

Prishtina, 20.10.2017

Initial contribution to the Kosovo Country Report 2018

The following is a detailed input complementing the summary of inputs submitted by KCSF, as per the suggested template provided by the EUOK.

Contribution to:

Governance; Civil society; Policy development and coordination; Fight against organized crime

Kosovar Civil Society Foundation (KCSF) regularly participates in the EC dialogue with civil society as well as provides its written input to the EC Country Reports 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 2016 to 18th of October 2017**, while it will also emphasise the main elements of the existing policy and legal framework which remain unchanged during the reporting period, but continue to directly influence the work of CSOs and the environment they operate in. Furthermore, it mentions a number of ongoing processes which have not been yet finalized, but are expected to be concluded within the time-period covered by the Kosovo Country Report 2018. KCSF commits to update this information through its final input.

The 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 also been used 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 most of its comments and recommendations.

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 the development and the implementation of this instrument.

As a result, most of this written contribution for the period until 31st of December 2016 input is based on the **Monitoring Matrix Report for Kosovo 2016**, which was based on a vast amount of data, research and evidence. The remaining period is covered through continuous monitoring and research, as well as KCSF presence and active participation in numerous initiatives and forums related to the issues of concern. 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 submitted by KCSF upon request.

Benchmark (EC Civil Society Guidelines Objectives)	Assessment Area	KCSF Input/Commentary:	Recommendations:
<p>3. Civil society and public institutions work in partnership through dialogue and cooperation.</p>	<p>Cooperation between CSOs and public institutions (Government level).</p>	<p>The implementation of the Government Strategy for cooperation with civil society 2013-2017, adopted in July 2013, has been initiated only in the beginning of 2015. All the activities that have been planned to be initiated during 2013 and 2014 have been rescheduled for 2015 and onwards, through a detailed Action Plan for 2015. Coming close to the end of the implementation period of this strategy, only a part of these activities have been completed or initiated. The Council for implementation of the Strategy has met regularly, same as the Working Teams for each of the 4 Strategic Objectives. Despite the initiation of a few processes, only few results have been produced up to date (see below for details on “citizen participation” and “public funding”). Among the main problems remain the lack of sufficient thematic capacities from the side of the government and the lack of interest to participate and contribute to the process from many line ministries, resulting in most of the on-going activities being initiated and led by civil society representatives or Technical Assistance projects support. Although not at the same level, similar problems are present also from the civil society side.</p> <p>When adopted, the Ministry of Finance committed to allocate a budget of 137,960 EUR for the implementation of the Strategy for each year. However, throughout the entire implementation period of this strategy, with exception of the costs of small meetings held in government premises and covered by the budget of the Office for Good Governance, all other activities have been conducted with donor support.</p> <p>With regards to institutional setup for cooperation with civil society, the Office for Good Governance within Office of Prime Minister (OGG/OPM) continues to be the focal unit of government cooperation with civil society – the role of the Secretariat of the Council only adds to its mandate to cooperate with the sector. In order to better perform this role, OGG/OPM – through external expertise – has designed a comprehensive monitoring system for the Strategy, which has been operationalized during December 2015. While OGG/OPM has produced regular quarterly and semi-annual reports on the implementation of the Strategy, the lack of timely and</p>	<ul style="list-style-type: none"> • With only few months before the end of the period covered by the current Strategy (2013-2017), the Government shall focus on conducting a comprehensive and independent evaluation of its implementation and address the challenges for the new strategic process. • Drafting of the new strategic document for the period 2018-2022 should include more stakeholders, both from civil society and government, as well as reach out to a wider group of civil society organizations throughout Kosovo. • Drafting of the new strategic document for the period 2018-2022 shall be accompanied by a realistic cost-analysis and clear budget allocations, as well as dedicated human resources from the side of government to coordinate

