

REPORT FROM THE CONSULTATIONS WITH CSOs ON CRITICAL LEGISLATIVE ISSUES RELATED TO THE LAW ON ASSOCIATIONS AND FOUNDATIONS

I. Scope, form and purpose of the consultations

The EU Funded [Technical assistance for improving the enabling environment for Civil Society Organisations in the Republic of North Macedonia project](#) (the Project) on 12th and 13th December 2022, organized **four consultative roundtables** on specific topics, relevant for the ongoing process of drafting amendments to the Law on Association and Foundations (LAF).

The purpose of the consultations was to ensure inclusion and participation of representatives of civil society organisations (CSOs) in the amendment drafting process by receiving their input (in the form of comments, suggestions and opinions), about four particulate topics, identified in the [Action Plan](#) of the [Strategy for cooperation with and development of the civil society 2022 – 2024](#) as objectives of the planned amendments to the LAF. The four topics included:

1. Legal recognition of other forms of association;
2. Supportive environment for CSOs;
3. Public benefit organisations; &
4. Protection of the non-profit character.

The objectives of the consultations were to identify and discuss:

- the root causes of the problems and challenges related to the four topics;
- the consequences of maintaining the status quo (i.e. not making any changes); &
- the potential policy options (both regulatory and non-regulatory) for addressing key problems.

The Project **emphasises the need and the benefit of a broader consultation in all phases of law-making process**. It is crucial precondition for ensuring inclusiveness, participation and ownership of the reforms. These four consultative roundtables can serve as a solid starting point for preparation of an initial draft version of the amendments. Nevertheless, the policy-makers must ensure permanent and efficient consultation and transparency in the next stages of the process.

The roundtables were organized in the form of hybrid events, enabling participation in person and on-line (via Zoom). The roundtables were open for all interested participants. Over 30 representatives of CSOs attended the consultations. The consultations were announced via public call for participation published on the [Project's website](#) and on www.nvosorabotka.gov.mk on 5th of December as well promoted through mailing lists of the [Civil Society Resource Centre](#).

The report provides a summarized overview of the key points discussed by the participants, for each topic separately. It concludes with general observations and recommendations on the process and challenges that needs to be addressed in the following period to improve the quality of the legislation.

II. Overview of the key discussion points

Session 1: Legal recognition of other forms of association (12.12.2022, 10:00 – 12:00)



1. The CSOs in North Macedonia operate in different legal forms. Some of these CSOs are not registered in one of the forms established with the LAF¹. These subjects are non-state² and non-profit independent entities, through which people organise to pursue shared objectives and ideals³. An example⁴ of such form are the **private non-profit scientific or research institutes**, registered in accordance with the [Law on Scientific Research Activities](#).
2. The experience from the past ten years has shown that these **“other forms of organisations”** are not always recognized as CSOs. This is sometimes done by donors (to lesser extent) or, what is more concerning, quite often by the Government and other public bodies. A common practice is that public calls for input or consultations with CSOs are **excluding forms of organisations not registered in accordance with the LAF**⁵. The other forms of CSOs are also excluded from the state funding. This approach is not in line with the definition of CSO as set in [DG NEAR Guidelines for EU support to civil society in the enlargement region, 2021-2027](#).
3. Several causes for this problem can be acknowledged. One of it, relevant for the LAF, is the use of the umbrella term **“organization”** to cover all forms regulated with the LAF⁶. Such term results with narrower understanding of its meaning, and exclusion of other forms of CSOs whose status is regulated with other laws. Nevertheless, the **general problem with the recognizing the civil society sector as a distinctive form of organization, different from the public bodies and businesses, remains**.
4. One the options for a more inclusive LAF is to consider change of its name that currently includes only associations and foundations. The name should imply that there are more than these two forms of organisations. If this option is not plausible, the law can at minimum prescribe a definition of the term CSOs. This can be done by stating that **other legal forms, established under other laws, can be considered CSOs if they meet the required criteria**. The criteria must at minimum include the non-affiliation with the state and the non-profit character etc. Such definition should be afterwards used in all other laws, policies and documents when referring to CSOs.
5. The informal groups should be recognized but they must have some basic rules and structure. Imposing **unnecessary and disproportionate obligations to the informal groups should be avoided**. The recognition is important for **their inclusion in policy making process as well as for state funding**. The provisions should not be too much prescriptive, to regulate their internal structure. Additionally, the LAF should also define the term grass-roots organization since in the past couple of years this term became very often used without clear understanding about its meaning.

