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Civil Society Contribution to EC Progress Report for Kosovo 2014

Name of organisation: **Kosovar Civil Society Foundation (KCSF), Prishtina, Kosovo**

Contribution to: **Political Criteria**

2.1 Democracy and Rule of Law

2.2. Human Rights and the protection of minorities - Civil and political rights

Kosovar Civil Society Foundation (KCSF) regularly provides its written input to the EC Progress Report on civil society development, as well as on main relations between the EU and Kosovo, in particular structures for cooperation between Kosovo institutions and civil society. This year's input covers the developments from **October 2013 – end of July 2014**, while it will also emphasise the main elements of the existing policy and legal framework which remain unchanged during the reporting period, however continue to directly influence the work of CSOs and the environment they operate.

DG Enlargement Guidelines for EU support to civil society in enlargement countries 2014-2020 as a reflection of the increased importance that the European Commission attaches to the role and development of civil society in enlargement countries have been used also by KCSF as a basis for this contribution. The EC Guidelines set the strategic framework for EU support to civil society in enlargement countries, which should be focused on enabling and stimulating participatory democracy. The EC Guidelines contain a number of important objectives to be achieved. These objectives set the benchmarks against which KCSF has prepared its comments and recommendations here.

Civil society organizations from the enlargement countries have been closely involved and consulted during the drafting process of this strategic document produced by the DG Enlargement. Moreover, the guidelines are primarily based on the **Monitoring Matrix for Enabling Environment for Civil Society Development**, produced by the Balkan Civil Society Development Network (BCSDN). Being a member of BCSDN, KCSF has actively contributed both to development and implementation of this instrument.

As a result, most of this written input is based on the **Monitoring Matrix Report for Kosovo 2013**, which was based on a vast amount of data, research and evidence. In order not to overburden this input, there are no specific references and sources of information for the information provided. Nevertheless, all specific references and sources of information can be found in the Monitoring Matrix Report for Kosovo 2013, which is available at link: http://kcsfoundation.org/repository/docs/Kosovo_CSDev_Matrix_Final_eng.pdf.

EC Progress Report Reference	Benchmark (EC Civil Society Guidelines Objectives)	Assessment Area	KCSF Input/Commentary:	Recommendations:
2.1 Democracy and Rule of Law	3. Civil society and public institutions work in partnership through dialogue and cooperation.	Cooperation between CSOs and public institutions (Government level).	<p>The implementation of the Government Strategy for cooperation with civil society 2013-2017, adopted in July 2013, has been very slow. Although its Action Plan includes estimated costs for each of the planned activities, until now the Government has allocated no budget for its implementation. In April 2014, the government has adopted the decision on establishing the Council for the Implementation of Governmental Strategy for Co-operation with Civil Society. The Council has 29 members, 14 representing various units of the Government and 15 representing civil society. The selection process of civil society representatives is ongoing, based on an open nomination and voting process, managed by CIVIKOS Platform.</p> <p>With regards to institutional setup for cooperation with civil society, following the adoption of the Government Strategy for cooperation with civil society, Office for Good Governance within Office of Prime Minister (OGG/OPM) has been tasked to serve as a secretariat to the Council for implementation of the Strategy, in addition to its prior task of facilitating the dialogue between government and civil society. While this task is only one of the many tasks of this office, OGG/OPM has insufficient human and financial resources to facilitate CSO-government dialogue, same as for serving as a secretariat to the Council.</p> <p>To conclude, recently adopted Governmental Strategy for cooperation with civil society provides a comprehensive framework of advancement of the environment on civil society development and cooperation between government and civil society, however the current institutional setup, and human and financial resources do not guarantee its proper implementation.</p>	<ul style="list-style-type: none"> • The Government should allocate specific funding/budget lines for implementation of the Governmental Strategy for cooperation with civil society, as well as intensive education and capacity-building activities for civil servants on the Governmental Strategy for cooperation with civil society and their role in its implementation. • The Office for Good Governance within the Office of Prime Minister should establish a specific unit for cooperation with civil society, with a specific mandate to facilitate government-CSO cooperation and performing the task of the secretariat of the Council. The Government should allocate sufficient funding and specific budget lines for OGG/OPM to perform these tasks.

