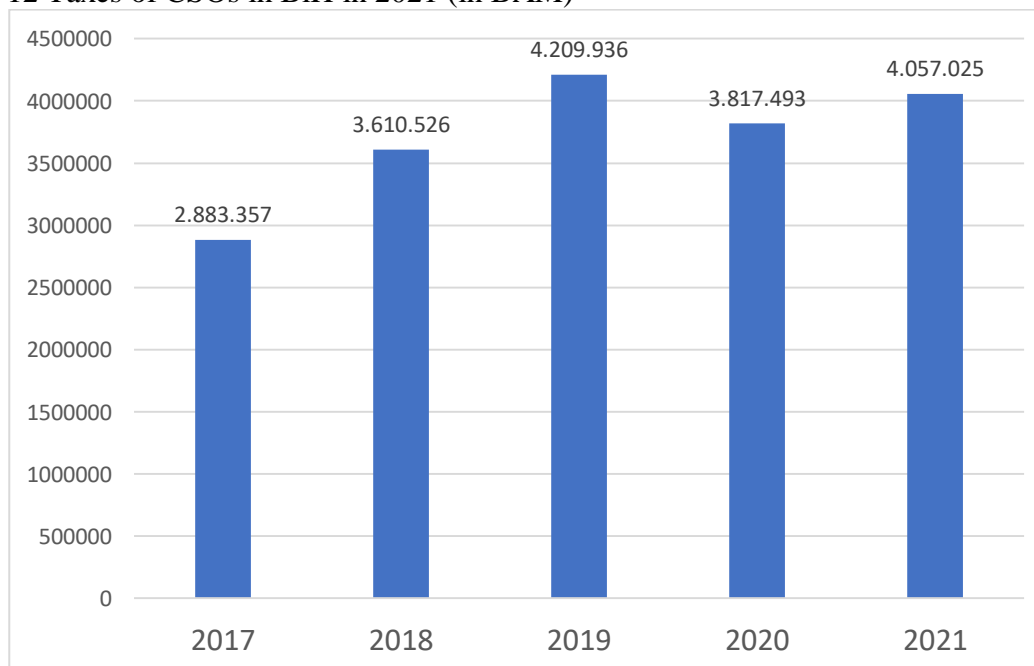
Chart 11 Expenditures of CSOs in BiH in 2021 (in millions BAM)



Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

The taxes that are shown in the graph below represent the sum of labor income tax and capital income tax that are shown in the financial statements. It must be noted that indirect taxes are not included here, i.e. value added tax. According to the data in the graph below, there is generally an increasing trend in the last five years in the level of taxes paid, so that from 2017 to 2021, taxes increased from 2.8 million to 4.1 million BAM, which is an increase of a significant 46.4%.

Chart 12 Taxes of CSOs in BiH in 2021 (in BAM)⁹⁸



Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

⁹⁸ It must be noted that indirect taxes are not included here, i.e. value added tax.

4.6. Number of employees in CSOs in BiH

When analysing number of employees recorded in the financial reports of CSOs in BiH, it's possible to identify surprisingly small number of employees - there are only 3,323 full-time employees registered in BiH civic sector, in 2021 (chart 12 below).

