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PRAVOK  
(Pravni Okvir)

# **Guidelines on the Management of Juridical and Non-juridical Obstacles for Civil Society**

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# **Introduction**





## 1. Institutional framework

Within the framework of Italian law 84/01 “Provisions for Italian participation in the stabilisation, reconstruction and development of countries of the Balkan region”, the **Italian Ministry of Foreign Affairs** – Directorate General for Cooperation and Development – has granted **CERFE** with a contribution for conducting a project envisaging assistance to the institutions concerned of the Government of **Serbia** in order to facilitate **citizens’ participation** by creating **favourable legislative frameworks**. The project is conventionally referred to by the term “**PRAVOK**” (from *Pravni okvir*, the Serbian expression for “legislative framework”).

**CERFE** is a non-profit research institute based in Rome. Since 1980 it has conducted many activities of assistance, training and study on themes like, inter alia, relations between citizens and the state, the dynamics of civil society, the quality of public and social services, and conflict resolution. In this regard, **CERFE** has also carried out a study on behalf of the Banco Interamericano de Desarrollo (BID) in order to identify the legislative and organisational obstacles to the full activation of local civil societies in five Latin-American countries. This study has been an important point of reference for conducting the present project.

The **PRAVOK** project started in November 2006 and will be completed in December 2008.

This project aims to contribute to enhancing the presence of **civil society** in public life; such a presence that is increasingly characterising the process of modernisation and development of democratic structures and is often recalled in European legislation.

In particular, the project aims to **contribute to removing the legislative and organisational obstacles to the activation of civil society** in Serbia, by promoting a broad debate between public actors and civil society ones in order to favour the creation of new associations, the strengthening of existing ones, the revision and reform of laws, and the creation of an environment favourable to dialogue and cooperation among the various actors concerned

To pursue these aims, the **PRAVOK** project is organised as an **integrated itinerary** which includes **research, training and public communication** activities that will be described further on.

To carry out the project, a specific **team** was set up consisting of the sociologist and trainer Daniele Mezzana (project director), the sociologist and jurist Marina Cacace, and the sociologist and trainer Simonetta Bormioli.

The project is conducted in partnership with the European Center for Not-for-Profit Law (ECNL), and with the cooperation of the *Associazione italiana dei comuni, delle provincie, delle regioni e delle altre comunità* (AICCRE), the Association of local democracy agencies (ALDA), the Standing conference of towns and municipalities of Serbia (SKGO), and the municipalities of Subotica and Kragujevac.

The present document contains “**guidelines on the management of the juridical and non-juridical obstacles for civil society**” that are the product of the research activities carried out under the project. The text was drafted by Daniele Mezzana with the cooperation of Marina Cacace and Simonetta Bormioli. These guidelines are addressed to national and international public, private and non-profit organisations interested in carrying out initiatives aimed at removing the existing obstacles to the activation of civil society organisations.

## **2. Thematic framework**

The project is based on the recognition of the growing weight of **civil society** for social and economic life at a global and local level. This phenomenon seems to be caused by the growing **subjectivity** of individuals (in terms of knowledge, skills and capacity for action), by the increasingly more widespread pressure for citizens’ **participation** in the governance of societies, and by the decrease in confidence in the capability of governments alone to solve problems linked to welfare, the environment and development.

To this end, the idea of **partnerships**, or ways of having real cooperation between public institutions, non-profit organisations and enterprises, has greatly increased in importance over the last few years in European and international policies and in those of many countries. In this sense, partnerships are seen by many as a new way to govern contemporary societies as well as specific areas of social and economic life<sup>1</sup>.

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<sup>1</sup> See the Progress Report on “The Countries of Western Balkans on their road to EU”, published by the EC in March 2008

In **Serbia**, in particular, there has been a strong **increase in civil society organisations** (CSOs) after the dissolution of the Socialist Federative Republic of Yugoslavia (1991). In the 1990s, CSO activities particularly concerned the effects and needs determined by conflicts in the Balkans, and thus mostly focused on promoting human rights and on assisting refugees and victims. At the end of these conflicts, CSOs contributed, albeit with great difficulties, to promoting the turning-point which led to bringing about the democratic political system in Serbia and to the elections of October 2000. Since then, CSOs have further **diversified their field of action**, which currently ranges from advocacy to the monitoring of democratic institutions and actions addressing specific social issues, sometimes in cooperation with public administrations.

More intense dialogue and cooperation between public powers and civil society organisations appears particularly important if we consider that the latter organisations address problem areas that are crucial to assure **joint governance**<sup>2</sup> of important aspects of social life in Serbia. These aspects include: the improvement of inter-ethnic relations; support to refugees of the recent conflict; the social activation of local communities, especially in order to regain a feeling of confidence, particularly in the younger population; the promotion of partnerships in order to contribute to empowerment, social inclusion and economic development of local communities; the management of services in key sectors of welfare such as health and education, where a reform process is underway; support to reform of the mass media sector.

In this regard, some **experiences of cooperation** between state and civil society recorded over the last few years in Serbia are particularly interesting. These include the one concerning the definition of the **National Strategy for the Fight against Poverty** (PRSP), which was started in 2003, which included an intense participated policy-planning activity involving local authorities, central government, the unions, the private sector and other organisations of Serbian civil society. Another example concerns the **National Strategy for Youth** (2007), which envisaged consultation, by the Ministry for Youth and Sport, of the key actors representative of the various Serbian cultural, social and institutional realities at a central and local level.

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<sup>2</sup> Governance here means the ability to deal with issues of interest to the whole community by establishing an interaction between public and private actors, each one of whom is a bearer of specific demands, projects, powers and orientations.

Even the Report by the Foreign Affairs Committee of the European Parliament (18/8/2007)<sup>3</sup> found in Serbia civil society more developed and now closer to the government institutions. A **Council for Relations with Civil Society** has recently been set up within the President of the Republic's Office. This Council acts as a direct communication and consultation body dealing with important issues for the country. Another Council was established at the Prime Minister's Cabinet. The representatives of some NGOs have also been asked to sit in the **Council for European Integration**, guided by the Serbian Prime Minister. Institutional roles are also envisaged in Serbian **municipalities** in order to act as links between local authorities and civil society.

Over the last decade there have been several actions in support of civil society on the part of many **international donors**, within the complex dynamics of transition and especially with a view to joining the European Union. These actions have contributed to the **strengthening** and **capacity building** of the CSOs which are now preparing to tackle issues regarding aspects such as sustainability, transparency and professionalisation.

As many studies conducted over the last few years show<sup>4</sup>, despite the start up of forms of cooperation between state and civil society and the fact that important service, information and legal assistance structures have been set up within the associations sector, **there is for several aspects a weakening of civic participation, and** most CSOs in Serbia today face **many problems** that hinder their full participation in public governance. These problems concern aspects such as knowledge and skills, public image, the available structures and resources, and inter-organisational coordination.