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		<p>qualitative input from line ministries remains a concern. Furthermore, the monitoring system is fully based on quantification at activity level, without measuring any level of results of impact. This resulted in unrealistic assessments compared to the actual achieved results. To illustrate, while the Strategic Objective on volunteering has achieved only to establish an inter-sectoral working group and conduct an initial analysis of the area, it has been assessed with an 83.3% completion rate. Due to lack of additional staff engaged for the Strategy and no budget allocated for its implementation, OGG/OPM remains with insufficient human and financial resources to facilitate CSO-government dialogue, same as for serving as a secretariat to the Council.</p> <p>The Technical Assistance project for implementation of the Strategy, supported by the EU, has resulted in an increase of dynamics of implementation during 2016 and 2017. However, with lack of proper efforts from the Government, only parts of the strategic objectives have been met, with few months remaining until the end of the period covered by this Strategy.</p> <p>The process of drafting the new strategic document covering the period 2018-2022 has already initiated and is planned to be concluded during the first part of 2018. The working group has been appointed and its first meeting is scheduled for 19th of October 2017. A number of civil society representatives are involved, while more outreach and inclusiveness is necessary during the drafting phase. With a very initial assessment of implementation of the current strategy being in the process, the working group shall be supported with comprehensive and independent evaluation which shall identify bottlenecks of the previous experience and propose best ways forward.</p>	<p>the drafting and implementation process.</p> <ul style="list-style-type: none"> • The TA project in support of the implementation of the Strategy should continue, in particular to support the drafting process of the new strategic document.

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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 has advanced with the entry into force as of 1st of January 2017 of the Regulation on Minimum Standards for public consultation process (MSPC), adopted in May 2016. Based on a KCSF proposal, the set of standards presents a systematic basis for public consultation from agenda-setting to expert involvement to general public consultations, with specific requirements for each of the steps. Furthermore, an online platform has been launched in February 2017, serving as an entry point for all interested parties to get involved in the consultation process. Public Consultation Coordinators, as required by the Regulation, have been appointed in almost all line ministries, aiming to both assist their colleagues in conducting public consultations and reporting regularly on this area. Last, while the monitoring of implementation of this regulation is based on the existing system of monitoring the policy and law cycle, bi-annual reports are required both from line ministries and Office of Prime Minister on the details of the public consultation process. A manual and monitoring methodology has been prepared by the TA project in support of implementation of the Strategy for cooperation.</p> <p>Nevertheless, the public consultation during the report period has seen little progress in practice, initially due to lack of specific regulation (for 2016) and latter due to insufficient level of implementation of the Regulation on MSPC. Only 24.75% of the surveyed CSOs declare to have been regularly invited to comment on policy/legal proposals on their fields of interest during 2016, while slightly more than half of them declare to have had sufficient time to comment on the proposals. During 2016, only 39.8% of the policy documents and normative acts adopted by the government have been consulted with civil society through CiviKos Platform. Concretely, the government has disseminated for public consultation 27 draft-laws (from 53 adopted in total), 7 concept-documents (from 26 adopted in total), 2 strategic documents (from 8 adopted in total) and 23 administrative instructions (from 63 adopted in total). As of August 2017, only 21.43% of the primary policy documents/laws planned</p>	<ul style="list-style-type: none"> • The Government should ensure that all preconditions for implementation of the Regulation on MSPC are fulfilled, such as: regular capacity building programs are delivered for all civil servants; Online Platform for public consultations is fully completed and functional continuously; sufficient human resources are allocated to the Office for Good Governance for coordinating and assisting line ministries in its implementation; political willingness to continuously monitor its implementation and instantly react on identified failures. • Acknowledging that Regulation on MSPC sets only the minimum