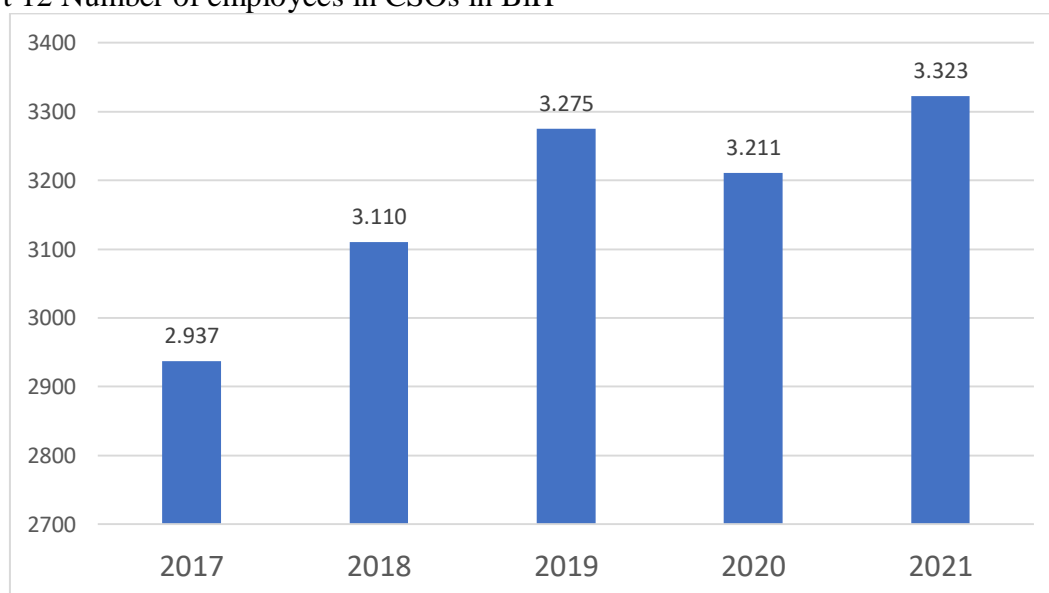
Since it's well known that CSOs often engage labour resources on less-than full time basis (due to various reasons – e.g., available financial donor's resources per project), absence of this kind of data in their annual financial reports (again due to structure of the reports – although used by civic society, those forms of the reports are adjusted to the needs of business for-profit sector ?!?) impact so small number of reported employees in civic sector. Also, similar problem is related with reporting on volunteers engaged – no data about their work at CSO in their annual financial reports.

Consequently, based on data available from mentioned sources, only exact number of full-time employees is possible to identify while number of part-time employees and the number of volunteers can be estimated so to assume the total number of employees currently working in the civic sector in BiH.

The assumptions for the assessment of part-time employees are as follows: in the IBHI study "Employment, provision of social services and the non-governmental (NGO) sector, status and perspectives for Bosnia and Herzegovina - Analysis and implications for policies (document 4: Report on detailed NGO survey)"⁹⁹ based on a detailed survey, the ratio between full-time and part-time employees was defined. This ratio indicates that two-thirds of registered workers are employed full-time, and one-third are employed part-time. In this case, if 3,323 employees in the CSO sector are on full-time basis in 2021, then there are additional 1,630 part-time workers.

The ratio between full-time employees - 2.37 volunteers per one full-time employee. In this case, on 3,323 full-time employees in the CSO sector, in 2021, there are additional 7,660 volunteers.

Chart 12 Number of employees in CSOs in BiH



Source: APIF, RS, FIA, FBiH and Register of financial reports of the Brčko District of BiH

⁹⁹ Available at: https://www.ibhi.ba/Documents/Publikacije/2005/QS3%20NGO%20Sector_bos.pdf

If all three categories are calculated, there are approx. 12,600 people who engaged in one of these three ways in the civic sector in BiH. Compared to the 1.39 million people who represent the labour force in Bosnia and Herzegovina (or the active population), this represents a modest 0.9%.

However, we must not forget that 12,600 people still represent a force that can significantly influence social and economic situation in Bosnia and Herzegovina, if there were a favourable social and financial environment for their work, so obviously civic sector present a great potential insufficiently used so far.

V Conclusion and recommendations

In the public of Bosnia and Herzegovina, there are often attitudes, especially among politicians, that view the civic sector in a negative way and talk about its power and influence on public life in Bosnia and Herzegovina. Most often, these are the views that the civic sector in Bosnia and Herzegovina, under the influence from abroad, significantly influences some aspects of life in the country.

According to the data from this analysis, BiH does have a large number of registered CSOs, but the number of them which can be assessed as active ones is much smaller. Considering the structure of CSOs' activities smaller number of CSOs dealing with civil society development, economic development, sustainable development, environmental protection and other areas important for modern society while most of CSOs are engaged with sports and culture. This structure of CSOs, located more on service delivery side rather than on decision-making and policy development areas, can reduce ability of CSOs to partner with public decisions in upcoming EU related reforms in BiH.