Part of these difficulties depend on the environment these organisations operate in and, in particular, on the juridical structures whose context they work in. A notable obstacle for civil society development in Serbia has been the non-adaptation of the **legal framework** of reference for CSOs that is still fragmented and weak.

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<sup>3</sup> European Parliament, *Report with a proposal for a European Parliament recommendation to the Council on relations between the European Union and Serbia (2007/2126(INI))*, RR/391943EN.doc

<sup>4</sup> Cf. for example: Milivojevic Z., *Civil Society in Serbia*, CIVICUS/ARGUMENT, 2006; FENS, *Vesti: civilni sektor - položaj i perspektive*, 2006; Golubovic D., Paunovic D., *Saradnja nevladinog sektora i vlade*, CRNS, Gradanske Inicijative, ICNL, 2004; USAID, *The 2005 NGO Sustainability Index*, 2005

This difficulty should be partly overcome because the Serbian Parliament, in the moment in which these guidelines are being drafted, is in the process of passing a new **bill on associations**. This bill was drafted by the Ministry of State Administration and by the Local Self-Government in cooperation with Serbian CSO leaders and experts. The new law (which replaces the previous ones of 1982 and 1994, which are still in force but heavily dated) establishes in detail the **foundations and legal status of CSOs** (except for sport, religious and trade union associations) and aims to regulate the non-profit sector in line with EU laws and standards.

### 3. Description of the project

The main **activities envisaged by the project** are briefly the following.

Carrying out a **study** in order to draft a **map of the legislative obstacles** to the emergence and operative capacity of **civil society**. The map was drafted by:

- Analysing the existing literature and documentation in order to create an **international inventory of obstacles** (both juridical and non-juridical ones) that are *potentially present*, in that they have been found in other countries; it is thus a “**virtual**” **map** of obstacles (because it has still not been verified locally).
- Comparing this “virtual” map with the specific reality of Serbia in order to produce a “**real**” **map** of the obstacles found in this country; this took place by consulting leaders of **CSOs** working in Serbia and Serbian **experts** in the legal, administrative and political fields<sup>5</sup>.

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<sup>5</sup> In particular, on June 2007 four seminars were held (two in Belgrade, one in Novi Sad and one in Nis) with key informants, that is, leaders of Serbian civil society organisations, in which the project themes were discussed and a questionnaire was illustrated and distributed in order to assess the existence, importance and features of the obstacles present in the “virtual map” as well as to gather indications for overcoming and handling the obstacles found. Fifty-three CSO leaders filled in the questionnaire. At the same time, a similar questionnaire was administered to seven experts on legal and civil society matters. Interviews were also conducted with scholars and key-persons of civil society in Serbia, and with representatives of the political sphere and of public administration. These interviews provided further information on Serbia’s juridical, administrative and social situation in order to draft the guidelines.

The research results formed the basis for drafting, on April 2008, a first version of these **guidelines** which were the object of a **training course** in Belgrade for 25 representatives of civil society and public administration. The course, entitled “**Legal frameworks for the advancement of civil society**”, was held at the Belgrade Open School. The present version was drafted on the basis of the feedback of lecturers and participants to the course, plus some further consultation with Serbian experts and scholars, including those that have taken part in the concluding seminar of the project (see below). We are particularly grateful to Dragan Golubović of ECNL for his contribution to the finalisation of those parts of the Guidelines more related to normative issues<sup>6</sup>.

Finally, the project envisaged a series of **public communication** activities including the creation of a website ([www.pravok.org](http://www.pravok.org)) and the promotion of work meetings on project themes as well as a concluding seminar (Belgrade, December 16th 2008) in which the contents of the guidelines, and the PRAVOK project in general, have been presented and discussed<sup>7</sup>. Parallel to this, **networking** and exchange activities were conducted among all the actors interested in the project themes.

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<sup>6</sup> We also thank Miroslav Prokopijevic of the Institute for European Studies for his feedback in the final stage of the drafting of the Guidelines

<sup>7</sup> The final seminar of PRAVOK project, “Fostering civil society in Serbia”, was held in Belgrade on December 16th 2008, at Institute of Economic Sciences (IES). This initiative has been organised in collaboration with the Institute of Economic Sciences of Belgrade and the Link Campus University of Malta. After the welcome addresses by Srdjan Redzepagic (vice director of Institute of Economic Sciences) and Anna Zambrano (head of Local Technical Unit of Italian Cooperation), and the introduction of Gabriele Quinti (Director of CERFE), Daniele Mezzana (PRAVOK project manager) presented the Guidelines. The discussion was introduced by the interventions of Miroslav Prokopijevic (Institute of European Studies, and University of Belgrade, Faculty of Political Sciences) and Dejan Milenkovic (lawyer and legal expert of YUCOM). Stanka Parac (Local Democracy Agency of Subotica), Zdenka Milivojevic, Association ARGUMENT), Miljan Radunovic (AEGEE Association) and Vesna Kolundzija (NGO Re-Akcija) intervened during the seminar. Vesna Ciprus (international consultant), Bojana Radovanovic (IES), Marina Petkovic (Belgrade Banking Academy), Valentina Boskovic (Student Union of Serbia), Milica Rodic and Sonja Skarep (ONG “Fractal”) also did participate.

## 4. The guidelines

These guidelines are a **tool** for those actors interested in promoting and strengthening the presence of civil society in Serbia and in creating partnerships between CSOs and national government or between CSOs and local administrations and businesses.

The guidelines contain **information** and **interpretative elements** on the current juridical and non-juridical obstacles to civil society in Serbia, and some suggestions and recommendations for overcoming these obstacles, also bearing in mind the positive experiences gained and those underway in this country.

The guidelines are divided into **three parts**, besides this **introductory section**.

- **Part One, “Guidelines for the thematisation of the obstacles for civil society”** (chapters one to four), starts by presenting the map prepared by the PRAVOK project in Serbia and provides tools and directions for identifying the main areas of existing (juridical and non-juridical) obstacles and for analysing their features and manifestations.
- **Part Two, “Guidelines for interpretation and for action”**, uses the ranking of the mapped obstacles and a transverse interpretation of a sociological kind of the map itself in order to establish five risk areas for civil society that correspond to five “clusters” of obstacles (chapter five). These clusters, to be considered as indicators of the “structural” and deep problems to be tackled, are called “Fundamental rights” (chapter six), “Sustainability” (chapter seven), “Autonomy” (chapter eight), “Ability and professionalism” (chapter nine) and “Public presence” (chapter ten). The existing problems are specified for each of these clusters, while chapter eleven presents some complex methods (“social regimes”) for handling the obstacles identified in the study and provides some practical indications.
- **Part Three, “Guidelines for training”**, provides the actors interested in handling the existing obstacles for civil society with a series of recommendations on the possible ways of setting up and implementing training activities in this regard, both at a theoretical level (chapter twelve) and at a methodological and technical one (chapter thirteen).