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		<p>for adoption during this year have been published for consultation through the Online Platform for public consultations. Concretely, the rate of publishing in the Online Platform has been 24.56% for draft-laws, 17.95% for concept-documents and 18.75% for strategies. No formal data exist on secondary legislation, including those adopted directly by the ministries.</p> <p>Despite the above, the response rate from civil society and the public is still low. Only few public consultation processes have resulted in written comments. Among the reasons for this are: lack of trust towards the government; lack of proper implementation of the public consultation requirements, including inadequate methods of consultation and outreach; insufficient capacities of a number of CSOs; difficulty to change the existing routines of non-formal consultations and communication between both sectors; lack of genuine interest from civil society to contribute through formal procedures.</p> <p>Up to date, government and other public institutions have made little progress with regards to human and financial capacities on public consultation, mainly with support of external actors. Neither KIPA nor other public institutions provide any educational programs/trainings for civil servants on this issue. The TA project to the Strategy, supported by the EU, has facilitated a series of training sessions for selected civil servants on Regulation on Minimum Standards on public consultation process, while KCSF has formally taken charge and organized a similar series of trainings for CSOs, with its own resources. Increased efforts should be made to ensure the sustainability of these actions and involvement of responsible institutions (including KIPA) in design and implementation of the capacity building programs.</p> <p>The legislation allows, but does not oblige public institutions to include CSO representatives in decision-making or advisory bodies created by public institutions. Although with a slight increase compared to previous reporting periods, only few cases of open and democratic selection processes have occurred. CiviKos</p>	<p>requirements, Government shall go beyond these standards and deploy adequate methods of public consultation and larger outreach to the public, in order to attract increased response rate and trust towards this process.</p> <ul style="list-style-type: none"> • As a follow up to the Regulation on Minimum Standards, general selection mechanisms should be designed by the Government so to allow all public institutions to apply them with specific adaptations.

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		Platform, through its selection mechanisms, has facilitated such processes.	
	Consultations with civil society on EU agenda.	<p>The National Strategy for European Integration 2014-2020, finalized in June 2013, to date is forgotten, lacks ownership and nothing is enacted to implement it.</p> <p>Established in 2012 to guide the country through the elaborate reforms, Kosovo's National Council for European Integration (NCEI) is not delivering for a number of years now. KCSF monitored and regularly reported that the Council set up to lead this process is divided, side tracked by political exigencies, managed ineffectually, and opaque in its operations and communications. The first and only meeting invited by the new President took place on 28th of October 2016 and was characterized by appointment of civil society members contrary to the selection rules and no accompanying documents prior to the meeting, thus boycotted by the legitimate members from civil society. All in all, the Council has failed to serve its mission.</p> <p>The Ministry of European Integration has drafted the Communication and Information Strategy in support of Kosovo's European Integration Process. The Strategy covers the period from 2017 to 2020, and has been prepared with the involvement of relevant stakeholders from both state institutions and civil society. Nevertheless, it is still not approved from the Government.</p>	<ul style="list-style-type: none"> • The public institutions should clarify the status of the National Strategy for European Integration 2014-2020, either by enacting and/or revising it according to the recent developments, or by formally announcing this document as not valid; • The President's Office should clarify the status of the Council. If not abolished, the President should recall a meeting and the Council should enact a system for monitoring its work, with the aim to evaluate whether its members deliver on Council's conclusions and recommendations.