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		<p>Consultations with civil society on laws/bylaws, strategies and policy reforms.</p>	<p>The legal framework for CSO involvement in decision-making at government level provides with many opportunities for CSO input, but the deficiencies in proper implementation and lack of concrete standards do not enable CSOs for their input in a timely manner. Concretely, the Rules of Procedures of the Government require public consultations for all draft policies/laws, with adequate and timely information to be provided by the proposing authority, as well as feedback on the consultation results. However, only 29.29% of CSOs have declared that they have been regularly invited for consultations for laws/policies relevant for their work, at all levels of governance. Lack of political willingness to involve civil society in many policy and legislative processes where major political and/or economic interests are at stake continues to be one of the main reasons for deficiencies in public consultation process.</p> <p>Furthermore, government and other public institutions have been unwilling to address the issue of human and financial capacities for many years now, as there are no educational programs/trainings for civil servants on this issue.</p> <p>The legislation allows, but does not oblige public institutions to include CSO representatives in to decision-making or advisory bodies created by public institutions. CSO representatives participate in many cross-sector bodies but their selection is rarely done based on clearly defined criteria and processes. On this matter, there are no guidelines or standard selection mechanisms which would ensure appropriate representation from civil society.</p>	<ul style="list-style-type: none"> • The legislation should be complemented with Minimum Standards for public consultations at governmental level, which would cover the entire cycle of decision-making, starting from agenda-setting to reformulation. • General selection mechanisms should be designed by the Government so to allow all public institutions to apply them with specific adaptations • The Government should allocate sufficient funding for building capacities of civil servants on public consultation process, and cooperate with civil society in designing and delivering educational programs/trainings for civil servants on this issue.

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			<p>Kosovo's National Council for European Integration (NCEI) was established in 2012 to guide the country through the elaborate reforms required of it to move closer to EU. After two year of operations, however, the Council is singularly failing to fulfil its mission. KCSF's research¹ revealed that the Council set up to lead this process is divided, sidetracked by political exigencies, managed ineffectually, and opaque in its operations and communications. Moreover, it is not held accountable for its shortcomings. As a result, the Council has a tendency to serve daily politics rather than a strategic vision.</p> <p>The National Strategy for European Integration 2014-2020 has been finalized in June 2013. The draft strategy has been presented for discussion and approval at the Council; however it has not undergone a public consultation process in accordance with the legal provisions in force. As we speak, the Strategy lacks ownership and nothing is enacted to implement it.</p> <p>Numerous strategic documents provide good ground for cooperation with civil society. Also, a set of bodies at highest level could benefit from civil society involvement. However, neither these documents nor structures, due to their poor management and deficiencies in implementation, provide a fruitful ground for civil society cooperation, contribution and monitoring of the EU agenda for Kosovo.</p>	<ul style="list-style-type: none"> • The Council has set strategic vision, now it shall focus on building consensus and all inclusiveness around that vision. • The Council shall enact a system for monitoring its work, with the aim to evaluate whether its members deliver on Council's conclusions and recommendations. • The Council shall respect its own Rules of Procedures when formulating meetings, distributing minutes and conclusions, and communicating with the public with the aim to improve its output and performance. • The National Strategy for European Integration shall become the guiding document for all other efforts; hence its ownership and implementation must take place.

¹ "Complicit in Dysfunction" – Analysis of the National Council for European Integration's performance in Kosovo. Available at <http://www.kcsfoundation.org/?page=2,6,219>

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		<p>Consultations with civil society on EU agenda.</p>	<p>The SAA negotiation process and visa liberalisation roadmap implementation as strategic processes full of policy reform requirements have taken place far from consultation or cooperation with CSOs. Similarly, except the direct support to CSOs whose programming has been consulted with CSOs, during the reporting period no consultation with CSOs took place with regards to country IPA programming.</p> <p>The negotiations for an SAA operated behind closed doors, considered to be exclusively government business. The usual justifications included claims that this is a critical stage, that drafts include sensitive information, or even that the EC is suggesting documents are kept away from the public and CSOs. In an attempt to consult CSOs on SAA negotiations, on 23rd of December 2013, when asked by KCSF that prior to meeting, based on Article 32 of Government Rules of Procedure 09/2011, MEI shares the draft agreement the meeting was cancelled. Up to date, even the initialled SAA agreement, is not public.</p> <p>The visa liberalisation roadmap implementation has also been marked by lack of cooperation with CSOs. Moreover, the implementation reporting was marked by full lack of transparency. The only document of reference was the EC assessment report of 12 Feb 2013. During the reporting period, neither the government input nor the EC assessment mission reports were available to CSOs. It was only in late July 2014 when EC published its 2nd assessment report (18 months after the 1st report) that CSOs were able to assess the implementation of the roadmap criteria. In several occasions, when KCSF asked to share more information in between reports the EC assessment mission members and EUOK instructed CSOs to seek this</p>	<ul style="list-style-type: none"> • The government shall be encouraged to cooperate and consult CSOs under SAA and visa dialogue processes. • The government shall make public the initialled SAA agreement and allow CSOs to monitor its implementation, once it's signed. • The government should share its roadmap implementation input, in order to allow CSOs to monitor and build public trust behind this process. • The government shall cooperate in structured manner with CSOs to inform the public about visa dialogue. • The government shall consult CSOs during IPA programming, in particular during yearly country programming as per specific sectorial fields.