PART ONE

**GUIDELINES FOR THE  
THEMATISATION OF OBSTACLES  
FOR CIVIL SOCIETY**



Chapter One

**The construction of a map  
of obstacles for civil society**



## 1. A map of obstacles for civil society: why and how?

### 1.1. *Thematising obstacles for civil society: the usefulness of a map*

To effectively deal with the juridical and non-juridical **obstacles** for civil society it is first necessary to **know them in detail**. To this end, it is important to go beyond mere generic information or loose summaries on them and to understand what **type** of obstacles exist and, more specifically, what they actually are **one by one**.

A fundamental operation in this regard is **thematisation**, that is, the identification of the different features of a given topic or problem. Usually, to carry out effective thematisation, it is worth studying the way the **scientific literature** and **policy documents** at international, regional and national level deal with theories and concepts, on the one hand, and policies, strategies and experiences relating to this topic or problem, on the other.

As regards the PRAVOK project, thematisation consisted of studying the way obstacles (in this case, to civil society) are **identified, classified and analysed** in the international context and in transition countries to then identify the **obstacles actually present** in Serbia.

To this end, it was decided to **map** the obstacles. A map offers considerable **advantages** because:

- It is a **tool that is easier to use** than a complex (albeit necessary) treatise of a technical-legal kind.
- It allows a **clear pinpointing of the various problems** to be faced.
- It enables determining which problems are **more important** than others.
- It allows **better identifying the priorities for action** and thus the more important and urgent **actions** for solving the problems found and for acting on specific aspects.
- It offers the possibility of having a **summary** view of the existing problems besides an analytical one.
- It is a tool that can be used also for making **comparisons** either of different countries or even within the same country.

In this **first part of the guidelines** we shall thus present a **proposal for thematising** the juridical and non-juridical obstacles for civil society in Serbia, starting from a **map** of the obstacles drafted in this country.

In particular, this chapter will provide an overview of the **map**. Chapters two and three will respectively illustrate the **juridical and non-juridical obstacles** found in Serbia. Finally, chapter four will make some **concluding remarks** on the way the obstacles for civil society can be thematised and grasped in view of the actions geared to overcoming them.

### *1.2. Obstacles for civil society: the approach used for creating the map*

To explain how the map of obstacles was drafted, it is first worth underlining that the PRAVOK project has a **sociological framework** and is based on the definition of **civil society** as a set of actors that actually practice “**social responsibility**”.

This expression is taken to mean a group’s motivation to act in order to take part in the direct or indirect **management** of existing **social and environmental risks**, within a context of **joint governance** of problems, which sees the participation of public, private and non-profit actors. In relation to this definition of civil society, the **types of actors** that can be taken into consideration include, amongst others, NGOs, mutual-assistance groups, cultural associations, firms, research centres, professional associations, the media, and more besides.

Now, these actors can face specific **obstacles** in their activities. An “obstacle”, here, may be defined as a **legal structure** in the strictest sense (that is, of a juridical nature) or in a broader sense (that is, based on organisational, political, social or cultural rules) which systematically impedes the exercising of social responsibility in the sense mentioned above.

To examine the **obstacles**, the project envisaged a **study** which specifically adopted a **sociology of knowledge** approach.

This approach, as recalled in the first part of this document, formed the basis for conducting a **documentary analysis** by consulting the following information **sources**:

- Scientific literature;
- International documentation;
- Regional documentation regarding the Balkans and national documentation specifically on Serbia.

More specifically, 177 international sources and 32 Serbian ones were consulted, thereby identifying the **obstacles** through appropriate interpretation grids. The obstacles were then entered in a computerised database, to be sorted and classified.

This analysis enabled creating an **international inventory of obstacles potentially present**, in Serbia and elsewhere. This inventory thus made up a **“virtual” map** (“virtual” in that the obstacles were not yet verified) consisting of 212 obstacles. This “virtual” map represented a sort of **check-list** for their identification in specific national contexts, such as the Serbian one.

The “virtual” map firstly took into account the obstacles of a strictly **juridical** type, that is, the ones linked to the presence of laws and regulations. The existence of **non-juridical** obstacles, that is, the ones connected to social, cultural, political and organisational dynamics, was also taken into consideration.

After drafting the “virtual” map, it was compared with the **actual reality of Serbia**, thereby producing a **“real map”**, that is, specifically referring to this country. The production of the latter map, as also recalled in the first part of this document, came about by conducting a series of **seminars** and **interviews** in Serbia, in particular by administering a questionnaire to 53 leaders of **civil society organisations** and to 7 **experts** (see appendix to this chapter), by a further gathering and analysis of **documents** and through other operations of information-gathering and in-depth analysis.

Starting from the aforesaid operations, the results obtained were processed and interpreted in order to produce – through the work of a specific committee of experts<sup>8</sup> (see box) – a **map of 120 obstacles** that are specifically found in Serbia.

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<sup>8</sup> The commission was composed of Marina Cacace, Dragan Golubovic (jurist), Federico Marta (socio-psychologist), Daniele Mezzana and Giancarlo Quaranta (sociologist, senior consultant).

The committee of experts responsible for identifying the **map of obstacles** in Serbia on the basis of the research results, worked according to the following steps.

*a. Applying the principle of "convergence"*

Firstly, an initial real map **entry criterion** was applied, that is, the principle of "**convergence**". According to this principle, an obstacle present in the virtual map juridical or non-juridical was regarded as an acknowledged obstacle, if in the research phase it had been indicated as being in existence by at least one key informant and one expert.

*b. Correction measures*

Secondly, some **corrective measures** were applied in adopting the convergence principle. To this end, any obstacle which received a positive vote by at least one third of all those judging it, even when there was no convergence between key informants and experts, was taken into examination again. This was done to overcome the fact that many obstacles received a judgement by only one expert.

This further criterion was, in any case, jointly applied to an **analysis of written materials** (information and observations) with which the compilers (and particularly CSO leaders) in most cases supplemented the voting on the various obstacles they examined. The experts' written observations were also taken into account in this regard.

*c. Examining further proposals regarding the obstacles*

The **proposals** for re-wording the titles and definitions of the obstacles, put forward by the key informants and experts, were also examined. The respondents' proposals of any new obstacles were also assessed<sup>9</sup>.

*d. Overall evaluation of the results*

On the basis of the activities illustrated in the previous points, the committee of experts proceeded to evaluating the results as a whole as well as any possible corrective measures. In this regard, it made some ad hoc checks on specific obstacles or set of obstacles as well as an overall examination of map consistency.

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<sup>9</sup> After this activity, the titles and definitions of some of the obstacles were reworded, and a check was made to ensure that all the proposals for new obstacles fitted within the already available ones.



*e. Final drafting of the map*

After carrying out the operations described in the previous points, the committee prepared the final version of the map of obstacles for Serbia to be used for the project aims.

The map thus drafted represented the **knowledge basis** for further project activities, that is, in preparing the present **guidelines** and the **training course** (see part one and part four).