Also, according to the geographical dispersion of CSOs in BiH, more than 70% of them are located in the Federation of Bosnia and Herzegovina and over 40% of them are located in 5 large urban cities. This means that the problems of smaller communities and rural areas are often neglected in the activities of CSOs (although they are suffering from significant social exclusion, socio-economic problems, poverty, vulnerable population categories etc.) so in future public policies related with CSOs (e.g., public call for financing CSO' projects) these issues should be addressed (e.g., via additional points during evaluation for projects planned for realization in smaller and less developed municipalities all over BiH or similar.

Insight into the financial data shows that CSOs participate little in the overall social and economic life of BiH. The share of gross value added created by CSOs in the total gross value added or GDP is only 0.3%. When compared those data with the countries of Central Europe such as the countries of the Visegrad Group and especially with Western Europe, obviously Bosnia and Herzegovina lags behind.

The share of CSOs that submit a financial report to the competent financial institutions is surprisingly small - only 29.4% of the total registered. This means that, taking everything into account, about 17,000 registered CSOs do not follow to law and most probably don't have any financial flows, nor any activity in progress. This finding demands quick and in-depth follow up research to find out additional information needed to assess real status of those approx. 17000 CSOs, since that may have a significant impact on overall status of civic society in BiH.

Financing of the civic sector primarily based on foreign and domestic donations presents the need for the action – primarily regarding improving percent of local financing of CSOs as well as improvement of transparency of the process for allocating public resources to CSOs.

Finally, data on small number of permanent employees in the civic sector in BiH indicate that CSOs are facing with relatively small available funds for financing their proposals, with no room for financing employees on permanent basis (practice of local authorities to give small amounts to all CSOs applied on the call does not contribute positively to these issues and also kill the competition among the CSOs), so prefer to engage people on temporary or volunteer basis. Existing forms for annual financial reporting of CSO do not support this segmentation of the employees during annual reporting, and demand an emergent action for adjusting them.

The recommendations we propose also come from this assessment of the situation.

Recommendation 1. Improvement of the financing system of the civic sector in Bosnia and Herzegovina. This requires correcting the current situation in three directions:

- Improving financing of civic sector from domestic sources, (e.g., allocating more resources, reducing current practice to give same small amounts to all CSOs applied on certain calls, improving overall transparency of calls for financing CSOs from local budgets etc.),
- Regarding foreign donations, a quote from 2020 EU TACSO: "The financial environment deteriorated as funding for CSOs continued to decrease, with international rather than local organizations receiving most of the direct donor funds. International organizations and agencies still receive funds directly from donors and then disburse part of it to local CSOs. Their fees consume a large part of the total funding, and their involvement reduces the sense of ownership among local CSOs."¹⁰⁰
- Charts of accounts and annual reporting forms to be further adjusted to the needs of CSOs to establish more accurate basis for analysis of civic sector in BiH and developing future policies,

Recommendation 2. Improving capacities of CSOs regarding their performance in regards to respecting legal obligations for delivering annual financial reports.

This segment may include (but is not restricted to) reforming current policies of public institutions regarding fees to be pay during delivery of the annual reports, making less complicated charts of accounts and reporting forms, establishing on-line capacities for delivering annual report (instead of current physical delivery, established online supporting service for CSOs etc.

Recommendation 3. Stimulating more CSO activities in smaller communities and rural areas. It is necessary to stimulate greater activity of civic organizations in areas where there are major socio-economic and social problems. This applies especially to rural areas, but to all areas where there is a pronounced problem of vulnerable categories of the population. At the same time, role of the civic sector and various citizen initiatives in urban areas, which can initiate some of the important issues of social development with their mass influence, should not be ignored

¹⁰⁰ Available at: <https://tacso.eu/civil-society-assessment-report-for-2020/>

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