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			<p>information from the government, whereas the Government claimed that EC didn't allow sharing any reports with CSOs.</p> <p>This approach, both during SAA negotiations and ongoing visa liberalisation process, didn't provide ground for civil society's contribution, involvement and monitoring of the European integration process in Kosovo.</p>	
2.2 Human rights and the protection of minorities.	1. An enabling legal and policy environment, for the exercise of the right of freedom of association.	Freedom of association	<p>Freedom of association is a constitutional right, guaranteed from the Article 44 of the Constitution of Kosovo and defined in the Law 04/L-57 on Freedom of Association in NGOs. The legal form to which this freedom is extended includes associations and foundations (as per the Law on NGOs), as well as trade unions, political parties, employers' associations, religious communities, etc. which are regulated through their respective laws. However, there are no legal provisions on the establishment of non-profit companies or endowments, although the latter is neither prohibited nor allowed explicitly. Registration is not mandatory, although vast majority of organizations decide to register as NGOs in order to gain legal personality. Registration rules are simple and free of charge and most of the NGOs are registered within the legally prescribed deadline, although there are cases when this deadline is not respected, usually due to requirements for additional documents or change in statutes. Although it is considered easily accessible and not burdensome, there are cases when NGO Registration Department requires additional documents which neither are legal requirements nor based on any document or international standard. Legislation allows for appeal process, and an administrative instruction on the appeal process exists. However, it is problematic that the same authority is mandated to establish an appeal commission. In addition, no clear rules on functioning of this</p>	<ul style="list-style-type: none"> • The capacities of the NGO Registration Department should be increased to properly interpret and implement the Law on Freedom of Associations in NGOs. • The current Law on Freedom of Association should not be amended until a comprehensive legal review and implementation report is completed, in order to identify the current gaps both in legal framework and implementation and accordingly address the issues to be improved.

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			<p>commission exist. Most of the problems at the registration phase are due to lack of sufficient capacities and understanding of the legal requirements by the NGO Registration Department/Ministry of Public Administration, which is the sole responsible authority for registration of NGOs.</p> <p>During the reporting period, an initiative from the NGO Registration Department to amend the Law on Freedom of Association was launched, aiming to introduce monitoring and supervision competences for the NGO Registration Department, as well as harmonization of the NGO Law with the Law on preventing the money laundering and financing of terrorism. In addition, the amendment process aims to introduce sanctions for breaching a number of specific articles of the current law and civil, administrative or criminal proceedings in case of suspension or revocation of Public Benefit Status. This initiative has not been based on any legal or implementation assessment of the current law, thus does not contribute to advancing the NGO Law in line with the current needs of civil society development in Kosovo.</p>	