## 2. Overview of the map of obstacles

The **map of obstacles** concerning Serbia that was drafted includes, as already mentioned, **120 obstacles**, divided according to type of obstacle, as shown in the following table.

**Table 1 – Distribution of obstacles according to type**

Type of obstacles	Number of obstacles
Juridical obstacles	57
Non-juridical obstacles	63
<b>Total</b>	<b>120</b>

Source: CERFE, 2008

The 57 **juridical type obstacles** were in turn divided into **11 areas**, according to the forms of classification found in the international literature, and are as follows:

- I. Constitutional rights and general issues
- II. Juridical existence of the CSOs
- III. Public benefit organisations
- IV. Internal governance and structure
- V. Economic and financial activities
- VI. Political activities
- VII. Economic and financial resources
- VIII. Tax benefits
- IX. Foreign CSOs
- X. Partnerships and service provision
- XI. Self-regulation

The distribution of the 57 juridical obstacles according to area is illustrated in the following table.

**Table 2 – Distribution of juridical obstacles according to area**

Area	Number of obstacles
I. Constitutional rights and general issues	8
II. Juridical existence of the CSOs	4
III. Public benefit organisations	3
IV. Internal governance and structure	3
V. Economic and financial activities	4
VI. Political activities	3
VII. Economic and financial resources	9
VIII. Tax benefits	9
IX. Foreign CSOs	1
X. Partnerships and service provision	9
XI. Self-regulation	4
<b>Total</b>	<b>57</b>

Source: CERFE, 2008

The table shows that the **areas of juridical obstacles mostly represented** in the map are the ones concerning economic and financial resources, tax benefits, partnerships and service provision, and constitutional rights and general themes. As we shall see in part two, these areas are also among the ones containing the obstacles that, to some extent, turned out to be more important in the Serbian context, and thus call for specific attention as regards knowledge and actions.

The 63 **obstacles of a non-juridical type** were instead divided into **5 sections**, and namely:

- a. Cultural and social dynamics
- b. Political dynamics and latent functions
- c. Bureaucratic dysfunctions and the capacity of public administrations and of judicial bodies
- d. Relations with the private sector
- e. CSO capacity and sustainability

The distribution of the 63 non-juridical obstacles according to section is illustrated in the following table.

**Table 3 – Distribution of non-juridical obstacles according to section**

Section	Number of obstacles
a. Cultural and social dynamics	12
b. Political dynamics and latent functions	16
c. Bureaucratic dysfunctions and the capacity of public administrations and of judicial bodies	11
d. Relations with the private sector	4
e. CSO capacity and sustainability	20
<b>Total</b>	<b>63</b>

Source: CERFE, 2008

As one can see, the most represented obstacles in this part of the map are those linked to the CSOs' professional capacity and sustainability, the political dynamics and latent functions of the various actors (CSOs and those who interact with them) and the many complex cultural and social dynamics involving CSOs themselves in the Serbian context. In any case, as we shall see better in the next part of the guidelines, even the other two sections (i.e. bureaucratic dysfunctions and relations with the private sector) although smaller, have reclined a significant degree of attention .



Appendix  
to Chapter One  
**List of consulted civil society organizations  
and experts**

**Civil society organizations**

- ABCD Beograd
- AEGEE
- Agora
- Ambascadori životne sredine
- Amity
- Anti trafficking centar
- ARCI - Cultura e sviluppo
- Associazione Poverello
- ASTRA – Anti trafficking action
- Caritas
- Centar modernih veština
- Centar za interaktivnu pedagogiju
- Centar za zaštitu potrošača "FORUM"
- Center for development and integration
- Dobro Drvo
- Društvo mladih istraživača Bor
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- Good Luck
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- Ljudska
- Logos Pirot
- Micro Development Fund
- Muslimansko humanitarno društvo Merhamet - Sandžak
- Nezavisnost
- Novosadska Novinarska Škola

- Odbor za građansku inicijativu
- Odbor za ljudska prava
- Osvit
- Parliament
- Proconcept
- Prosvil-CGIL
- Resource center - Niš
- Savremenu
- SRCE
- Srećna porodica-Happy family
- Srpski Demokratski Forum
- Studentska Unija Srbije
- Studentski forum za Latinsku Ameriku
- Timok
- UCODEP
- Udruženje građana Otvorene perspektive
- Udruženje građana "Nevort"
- Udruženje za medicinsko pravo Srbije
- Veliki I Mali
- Vojvodjansko udruženje za pomoć osobama sa autizmom
- Vojvodjanska zelena inicijativa (FONDRNPS)
- Zavod za ravnopravnost polova
- Zenski Prostor

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## Chapter Two

# **Juridical obstacles**





The **areas** and individual **obstacles** making up the map will now be illustrated in detail, starting from the **juridical** ones, which will be presented in this chapter, while the non-juridical ones will be dealt with in chapter three.

The following information elements will be reported **for each area of juridical obstacles**.

- Firstly, the **themes and problems** linked to each area of the map, both in general and specifically regarding Serbia, will be **briefly illustrated**.
- Secondly, the **list of obstacles** contained in that **area**, and which have been found in Serbia, will be reported.
- Thirdly, **each obstacle will be described** by illustrating what it consists of and the problems it gives rise to, in general and/or in the Serbian context<sup>10</sup>.
- Finally, some of the **bibliographic and documentary sources** which served to identify the obstacles in a given area will be listed; these sources may be referred to for further details on the information presented here<sup>11</sup>.

It is worth stressing here that the map illustrates the **situation as it stood** at the time of the research phase. Some novelties at a political and legislative level – and especially the **new law bill on associations** – can deeply change this situation in various ways (see chapter four).

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<sup>10</sup> Further decriptive elements referring to the Serbian situation will be provided (for each obstacle or set of obstacles) in part three of the Guidelines.

<sup>11</sup> In drafting the virtual map, the sources relating to each obstacle were identified and are available from the team. So as not to overly burden this text, these guidelines will include only some of the sources, as an example, at the end of each chapter.



## AREA I

### CONSTITUTIONAL RIGHTS AND GENERAL ISSUES

The first area of obstacles to consider concerns **constitutional rights** and **general juridical issues** that can influence the type of presence of CSOs in society.

In the international literature, this area of obstacles usually concerns aspects which shape the juridical **context** in which CSOs find themselves and operate. These aspects may, for example, consist of the problems of **connection** between laws on CSOs and other laws, the ineffective **safeguarding of human rights**, the inadequate **legal definition of the sector** of civil society or of its individual components.

In **Serbia** this area contains **8 obstacles** and, as we shall see in part two, is present, on the whole, with a certain intensity. In particular, the obstacles concerning the lack of a clear, univocal and up-to-date definition of “**non-profit organisation**” and the **non-systematic nature of legislation** on CSOs are rather important.

It must be stressed that, for this and other areas, the **new law bill** on associations (is in the process of being approved by the Serbian Parliament) can make significant changes as regards the coherence of the legislation and the solution of specific problems and deficiencies.

Here is a summary table of the obstacles contained in Area I.