Session 2: Supportive environment for CSOs (12.12.2022, 12:00 – 14:00)

1. The LAF **does not specify any concrete obligations for the state organs to create and support favourable enabling environment for operation and development of the CSOs**. There are several exceptions of this with regards to the possibility for beneficial tax and custom

¹ Associations, foundations, unions of organisations and organizational forms of foreign organisations.

² Organisations that are not affiliated with or directed by the government.

³ For example political, cultural, religious, environmental, educational, social or other interests and idelas.

⁴ Other examples may include professional chambers, trade unions, cooperatives, religious groups etc.

⁵ For example, the latest [Call by the Secretariat for European Affairs for creating a database of CSOs](#) for consultation in the process for negotiation for accession in the EU, as well as the [Call for input in development of the Program of the Government for 2023](#) restricts application/input **solely to CSOs registered in accordance with the LAF**.

⁶ See: Art. 3 p. 1 from the LAF.



treatment (in accordance with special laws), the possibility for state funding, as well as the legal ground for delegation of public authorities to CSOs. However, all these measures have been shown inadequate to contribute in improvement of the enabling environment.

2. The **LAF should prescribe tangible duties for the Government (including ministries) and the local government units for improving the enabling environment for CSOs.** These obligations might be incorporated either in a special chapter, or as specific provisions dispersed in the different chapters of the law. With such provisions in the LAF, the legislator will express and operationalize **a commitment to support the growth and development of CSOs** as key components of any democratic system. Even though that some of these measures might be set with policies, bylaws or other non-obligatory acts, the experience has shown that when they are not based on law, their implementation depends heavily on the political will and context.
3. The LAF should set the foundations for an effective system for state funding of CSOs that will be able to support the sustainability of CSOs. **The LAF should establish a special Fund for Support to CSOs, as a separate and independent legal entity** (The Fund). The Fund should provide operational financial support to CSOs. Other than the Fund, the LAF should also **set the basic rules for planning, awarding, contracting and monitoring of all state funds provided to CSOs** (including for specific projects/activities).
4. The LAF should also include **obligation for the Government to adopt, implement and monitor a Strategy for development of civil society.** It should oblige competent authorities to budget necessary funds for its implementation as well as to introduce an effective monitoring mechanism. A clear activity plan with deadlines and performance indicator must be part of the Strategy. Another option that should be considered by the working group (for amending the LAF) is delegating the authority for adoption of such Strategy to the Assembly, not the Government. This could help in ensuring that civil society remains independent of political influences.
5. The **participation of CSOs in a consultations and decision-making processes can be increased if it is made mandatory as a clear legal obligation.** One potential alternative how this might be achieved, as planned in the Strategy, is by raising the legal force of the non-obligatory [Code for best practices for participation of civil society in policy-making process](#) to a mandatory bylaw. The LAF should set the legal ground for adoption of this bylaw and delegate authority to the specific state organ that should adopt it.
6. The grounds for establishment and work of the Council for Cooperation between the Government and the Civil Society (the Council) should be set in the LAF **to increase its independence from the Government.** The LAF should regulate only the Council's role, function and general rules about its composition. Other issues should be left for regulation in bylaws. There should be an obligation set in the law for the Government or another ministry to mandatory consult the Council on any issues that have an impact on the CSOs.
7. The enabling environment for the development of CSOs should particularly **target smaller CSOs who operate on local level.** The LAF should acknowledge this and set this as criteria in determining the types of support measures. Equal geographical distribution should also be one of the criteria for state funding.
8. The LAF as a special law might specify to greater detail the other support that the central and local government might provide to CSOs such as a package of tax reliefs, exemption of specific fees and costs (ex. administrative fees, registration fees etc.), as well as using a state or municipal owned property.