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		Related legislation	<p>During the reporting period, CSOs have raised their concerns on the money laundry and anti-terrorism restrictive legislation on NGOs. The main issues of concern with regards to the Law 03/L-196 for preventing the money laundering and financing of terrorism are the following: while all other sectors are required only to inform the competent authority for payments (Financial Intelligence Unit) beyond a certain threshold (usually 10,000 EUR), NGOs are not allowed to receive or disburse payments beyond quite low thresholds (1,000 EUR, respectively 5,000 EUR from a single source/recipient in a single day). The exemption system from these restrictions is burdensome and without any specific criteria, and the response can be delayed up to 30 days – a period in which the NGOs cannot execute the specific financial transactions. Moreover, failure to respect these restrictions is considered a criminal offence and is punished by imprisonment of up to 2 years. Other problems of the law are related to the legal collision with the basic NGO Law in terms of revoking the NGO registration status, as well as introducing monitoring and inspecting competences for the NGO Registration body.</p> <p>With its decision of 12th of April 2013 on the Law on Banks, the Constitutional Court abolished all provisions of the Law on Banks which enabled the transformation of Microfinance NGOs. Following this decision, a new draft-law on Microfinance Institutions is being drafted by the Central Bank of Kosovo. Responding to an invitation for comments from the governor of Central Bank of Kosovo (CBK) in January 2014, KCSF has submitted written comments, a legal analysis and concrete recommendations to the initial draft-law proposed by the CBK, on behalf of a wider group of CSOs interested in this case.</p>	<ul style="list-style-type: none"> • The Law No. 03L-196 on the prevention of money laundering and terrorist financing should be amended in order to remove the restrictive provisions on NGOs while ensuring that public safety is still safeguarded. Civil society should be involved in the amendment process, in order for the new law to take into account the specific nature of work of civil society sector. • The ruling of the Constitutional Court on the Law on Banks, Microfinance Institutions and Non-bank Financial Institutions (dated 12th of April 2013) with regards to transformation of Microfinance NGOs should be fully adhered to while drafting the Law on Microfinance Institutions.

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			<p>The main requirement from CSOs has been to fully implement the ruling of the Constitutional Court while drafting this law. KCSF has noted that the initial draft has numerous provisions which implicitly allow such transformation, namely are contrary to the decision of the Constitutional Court. Moreover, the process of drafting this law has also procedural problems: while the Government confirmed that the Ministry of Finance shall sponsor this law, the CBK declares that the drafting was authorized by the Parliamentary Committee on Budget and Finances. CBK did not respond to the comments submitted by KCSF and we have no official information of the current state of the drafting process.</p>	
	<p>2. An enabling financial environment which supports sustainability of CSOs.</p>	<p>Easy to meet financial rules for CSOs.</p>	<p>In general, CSOs in Kosovo operate freely without unwarranted state interference in their internal governance and activities. General reporting requirements are twofold: reporting to Kosovo Tax Administration for their financial transactions and reporting to the NGO Registration Department for Public Benefit Organizations. Reporting requirements to Tax Administration are identical to businesses and 53.94% of CSOs consider these requirements as not in line with the specific nature of the work of CSOs. Reporting to the NGO Registration Department for Public Benefit Organizations is highly formal, whereas the information gathered through this channel is not utilized.</p>	<ul style="list-style-type: none"> The legal framework for financial reporting of CSOs should introduce a system which takes into account the specific nature of CSOs.

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		Stimulation of donations	<p>The Law on Corporate Income Tax and the Law on Personal Income Tax provide tax deductions for corporate or individual donations up to 5% of their taxable income if those donations are for humanitarian, health, educational, religious, scientific, cultural, environment protection or sports purposes. The eligible recipients of donations include NGOs which are granted public benefit status under the framework regulation and any other non-commercial organization that directly perform activities in the public interest and not for profit in the above mentioned areas. This tax benefit is provided only for a selected number of publicly beneficial activities, thus incoherent with the public benefit status which is set in the basic NGO Law. In practice, during the reporting period few CSOs have received individual or corporate donations, but none of them has reported tax deductions as the main reason for receiving those donations. This implies that tax benefits are not the main motivation for donations. Corporate Social Responsibility is not a wide-spread concept among private companies in Kosovo and the rare cases of CSR are mostly initiated on individual basis, without any state policy on CSR. CSR is promoted neither by state, nor by business sector or CSOs</p>	<ul style="list-style-type: none"> • The system and legislation for tax deductions for individual and corporate donations should be reformed with regards to the scale and scope of deductions and its implementation mechanisms. • The tax laws should be harmonized in their full, in particular with the Public Benefit Status chapter of the Law on Freedom of Association in NGOs.
		Tax incentives for CSOs	<p>The legal framework provides tax benefits for a number of income sources of CSOs, although their effect in practice is limited. Grants and donations supporting non-for-profit activity of CSOs are not taxed, and there are no reports on any taxation of such income source. With regards to the economic activity, there are ambiguities in the legal framework, in particular on the economic activities of CSOs which do not have the public benefit status. “A non-governmental organization that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income</p>	<ul style="list-style-type: none"> • The system and legislation for tax benefits on CSO income sources should be reformed with regards to the scale and scope of deductions and its implementation mechanisms. • Drafting of the legal framework for non-for-profit companies and endowments should be initiated and