Area I Constitutional rights and general issues	
Obstacle no.	Name of obstacle
1	Insufficient recognition of the right of association
2	Ordinary legislation contradicting the rights to free association established in the Constitution

3	Lack of a clear, univocal and up-to-date legal definition of "non-profit organisation"
4	Lack of any clear system for classifying the various types of CSOs
5	The non-systematic nature of CSO legislation
6	Existence of uncoordinated consecutive provisions concerning CSOs
7	Discrepancies in compliances requested of organisations by different administrative authorities
8	Lack of legal recognition of voluntary work

The 8 obstacles included in this area are presented more analytically below, along with their **indication number**, **name** and **description**. This presentation format will also be used for the other areas in this document.

## **1. Insufficient recognition of the right of association**

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Even though most constitutions recognise freedom to associate, the degree to which such freedom is extended can vary. In some countries, for instance, specific categories of associations are automatically prohibited by the Constitution, while it would be more correct to verify on a case-by-case basis the occurrence of conditions that justify their exclusion. In others, all organisations are forced to register, thus limiting the freedom of informal associations. This is the case in Serbia, even if the new law bill on associations should overcome this problem.

## **2. Ordinary legislation contradicting the rights to free association established in the Constitution**

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Restrictions to the freedom of association, which is proclaimed – sometimes too laconically – by constitutions, can be introduced through ordinary legislation that sometimes preserves the spirit of previous authoritarian regimes. In some countries, for instance, the law gives the governing executive broad discretionary powers regarding the setting up of associations; in others a decree of the highest authority of the State is required for incorporation, while informal associations – as is the case today in Serbia – have an extremely limited juridical capacity.

### **3. Lack of a clear, univocal and up-to-date legal definition of “non-profit organisation”**

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The confusion regarding the rules applicable to CSOs is often facilitated by the lack of any clear, up-to-date definition of the non-profit sector as a whole and of the various types of organisation that can be set up. The same traditional figures of association and foundation are beginning to be inadequate with respect to the development of the reality of civil society. In some countries, including Serbia, the lack of clear rules to distinguish non-profit organisations means that businesses can be registered as CSOs, thereby damaging the sector’s image. Moreover, the legislation governing the sector is often based on obsolete principles, sometimes stemming from previous political regimes. In Serbia, for instance, as regards the third sector, a Serbian law of 1982 and a more liberal federal law of 1994 are both still in force.

### **4. Lack of any clear system for classifying the various types of CSOs**

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Laws on CSOs often do not adequately allow for differences between the various kinds of organisation they are meant to regulate. In some countries an “identity crisis of civil society organisations” can be registered, which causes problems in allocating tax benefits and subsidies. It sometimes happens, even in Serbia, that the framework laws regulating the sector do not make any distinction, so that all organisations are treated in the same way, even from a fiscal standpoint – from charities to local development organisations. The lack of distinctions also means there is state interference and control without following any principle of proportionality with respect to organisational size.

### **5. The non-systematic nature of CSO legislation**

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The lack of coherence in CSO legislation is found in various forms: the existence of too many laws and the resulting dispersion of legislative sources; the lack of co-ordination between special laws on CSOs and general legislation; provisions for specific typologies of organisations in the absence of any frame of reference for the non-profit sector in general; legislative gaps linked to the rapid development of the subject. This situation can lead to an increase in the discretionary powers of law enforcement authorities. The problem of the non-

systematic nature of legislation in this field is also found in Serbia, and this problem is now being tackled.

## **6. Existence of uncoordinated consecutive provisions concerning CSOs**

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A particular aspect of the non-systematic nature of CSO legislation is the lack of co-ordination between previous and subsequent legislation which is not properly integrated owing to imperfections in the legislative procedure. For example, there are countries in which the law on associations may be incoherent with respect to the civil code, and this creates confusion and makes it more difficult to implement laws. In other cases, as in Serbia, the sector is burdened by laws and decrees written from different perspectives and in different contexts (consider the aforesaid laws of 1982 and 1994). These laws are often incoherent and at times contradictory, and their discrepancies lend themselves to many possible interpretations.

## **7. Discrepancies in compliances requested of organisations by different administrative authorities**

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When there is more than one CSO monitoring authority, then in many cases there are laws issued by different organisations which regulate the same kind of organisations in a different way. Phenomena of this kind have also been found in the Serbian context.

## **8. Lack of legal recognition of voluntary work**

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The lack of suitable regulation in voluntary work is a serious obstacle for CSOs. In some countries – like Serbia – there is no specific regulation<sup>12</sup>, while in others the law does not even define the expression “voluntary work”. Still in others, instead, the law, although recognising the importance of voluntary work, establishes a legislative framework favourable only for PBOs, which often represent a minority of CSOs. The lack of regulation may lead to a situation

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<sup>12</sup> it is to be noted, however, that a group of experts has recently drafted a proposal for a bill that has been transmitted to the Serbian Parliament

where organisations tend not to use voluntary workers for fear that, after inspections, these people could be considered employees and that the organisation can thus be prosecuted for infringing labour legislation. Without any clear juridical statute, voluntary workers risk losing their relative indemnity if they are unemployed.

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## AREA II

### JURIDICAL EXISTENCE OF CSOs

The second area of obstacles refers to problems arising when **setting up a CSO**, as regards its legal status.

The problems usually encountered in this regard, somewhat found all over the world according to the relative literature, are the ones concerning **registration** and the **legal requirements** necessary to set up an association.

As regards the situation in **Serbia**, this area of obstacles – although present – seems to be less important than others. This is particularly true if we consider that the **new law bill** on associations envisages specific **improvements** in some aspects of considerable importance such as abolishing the obligation of registration and decreasing the minimum number of founder members necessary to set up an association (at present, 10 people are required).

In particular, 4 obstacles were found in Serbia.

Area II Juridical existence of CSOs	
Obstacle no.	Name of obstacle
9	Obligation of registration
10	Establishing a minimum or maximum number of members for setting up an association
11	Not recognising foreigners' rights to set up associations
12	Prohibition for legal entities to set up CSOs

Here is a more analytical description of these 4 obstacles.

## **9. Obligation of registration**

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In some countries, such as Serbia (at the time of writing), CSO registration is obligatory and the activities of informal groups are prohibited, which constitutes an undue obstacle to the freedom of association and greatly extends government control over civil society groups. This obligation is particularly oppressive where the registration procedure involves obstacles and difficulties, and so CSOs have few possibilities of actually operating legally. In many countries all activities carried out by CSOs which are not registered are illegal, and in some the law even envisages serious penalties for those who run, finance or belong to an informal group. Such provisions, on the one hand, involve a restriction of *ad hoc* civic initiatives while, on the other, conflict with art. 11 of the European Convention of Human Rights.

## **10. Establishing a minimum or maximum number of members for setting up an association**

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A high number of members as a requirement for setting up associations does not meet with sufficient justification, while it greatly hinders the free creation of small organisations. Seven, ten or fifteen members might be necessary in different countries, while in a case the law establishes a minimum number of members as high as 50. In Serbia's case, this number is currently 10, even though the new law bill aims to lower this to 3 people.