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		<p>The SAA entered into force behind closed doors, was considered to be exclusively EU and government business and was kept low profile. As a result, even NGOs with high level of expertise had difficulties to articulate for the public its substance, benefits and consequences of the agreement.</p> <p>Only during late 2016, the Ministry of European Integration initiated a Guideline on involvement of civil society in SAA structures, with civil society consulted during the drafting process. With these guidelines being finalized before summer 2017, its formal status remains unknown and its implementation has not started yet.</p> <p>The visa liberalisation requirements implementation has also been marked by lack of cooperation with CSOs. Moreover, the implementation reporting was marked again by lack of transparency. As a result, the process is politicized over the criteria on the delineation of border with Montenegro, keeping away the discourse from other important criteria such as rule of law, progress on fighting corruption, organized crime, functioning of judiciary, etc. Moreover, since two years now, public institutions have continuously propagated that visas will be lifted soon, creating high expectations among the public and in return resentment over EU credibility.</p> <p>Although it has seen some improvements in terms of civil society involvement in drafting specific documents, still the ground for civil society's contribution, involvement and monitoring of the European Integration process in Kosovo is limited.</p>	<ul style="list-style-type: none"> • The designed model on involving civil society in SAA implementation structures shall be adopted and implemented without delay, with the rest of EU Agenda related processes being consulted with the public according to standard requirements on public consultations; • The government should consult and inform the CSOs and the public on a timely manner on Visa benchmarks, in order to allow CSOs to monitor and build public trust behind this process.
1. An enabling legal and policy environment, for the exercise of the right of	Freedom of association	<p>The legal framework on freedom of association has not been changed during this period, and freedom of association continues to be a constitutional right, guaranteed in Article 44 of the Constitution of Kosovo and defined in the Law 04/L-57 on Freedom of Association in NGOs.</p> <p>Based on a Concept-Document on the freedom of association in NGOs adopted in August 2016, the Ministry of Public Administration initiated drafting of a new Law on</p>	<ul style="list-style-type: none"> • The best practices and international standards introduced in the current draft of the new NGO Law shall be maintained, while

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freedom of association.		<p>Freedom of Association in NGOs. The initial draft presented by the Ministry in October 2016 included severe restrictions for NGOs in terms of state interference in their internal matters and reporting requirements. KCSF, in cooperation with European Centre for Non-profit Law (ECNL), took an active role within the working group and beyond and influenced the content of the draft, based on its experience, expertise and full set of international standards and best practice on this area. The current draft, which completed the public consultation phase on 13th of October 2017, is free from initial restrictions and in general much more positive compared to the current law. Minor comments have been submitted by KCSF during public consultation phase and will be advocated for in the coming phases of the process (<i>see KCSF comments to the draft NGO Law as an annex to this input</i>).</p> <p>In the meantime, the Law 04/L-57 on Freedom of Association in NGOs is still applicable. 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.</p> <p>In practice, every individual and legal entity can establish an association, without the need to register the organization. Nevertheless, vast majority of organizations decide to register in order to gain legal personality and around 550 NGOs have been registered during 2016. Non-registered organizations are not common and there are no identified cases of endowments or non-profit companies. The most common registration period is around 30 days, although there are cases when the 60 day legal deadline is not respected, usually due to requirements for additional documents or change in statutes. An online registration platform which was designed a couple of years ago has been finally functionalized during 2017, allowing NGOs to register online with only one visit to the NGO Department. Overall, most of the problems at</p>	<p>remaining issues shall be put in line with those standards;</p> <ul style="list-style-type: none"> • Regardless of the above mentioned review, Article 18 of the Regulation on Registration of NGOs, which allows suspension of NGOs by the NGO Department, should be removed immediately and the continuous practice of suspending NGOs should be put to an end.

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		<p>the registration phase are due to lack of sufficient capacities and understanding of the legal requirements by the NGO Department, which is the sole responsible authority for registration of NGOs.</p> <p>The primary legislation prohibits state interference in the work and activities of NGOs. However, the Article 18 of the Administrative Instruction GRK – No: 02/2014 on Registration and Functioning of NGOs¹ allows the NGO Department to suspend the operation of an NGO, upon a written request and justification of an authorized security institution. The maximum duration of the suspension is one year, and its justification can be based in cases where NGO activities are alleged not to coincide with the legal and constitutional order of the Republic of Kosovo and international law. Despite requirements from civil society to remove this article, it remains in force and allows for unwarranted state interference. Based on this article, during the reporting period the NGO Department has suspended 17 NGOs, with majority of them being suspended repeatedly for a number of years now. Furthermore, while previous suspensions were accompanied by individual decisions with some level of justification, in all but one case of recent suspensions the NGO Department published only the list of suspended NGOs, without individual decisions or any justification on the latter. The Article 18 and the resulting suspension of NGOs are in direct breach with the primary legislation (Law on Freedom of Association in NGOs), the Constitution of Kosovo and international standards on the freedom of association.</p> <p>There are no specific legal provisions obliging the state to provide protection from interference by third parties. Cases of interference from third parties have been reported during this reporting period, mainly related to the limitations in access to NGO bank accounts from a number of commercial banks. No clear legal basis for these actions exists.</p>	