3. Public benefit organisations (13.12.2022, 10:00 – 12:00)

1. The public benefit status introduced with the LAF in 2012 did not become functional in practice. The fact that only six CSOs have obtained this status in a 12-year period is more than sufficient to indicate a fundamental flaw in the design of the status that prevents its operationalization.
2. The problem is caused by the **significant disparity between the rights and privileges of Public Benefit Organisations (PBOs) and their corresponding responsibilities & duties**. From one side, the LAF did not foresee any special privileges/benefits for PBOs. Though the LAF recognizes the right to “additional” tax & customs reliefs, neither the laws on taxation nor customs sets any benefits to the PBO. Neither preferences in state funding or assigning use of state-owned property were introduced. From the other side there is the complexed and lengthy procedure for obtaining the status, the strict (and sometimes quite vague) criteria to be met, the obligation for supervision, reporting and the external audit that should be covered by the funds of the PBOs. In such circumstances there is ***no incentive for the CSOs to obtain the status while they pursue with the public benefit activities***.
3. Due to the failure in operationalization of the PB status the LAF is not making the important difference between ***organisations working for greater public interest*** and ***organisations working for narrower group interests*** (ex. professional organisations, association of producers etc.). Though both forms of association are legitimate and should be protected, the State has the right to limit preferential treatment only for CSOs who are working for public interest.
4. There are two options for addressing the problem. The first one is to **keep the PBO status with reform of the: rights and privileges, criteria, procedure and decision-making body**. The second option is to **abolish the PBO status and replace it with support for activities/functions of public interest**. Both options have sound arguments either for and against. A careful consideration of both alternatives, in an open, inclusive and transparent process, is of key importance to identify the most adequate approach.
5. The **first option (keeping & reforming the PBO status)** is supported by CSOs with PBO status. According to them, revoking up the status is walking the line of least resistance. Abolishing the status won't do anything. The criteria for obtaining the status should be less strict, the procedure for obtaining the status should be streamlined and the role of the Commission that proposes to the Government to obtain such a status should be reconsidered. For example, the criteria should be the following: i. every organization of public interest must have a two-tier decision-making system; ii. transparency, and iii. must have mechanisms for prevention of conflict of interest. **Instead of granting the status, the PBOs might be just entered into a register, based upon their statute and proven track record of work**. About rights the LAF can introduce a package of different tax exemptions, preference in state funding, priority for use of state or municipal property, not charging for registration related fees, access to the Official Journal, etc.
6. The key argument in favour of the second alternative (abolishing the PBO status and replacing it with support for activities of public interest) is that if in the past 12 years there was no any will from all stakeholders to support the PBO status it is highly unlikely that, even with legislative changes, that it will be different. **The LAF should determine policy areas that will be considered as of greater public interest and set a procedure for registration of CSOs who**



are working in these areas. The sole fact that the CSOs are in the registry should be enough to qualify to the exemptions and preferences. Additionally, the **existing tax exemptions that already exist in the tax legislation should be harmonized to ensure that the organisations who are performing activities from public benefit receive some reliefs for performing such tasks.**

7. Aside from defining what is activity of public interest it is also **necessary to define how and who will decide whether the activities are or not of public interest.** Because this circumstance entails both, a right and an obligation. Regarding who, tax authorities are unlikely to agree to be the ones to decide whether a certain organization or activity is of public interest or not. The LAF must settle this issue.
8. One of the options proposed is that Department for cooperation with CSOs within the General Secretariat of the Government might keep such register. On a registry basis, there might be special benefits for the registered organisations. With the annual reports, the CSOs will demonstrate that they have worked in the public interest.