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			<p>tax...”, while the related economic activities of CSOs are tax exempt up to “a reasonable level of income”. Concretely, the economic activity of any registered CSOs shall be directly linked to its mission, and all other economic activities are subject to income tax. The reasonable level of income is an income which ensures sustainability and development of the CSO. However, while the Law 03/L- 162 on Corporate Income Tax could be interpreted that all non-governmental organizations are subject to the tax benefit for related economic activities, the respective AI 14/ 2010 explaining its implementation talks only about public benefit organizations. This incoherence causes difficulties in its interpretation and implementation, although there are numerous CSOs that have tax free treatments for their economic activities.</p> <p>There are no explicit provisions on any tax benefits on passive investments of CSOs, while passive investments are not common among civil society in Kosovo. Similarly, there are no provisions on establishment and operation of endowments. There are no practices found of endowments established or operating in Kosovo.</p>	<p>their establishment and operation should be explicitly regulated.</p>
		Public funding for CSOs (transparency,	No special law or national policy regulates the state support for CSOs , similarly as no national or local level mechanisms for distribution of public funds to CSOs exists. There is no public funding for institutional development of CSOs and co-financing of EU and other grants, while	<ul style="list-style-type: none"> • A comprehensive system on public funding should be initiated, based on the objectives of the Government

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		<p>fairness and non-discrimination; Amount of public funds available for CSOs; Quality (procedures) of public funding framework)</p>	<p>project support is present in many cases, mostly at local level. In practice, the share of public funds for civil society has increased from 8 % in 2010 to 20% of the total resources of civil society in 2013. These funds to CSOs are disbursed from specific institutions at central and local level, without any coordination or coherence. These funds are not planned within the state budget and only four cases of specific planning for CSO project support at central/local level were identified in the 2014 budget. To illustrate this, the only NGO specific budget lines in Kosovo are the following: NGOs in Rahovec municipality will be supported with 8.000 EUR for social issues and 15.000 EUR for rural development projects; in Istog a with 15.000 EUR budget line is dedicated to participation in capital project through NGO's, community and other donors, while NGO local projects in Kamenice will be supported with 25.000 EUR.</p> <p>The Law 04/L- 080 on games of chance provides with the possibility to direct a certain amount of funds from the Kosovo Lottery for different social categories, human rights issues, culture and sports. The details of such a transfer shall be determined by an administrative instruction, but such an instruction is still not drafted and there are no reports that such funds are collected or disbursed. Ministry of Finance is not able to provide any data on the amount of funds disbursed to CSOs. In response to an official request for information on this matter, the Ministry of Finance responded that the Law on Budget does not have any direct allocation or specific budget line for non-governmental organizations. This confirms that the funding is unpredictable and it is impossible to identify the amount of public funds committed or disbursed to CSOs. As participatory budgeting is not common in Kosovo, CSOs are not part of the public funding cycle</p>	<p>Strategy for cooperation with civil society, and the designed criteria, standards and procedures ensure transparent and accountable implementation of public funds for CSOs. Regardless the comprehensive system, all information on public funds disbursed to CSOs should be made transparent</p> <ul style="list-style-type: none"> • Regardless the design of the comprehensive system on public funding for civil society, all information on public funds disbursed to CSOs should be made transparent

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			<p>even for public funds for civil society.</p> <p>There are no specific procedures for distribution of public funding to CSOs, including lack of standard selection criteria which would ensure that public funding is distributed in a prescribed manner. Due to lack of specific budgetary planning and information on selection, it is very difficult to collect proper information on the amount, type of project and organizations benefiting from public funds. There is little publicly available information on application requirements and most of the decisions on tenders are not transparent. The only CSO specific procedures on addressing the conflict of interest are related to CSOs with public officials as Board members vis-à-vis state funding, although no information on fairness and conflict of interest is available.</p> <p>There is no system of accountability, monitoring and evaluation of public funding to CSOs. There are no procedures in place for ensuring accountability, while monitoring and evaluation of public funds is regulated only with general provisions of the Public Procurement Law and Public Finances Management and Accountability Law, which are not related to the specific work of CSOs. Monitoring visits from contracting authorities of public funding are not commonly reported, and when they happen, there are no standardized procedures or follow-up for such visits. As no specific legal provisions exist, the sanctions for misuse of public funds by CSOs are identical to all other legal entities, thus do not take into account the proportionality of the sanction with regards to size and type of CSO. Last, being disbursed in ad-hoc and non-standardized manner, there is no information that any evaluation for public funds for CSOs was carried out.</p>	