¹ <http://gzk.rks-gov.net/ActDetail.aspx?ActID=10287>

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	Related legislation	<p>Most of the above issues have been addressed within the current draft of the new NGO Law, mainly through introduction of positive principles and legal protections for such restrictive actions.</p> <p>Despite being more positive compared to the previous one, the new Law on Prevention of Money Laundry and Fighting the Financing of Terrorism (adopted in May 2016) is still restrictive for the entire NGO sector. Contrary to FATF standards and EU Directive 2015/849, all NGOs remain as reporting entities and are subject to burdensome requirements, which are not possible to be implemented by the vast majority of NGOs. Due to these problems, the Parliamentary Committee on Budget and Finance, as the functional committee on this law, has requested the Government to initiate a new amendment process immediately after the adoption of the new law. In contrary to this request, no amendment process has started yet.</p> <p>In the meantime, following intense pressure from civil society, a sectoral risk-assessment on NGOs has started in September 2017 and is expected to identify whether this sector is in risk to be abused for terrorist financing. The sectoral risk-assessment is being led by the Financial Intelligence Unit and supported by an EU funded project. Despite the lack of such assessment until now, the money laundering and anti-terrorism legislation remains restrictive towards the entire NGO sector and may inhibit their ability to operate effectively.</p>	<ul style="list-style-type: none"> As per FATF Recommendations and EU Directive 2015/849, NGOs should be removed from the Law on Prevention of Money Laundry and Fighting the Financing of Terrorism. Any potential obligation for specific types of NGOs can be introduced only after a sectorial risk assessment is completed and specific risks have been identified.
2. An enabling financial environment which supports sustainability of	Easy to meet financial rules for CSOs.	<p>Reporting requirements are twofold: reporting to Tax Administration for their financial transactions and annual financial statements, and reporting to the NGO Registration Department for Public Benefit Organizations. Reporting requirements to Tax Administration are identical to businesses, same as the sanctions for failing to fulfill these reporting requirements. Only some provisions are proportionate to the size of the CSOs/business. At the other side, reporting of PBOs (224 PBOs in 2016) is both narrative and financial, and PBOs with an income of more than 100,000 EUR</p>	<ul style="list-style-type: none"> The Ministry of Finance and the Kosovo Tax Administration, in cooperation with civil society, should design specific reporting forms

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CSOs.		should also submit an external audit report.	which take into account the specific nature of CSOs.
	Stimulation of donations	<p>The tax deductions for corporate or individual donations for humanitarian, health, educational, religious, scientific, cultural, environment protection or sports purposes are 10% (with the possibility for additional 10% of deduction for corporates, if specified with other laws). This list of eligible activities is not harmonized with list of public benefit activities from the Law on Freedom of Association in NGOs. In general, legal framework for tax benefits for CSO donors remains ambiguous, same as the implementation modalities. In practice, the existing legal opportunities do not produce any concrete effect in practice. In 2016, according to Kosovo Tax Administration, only one corporate taxpayer asked for tax benefits on these grounds, for a donation of 700 EUR to a public benefit NGO. This implies that even in those limited cases when private corporations or individuals decide to donate to CSOs, tax incentives are not the main reason for doing so.</p> <p>In general, CSOs are quite unaware of the tax legislation - almost half of interview CSOs consider tax benefit procedures as complicated or somehow complicated, with the other half not knowing these procedures.</p>	<ul style="list-style-type: none"> The system and legislation for tax deductions for individual and corporate donations should be clarified with regards to the scope of deductions and its implementation modalities, as well as 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 system of tax benefits for CSOs' operational and economic activities provides tax exemption for grants and donations. An Explanatory Decision published by the Kosovo Tax Administration in August 2016 provides more explicit explanations on the above, although there are reports on difficulties to implement it in practice, mainly due to the lack of awareness from both businesses and CSOs. 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. According to</p>	<ul style="list-style-type: none"> The system and legislation for tax benefits on CSO income sources, including on CSO economic activity, should be clarified with regards to the scale and