## **11. Not recognising foreigners' rights to set up associations**

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In some countries the right to set up associations is worded in such a way that it infringes the minimum standards of international law. Some constitutions, for example, recognise the right to set up associations only to citizens and thus contrasts with article 11 of the European Convention that recognises this right to all physical people, regardless of citizenship, residence or domicile. In Serbia, only citizens having the right to vote may be founders of associations. However, foreign organisations can have their premises in Serbia and their staff, but not based on the laws on associations of citizens. Foundations and funds can be established by foreign legal entities and citizens without limitations.

## 12. Prohibition for legal entities to set up CSOs

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The possibility for legal entities to set up new organisations should be provided for and suitably regulated. This prohibition is an unjustified obstacle to the development of the third sector. In some countries a foundation can be set up by legal entities provided they obtain prior government permission. In Serbia, according to the laws in force, only individuals can set up an association.

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## AREA III

### PUBLIC BENEFIT ORGANISATIONS

The third area of obstacles concerns those universally known as “**Public Benefit Organisations**” (PBO), that is, CSOs whose aims are considered to be of particular worth.

Therefore, this area of obstacles deals with the **inadequacy** of that part of legislation which should attribute a **specific legal and fiscal status favourable** to this kind of organisation. This generally means various kinds of inadequacy, ranging from **inconsistencies** in legislation to **rigidities** of laws with respect to the variety of situations actually found.

In **Serbia**, in particular, this area of obstacles is, on the whole, among those of **intermediate importance**. However, it must be stressed that, as we shall see in part two, one of the obstacles contained in Area III ranks among the first 20 in order of importance. This is obstacle 13, which concerns the discrepancy between the framework regulation and the tax law when defining public benefit organisations.

The three obstacles contained in this area that were found in Serbia are the following.

Area III Public benefit organisations	
Obstacle no.	Name of obstacle
13	Disparity between the framework regulation and tax law in defining Public benefit organisation (PBO) (i.e. activities deemed for public benefit)
14	Existence of peremptory lists of aims defining the public benefit concept
15	Lack of standardisation in dealing with PBOs in relation to the different organisational forms adopted

Here is a more analytical description of the three obstacles.

### **13. Disparity between the framework regulation and tax law in defining Public benefit organisation (PBO) (i.e. activities deemed for public benefit)**

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Most legislations recognise – even using different legal labels – the existence, within civil society, of organisations whose aims are deemed to be particularly worthy and important for pursuing the public good (PBOs). As a result, special benefits are granted to these organisations, balanced by the greater controls and reporting obligations to which they are usually subjected. Problems arise when – as found in Serbia – criteria adopted in the framework regulation for identifying such organizations are not the same used in the tax laws defining fiscal benefits.

### **14. Existence of peremptory lists of aims defining the public benefit concept**

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In establishing the public benefit concept, legislators should avoid drawing up peremptory lists devoid of residual formulas, since they risk leading to a restrictive interpretation by the authorities concerned. For its very nature, the concept calls for a certain degree of flexibility in order to reflect the constantly changing reality of CSOs, as is currently the case in Serbia.

### **15. Lack of standardisation in dealing with PBOs in relation to the different organisational forms adopted**

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In some countries, PBO status and the benefits granted to the organisations concerned are different depending on the various organisational forms they can take on (associations or foundations, for example). The resulting risk, also found in Serbia, is a lack of standardisation in their treatment, which turns out to be unjustified since it is not the organisational form that counts in granting benefits, but the nature of the objectives pursued by the organisation.

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## AREA IV

### INTERNAL GOVERNANCE AND STRUCTURE

The fourth area of obstacles deals with the juridical problems arising with regard to the **structuring** and **internal governance** of CSOs. These obstacles are the typical ones linked to aspects such as restrictions in CSO self-determination or the excessive powers of inspection of public authorities.

The obstacles linked to this area thus concern the presence of forms of great **external control** on CSOs (or the attempt to exert this control). These forms can have both *direct* negative effects on CSO life and *indirect* effects when the inspection can turn into an instrument for pressurising and influencing the CSO.

As regards the situation in Serbia, this area of obstacles turned out to be the **least important**, on the whole. In any case, the following three obstacles were found.

Area IV Internal governance and structure	
Obstacle no.	Name of obstacle
16	Excessive governmental powers of CSO inspection
17	Existence of administrative regulations allowing inspections on organisations when the law does not establish particular regulations on the matter
18	The obligation of notifying memberships of international organisations

Here is a more detailed description of the three obstacles.

## **16. Excessive governmental powers of CSO inspection**

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In many countries the government's powers of inspection and control of CSOs are excessive. The authorities responsible for registration may be for example authorised by the law to inspect the organisations' activities and financial transactions, as well as to require them to submit documentation at any time and without any limitation; the authorities can sometimes send government representatives to an organisation's internal meetings (assemblies, etc.). In some countries the government can interrupt meetings with a request to check the premises and documents or even to interrogate the organisation's representatives. Such inspections, above all in humanitarian organisations, are sometimes carried out with no prior notice or with very little notice. In Serbia, it was seen that this type of obstacle was sometimes found in the form of inspections and monitoring of organisations particularly critical of public institutions.

## **17. Existence of administrative regulations allowing inspections on organisations when the law does not establish particular regulations on the matter**

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Very often, inspections of CSO financial activities and issues are based on administrative regulations, traditionally inspired by repressive principles, while the laws on associations do not envisage any regulation on the matter. In the Serbian context, it was found that these kinds of inspection – over and beyond their actual outcome – are sometimes used as a way to pressurise CSOs.

## **18. The obligation of notifying memberships of international organisations**

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Some countries fine CSOs if they fail to timely notify the relative control authority of having become a member of an international organisation. This also happens in Serbia, even if the envisaged sanctions do not actually seem to be applied.

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## AREA V

### ECONOMIC AND FINANCIAL ACTIVITIES

The fifth area of obstacles concerns the economic and financial activities of CSOs.

In particular, the obstacles linked to this area are the ones found, in various ways, in the **prohibition**, or different forms of **limitation**, of the economic and/or financial activities that CSOs can carry on in order to raise the necessary funding for their existence and to guarantee their sustainability over time.

In **Serbia**, the obstacles of this area are of some importance and two of them in particular (as we shall see in part two) rank among the first 20 most important ones. Namely, these are obstacle no. 19 (“Lack of clarity of the definition of “economic activity of CSOs”) and obstacle no. 20 (“Uncertainty as to the possibility of conducting certain economic activities”).

In Serbia, the 4 obstacles of this area are the following.

Area V Economic and financial activities	
Obstacle no.	Name of obstacle
19	Lack of clarity of the definition of “economic activity of CSOs”
20	Uncertainty as to the possibility of conducting certain economic activities
21	No distinction, for tax purposes, between occasional economic activities and on-going ones
22	Low threshold of tax-exempt income generated from CSO’s economic activities

Here is a detailed description of these obstacles.