4. Protection of non-profit character (13.12.2022, 14:00 – 16:00)

1. The legislation should make a **stronger distinction between non-profit legal entities and for-profit legal entities.** Failure to understand the specifics of non-profits results with overregulation and unproportionate burden to the CSOs. An illustrative example on how this lack of understandings have on the CSOs is the obligation for payment of more expensive electric energy (so-called industrial electricity) though the CSOs are not working for profit.
2. It is necessary to have a **legislative framework that will encourage conducting economic activities necessary for support of their basic operation of CSOs and realization of their objective.** This framework should be permissive because the benefits of the work of the CSOs are far greater than the benefits of limiting their opportunity to conduct economic activities.
3. The problem with **allocation of remaining funds of the CSOs after dissolution** was identified in practice. Some statutes include a provision that in case of dissolution, the residual assets and funds will be distributed among founders, members or other related to the CSO persons. This is not in violation of the non-profit principle. The problem is caused by the drafters of Statutes who are not reading and understanding the law in its entirety. The solution from the point of view of the law is simple - the application of the provision for the allocation of funds to organisations of public interest (Article 54 par. 3) should be broadened to cover also the other organisations.
4. **Most subjects who are working currently as a social enterprise are registered as associations.** There is an ongoing process within the Ministry of Labour and Social Policy for drafting a special Law on Social Entrepreneurship. In its latest version (that has not been shared to the public), the draft text foresees possibility for any legal entity that fulfils certain criteria to acquire the status of a social enterprise. Because of this it is necessary to ensure that both laws are harmonized and not hamper their implementation.



III. General observations and recommendations

From the content of the discussion and input provided by CSOs on the four consultative roundtables, the following general observations and recommendations can be taken out:

- The four consultative roundtables have proven that amending the LAF, especially in the areas identified in the Action plan to the Strategy, is a **complex and demanding task without the possibility for instant (quick) remedies**. This law has an impact of an entire sector and any rushed and not well thought amendments will have a negative impact of the enabling environment for CSOs in general. **A transparent, inclusive, and meticulous process of drafting the amendments is of crucial importance for a successful law.**
- The **invisibility of the CSOs as a so-called third sector**, different from the businesses due to their non-profit nature and from the Government due to the private nature of the association was pointed out as quite serious problem on several occasions. The consequences of this “invisibility” can be seen in different areas. From the tax treatment, through the different administrative procedures to the lack of collective agreement for employees in CSOs simply because they did not fall under neither the collective agreement for public nor the one for private sector.
- Another important remaining issue is that the **LAF does not provide a legal ground for distinction between organization pursuing strictly narrow group interest (for example specific profession or trade) from the organisations that are acting in public interest**. Though one of the intentions of the PBO status was exactly this, the fact of the matters is that in that the LAF has failed. **Whether or not an organization is acting in public interest should not be subject to an unproportionate administrative procedure and check-ups.**
- Two very important areas **require a much more thorough and inclusive consultation process: the role and status of the Council and the reform of the system of state funding**. The first one is directly related to the need for a structured dialogue between CSOs and the Government while the second one is a key for a sustainable civil society.
- The dynamic of the process of drafting the amendments the LAF is dependent upon the dynamics of other current law-drafting processes that have overlapping subject matter for regulation. It is of utmost importance that all proposed amendments by the working group are well discussed and coordinated with other working groups or competent ministries before preparation of the first draft text of the law. At minimum, the LAF a linkage must be established for the following laws:
 - **Law on Donations and Sponsorships** - The definition of activities of public interest, notwithstanding whether the PBO status remains or not, needs to be harmonized and the criteria and mechanisms to determine whether certain CSOs/activity are of public interest should be identical (ex. How the public benefit organisations/public benefit activities will be recognized as such; Will there be a state body who would determine that; which would that body be; What would be the procedure for obtaining certificate or similar document etc.).
 - **Law on Social Enterprises** - The LAF should not be restrictive regarding the scope and types of economic activities that the CSOs could perform because that’s how they can secure their sustainability. However, it is necessary to introduce safeguards that will prevent direct and indirect distribution of the economic gain among founders, employers and members of management bodies. These safeguards need to be harmonized between the two laws.



- **Law on Cooperatives** - In 2019 a version published on ENER by the Ministry of Economy proposed regulation of cooperation as *voluntary association of physical persons and legal entities united for realization of their economic, social, culture and other needs, jointly owned and democratically managed*. It should be cleared whether eventual adoption of this law might have effect or be dependent upon corresponding amendment to the LAF.
- Since the Strategy foresees transformation of the **Codes for good practices for both, participation in policy-making and state funding into a mandatory bylaw** an issue arises about what be the legal ground for adoption of such mandatory bylaws. The authority for adoption of such bylaw must be delegated to a specific state body (ex. Government or particulate Ministry) by a law adopted by the Parliament. Since the LAF will be the legal ground for the bylaw on state funding, it should be considered that the LAF should also set the legal ground for the bylaw on participation of CSOs in policy-making processes.