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		<p>the Kosovo Tax Administration, the economic/commercial activities of PBOs are exempt from the corporate income tax if the income destination is solely for the public benefit purpose and up to a “reasonable level” of income. While the article of the tax exemption mentions only the PBOs, another article on commercial activities talks about all registered CSOs which “commercial or other activity shall be exclusively related to its public purpose up to a reasonable level of income”. This implies that the economic activity of any registered CSOs shall be directly linked to its mission and the income should be reasonable, and all other economic activities are subject to income tax. This incoherence causes difficulties in its interpretation and implementation.</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>scope of deductions, coherence within legislation and its implementation modalities.</p>
	<p>Public funding for CSOs (transparency, fairness and non-discrimination; Amount of</p>	<p>Following the Government adoption of the model on public funding for civil society in Kosovo in May 2016, the Ministry of Finance initiated the drafting of the Regulation for the operationalization of the model in September 2016. With a participatory process and with solid assistance from external experts, the Regulation on the Criteria, Standards and Procedures for Public Financing of NGOs was officially approved and signed on June 13, 2017 by the Minister of Finance. This regulation covers the entire cycle of public funding, from budget planning to selection to</p>	<ul style="list-style-type: none"> The Ministry of Finance and Office for Good Governance should be supported to coordinate, assist and monitor the implementation of the Regulation on public

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	<p>public funds available for CSOs; Quality (procedures) of public funding framework)</p>	<p>monitoring and reporting. The main responsibility for the distribution of public funds for NGOs remains with the respective line ministries and municipalities, in accordance with the relevant strategic documents and their priorities. However, such distribution shall be done in accordance with unified principles and procedures set forth in the Regulation. It ends the long period of public funding delivered without criteria, standards or procedures. As the regulation is new, initial reports show that only few ministries started to disburse funds to NGOs based on this regulation.</p> <p>In March 2017, responding to continuous pressure from civil society, the Government published the first ever report on public funding for NGOs. The report covering the years 2015-2016 provides information on public funding to the sector both in terms of total amount and number of beneficiaries. This was considered a very positive step towards transparency of public funding to NGOs. However, the report demonstrates the lack of trustworthy data maintenance system, as the amounts published include other types of funding which should not be categorized as a government support to the sector. KCSF in-house analysis of the published data reveal that more than half of the published amount of 26 million EUR for two years is provided to sports clubs and federations, services provided by NGOs on behalf of state institutions, or public institutions which were wrongly recorded as NGOs. Last, the KCSF in-depth analysis of the report confirms the findings of Kosovar Civil Society Index that around 90% of the payments to NGOs are below 10,000 EUR, with only 4.4% of them exceeding the amount of 25,000 EUR.</p> <p>With the regulation being adopted only recently, for the most part of this reporting period, public funds to CSOs have been disbursed from specific institutions at central and local level, without any cooperation or coherence and without being planned within the state budget. The procedures, criteria and decision-making were not</p>	<p>funding for NGOs, in order for its implementation to start in an effective manner;</p> <ul style="list-style-type: none"> • Discussions for establishing a co-financing scheme for EU funded projects to CSOs shall start.

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		<p>transparent for the vast majority of cases. Although the Government Strategy for cooperation with civil society requires setting up a co-financing scheme for EU funds for civil society, no initiative on this has been made yet. The Law 04/L- 080 on games of chance² 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. Such an instruction is still not drafted. Despite the legal possibilities, no funds from the lottery have been collected or disbursed during 2015.</p>	

² <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2813>