## **19. Lack of clarity of the definition of “economic activity of CSOs”**

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The lack of a plain definition of “economic activity of CSOs”, clearly distinguishing between economic activities in the strict sense and voluntary activities (even though partially or totally remunerated), makes it difficult to have – in many countries, including Serbia – a coherent regulation of the matter, including the question of the possibility of asking for a payment, at least partial, for the services rendered. It happens that organisations are uncertain as to the possibility of classifying some of their activities as “economic”, and often government officials are equally uncertain as to how to deal with them.

## **20. Uncertainty as to the possibility of conducting certain economic activities**

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The legislation of some countries explicitly allows the possibility for CSOs to conduct economic activities directly connected to their statutory aims, but does not say anything about unrelated activities. A clear disposition would be desirable in order to avoid leaving excessive room for uncertainty and discretion on the part of public administration, as also found in Serbia. For the same reason, and so that the right to conduct related economic activities be effective, it is necessary to explicitly formulate a criterion of distinction between related and unrelated activities.

## **21. No distinction, for tax purposes, between occasional economic activities and on-going ones**

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Since economic activities are allowed in many democratic countries of Eastern Europe, the key problem in the region is their taxation. For example, not always are on-going economic activities distinguished from occasional ones (such as lotteries, the sale of donated assets, etc.), while many feel that only the on-going activities should be considered for tax purposes.

## **22. Low threshold of tax-exempt income generated from CSO's economic activities**

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Some countries, like Serbia, have decided to exempt CSOs' economic activities, but only those under a certain threshold and to tax the rest.

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## AREA VI

### POLITICAL ACTIVITIES

The sixth area of obstacles concerns the public presence of CSOs, and namely the **political** sphere.

This area of obstacles especially deals with aspects like the lack of effective ways of involving CSOs in determining and implementing policies, or even limitations on CSOs' capacity to be heard in the **public arena**.

In **Serbia**, this area of obstacles carries **considerable weight**. As many as 2 obstacles out of 3 that were found in the Serbian context rank, as we shall see in part two, among the 20 most important ones, and namely obstacles nos. 24 and 25 (see the list below).

Area VI Political activities	
Obstacle no.	Name of obstacle
23	Existence of a hazy borderline between permitted and non-permitted political activities
24	Lack of legal mechanisms allowing CSOs to actively take part in defining public policies in their field
25	Lack of effective mechanisms for appointing exponents for properly representing civil society in sectoral public bodies

Here is a more analytical description of the three obstacles of this area.

#### **23. Existence of a hazy borderline between permitted and non-permitted political activities**

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The thin line dividing the political activities a CSO is allowed to undertake from the ones reserved to political parties is not always clear-cut. In certain cases, for example, a charity can publish and disseminate material commenting on government policies concerning its field of activity, but this material must not

suggest supporting the manifesto of any party or candidate. Even in Eastern European countries the laws are often not sufficiently clear in distinguishing between those political activities that are allowed and those which are not. The Lithuanian Law on Foundations, for example, contains a prohibition for these organisations to take part in political activities, without defining the concept of “political activity”. The resulting risk is that of an extensive interpretation of the prohibition by the public administration. In Serbia, the question of CSO political activities is not (or not yet) regulated by law, and it is sometimes found that, especially at election time, there is some confusion between the roles of CSOs and political parties.

#### **24. Lack of legal mechanisms allowing CSOs to actively take part in defining public policies in their field**

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The need to consult CSOs in relation to defining public policies on issues concerning their field of activity is in line with the idea of participative democracy. Consultation is particularly important in those countries in which there is prohibition for CSOs to directly take part in political activities. In some countries, instead, there are no clear mechanisms for encouraging CSO participation in decision-making. This also happens in Serbia, although important participation experiments have been carried out in several areas (e.g. struggle against poverty), some of which are still under way.

#### **25. Lack of effective mechanisms for appointing exponents for properly representing civil society in sectoral public bodies**

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In sectoral public bodies envisaging the participation of representatives of civil society, these representatives are often appointed by the executive power, which does not guarantee effective protection of the interests of the non-profit sector and of citizens in general.

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## AREA VII

### ECONOMIC AND FINANCIAL RESOURCES

The seventh area of juridical obstacles concerns the tools enabling CSOs to obtain the **economic and financial resources** they need to carry on their activities.

This area usually includes obstacles such as the ones linked to the difficulty in obtaining **credit** and in raising **funds**, to the ineffectiveness of public **financing** mechanisms or to the lack of adequate **incentives for donations** by private individuals.

In **Serbia**, this area of obstacles is rather important. As we shall see in part two, as many as 3 of the 9 obstacles it includes rank among the top ten most important ones. The three obstacles are no. 30 (“Lack of transparency of government funding”), no. 33 (“Lack of tax incentives for individuals making donations to CSOs”) and no. 34 (“Few tax incentives for firms making donations to CSOs”).

Here is the list of 9 obstacles of this area.

Area VII Economic and financial resources	
Obstacle no.	Name of obstacle
26	Difficulties in obtaining credit
27	Fundraisers’ need to meet complex legal criteria which sometimes come from different levels of authority
28	Prohibition for foundations financed by private enterprises to do fundraising or to ask for donations
29	Prohibition or restrictions on government funding
30	Lack of transparency of government funding
31	Existence of laws that create difficulties and restrictions for accessing foreign funds
32	Difficulties in exchanging currencies at real market rates
33	Lack of tax incentives for individuals making donations to CSOs
34	Few tax incentives for firms making donations to CSOs

Here is a detailed description of these obstacles.

## **26. Difficulties in obtaining credit**

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The excessive importance that banks in some countries, including Serbia, give to real estate collateral to secure loans makes it difficult for CSOs to obtain credit. There are no other sufficiently widespread indicators that can assess, for example, the guarantee represented by creditworthiness based on the working and earning capacity of the beneficiaries of CSO services.

## **27. Fundraisers' need to meet complex legal criteria which sometimes come from different levels of authority**

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In some countries, and, as we found, also in Serbia, the authority controlling public fundraising has discretionary powers and can impose conditions and limitations to this activity. In federal countries differences in state regulations mean it is very costly to conduct fundraising on a national level.

## **28. Prohibition for foundations financed by private enterprises to do fundraising or to ask for donations**

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The unjustified prohibition of fundraising for foundations financed by private enterprises limits the action potential of these organisations.

## **29. Prohibition or restrictions on government funding**

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There are cases in which the Constitution prohibits Parliament from decreeing donations or subsidies to private law organisations. In other cases, instead, the provision of public funds must be authorised by a specific law. At times, the law establishes that public enterprises can make donations to CSOs only as regards some specific sector of activity, as was also found in Serbia.

### **30. Lack of transparency of government funding**

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The frequent lack of a unitary reference legislation on the management of subsidies for non-profit organisations favours clientele systems and lack of transparency, leading to the consequent lack of clarity on the beneficiaries of public financing. From a reading of the expenditure items in the national budgets, actually, it is not often clear what kind of organisations are guaranteed funding and on what grounds. In countries where the government distributes a percentage of the proceeds of national lotteries to CSOs, it can sometimes also be registered a lack of determination of the criteria used for distributing the funds raised. When access criteria are hazy, this obviously leaves space for misuse and improper conduct. In Serbia, difficulties were particularly found in effectively “tracing” the path of public funds destined for CSOs.

### **31. Existence of laws that create difficulties and restrictions for accessing foreign funds**

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The lack of clear laws on accessing foreign funds, or the existence of restrictions and prohibitions, seriously limit the development prospects of the CSO sector in developing countries, making it difficult to access funds made available by international cooperation agencies and donations from foreign institutions and individuals. In some countries, CSOs cannot receive foreign funds without prior permission from governmental authorities, which have to check the use that the CSOs wish to make of these funds. In other countries, CSOs must stipulate an insurance policy in order to receive funding from some international bodies. In others still, foreign contributions are subject to separate registration and tax. Moreover, a stringent state control can be imposed over all programmes and projects undertaken with foreign organisations’ support. Other restrictions include a peremptory list of authorised donors, banking restrictions and an onerous taxation. In some countries, for example in Serbia, only donations coming from government-authorised foreign actors are tax-exempt. In others the law obliges organisations to deposit foreign contributions in government-controlled banks. In some cases, moreover, the law prevents CSOs receiving foreign financing from any political participation and from receiving public funding for conducting research that could influence the electorate’s decisions.

### **32. Difficulties in exchanging currencies at real market rates**

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In countries where there is no possibility of freely converting foreign currency to local currency, governments often oblige CSOs to exchange the foreign funds they receive at disadvantageous official exchange rates. This obliges CSOs to risk turning to the black market or parallel market so as not to lose significant sums and thus to operate on the edge of lawfulness. In Serbia it was found that this often leads to losing an important part of the donations.

### **33. Lack of tax incentives for individuals making donations to CSOs**

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Donations to non-profit organisations are not always encouraged: there are countries – like Serbia – in which tax deductions are not envisaged for donations from physical persons, but only on enterprise contributions. Even when tax incentives for donations are envisaged, these incentives are often unsatisfactory and unappealing for potential donors. Many countries limit the size of the deduction with reference to taxable income and to a different extent for physical persons and legal entities. As regards physical persons, for example, tax deductions can be limited to a fixed percentage of taxable income (often ranging from 1 to 10 %). Excess donations with respect to the established limits are sometimes subject to onerous tax. These are rather severe limits that do not favour the sustainability of the sector by developing local philanthropy. In some countries, such limits may be significantly raised with the approval of the competent government authority: it is obvious that, in this case, the government can, at his discretion, select for particularly favourable treatment any CSOs it finds to its liking.

### **34. Few tax incentives for firms making donations to CSOs**

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In some countries, like Serbia, firms can deduct their donations to non-profit organisations only if these donations can be included in marketing or business promotion strategies. Other times, instead, the law provides for incentives only for donations from physical persons.



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## AREA VIII

### TAX BENEFITS

The eighth area of obstacles concerns **tax benefits** for CSOs.

This area includes all the typical obstacles that CSOs face when their respective countries do not have a suitable **taxation system** to sustain the life and activities of CSOs. This occurs, for example, when tax benefits are non-existent or very few, when there is a tax on voluntary work, when it is difficult to obtain a tax exemption, and so on.

In the **Serbian context**, this area was seen as **one of the most present and substantial ones** because it contains 9 obstacles, reported below. As many as 4 of these obstacles rank among the most important in Serbia (see part two): they are obstacles 35, 36, 41 and 42.

Area VIII Tax benefits	
Obstacle no.	Name of obstacle
35	Insufficient tax benefits for CSOs
36	Existence of CSO tax reporting standards of the same level of for-profit enterprises
37	The need for a formal procedure before the administrative authorities in order to enjoy tax benefits, despite there being a legal exemption system
38	Impossibility for CSOs to apply for tax exemptions before some years have elapsed since the start of their activities
39	The need to renew the status of tax-exempt organisation every few years
40	Taxation of CSO real estate property
41	Lack of public policy instruments (public funds, for instance) to mitigate the burden VAT imposes on non profit entities engaged in activities deemed for public benefit

42	Lack or ineffectiveness of a tax system favourable to CSOs for customs duties
43	Lack or insufficiency of the inheritance tax exemption system for CSOs

A detailed description of each of these obstacles is given below.

### **35. Insufficient tax benefits for CSOs**

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In some countries, tax benefits for non-profit organisations are very limited – so much so that financing and donations are heavily taxed. There are also countries in which incomes coming from associates' contributions are also taxed. In Serbia, CSOs currently have to pay tax for any incomes they received, including donations (there is 5% tax on any donation received).

### **36. Existence of CSO tax reporting standards of the same level of for-profit enterprises**

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In many countries, including Serbia, the lack of differentiation between CSOs and private enterprises as regards tax reporting creates difficulties for CSOs, which often do not have sufficiently qualified administrative and accounts staff.

### **37. The need for a formal procedure before the administrative authorities in order to enjoy tax benefits, despite there being a legal exemption system**

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In some countries, including Serbia, despite there being a legal exemption system, the CSOs are in any case asked to comply with heavy administrative formalities in order to obtain tax benefits.

### **38. Impossibility for CSOs to apply for tax exemptions before some years have elapsed since the start of their activities**

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CSOs can sometimes apply for tax exemption only after having operated for some years, or after having dedicated a fixed percentage of their annual income or expenditures to philanthropic activities.

### **39. The need to renew the status of tax-exempt organisation every few years**

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In countries, like Serbia, where tax benefits are granted by administrative authorities, CSOs may have to renew their own status every few years or so.

### **40. Taxation of CSO real estate property**

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In many countries, including Serbia, CSOs are not exempt from paying real estate property tax. In some cases, exceptions are only granted as an exception to the general rule. In others, instead, it is required that real estate property should not be used for conducting business activities (especially unrelated ones). In some other cases it is requested that the organisations operating in the property belong to certain types (humanitarian organisations, youth associations, etc.).

### **41. Lack of public policy instruments (public funds, for instance) to mitigate the burden VAT imposes on non profit entities engaged in activities deemed for public benefit**

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Even when CSOs' activities are VAT exempt, the very nature of this tax often prevents the exemption to be effective. Without public support, then, the organisations' products and services risk being as costly as commercial ones.

## **42. Lack or ineffectiveness of a tax system favourable to CSOs for customs duties**

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In some countries, CSOs are subject to taxation on imported goods, while in others the exemption from these customs duties is not very convenient owing to the long time needed for customs clearance of the goods. Sometimes, the list of goods exempt from customs duties is quite short. At others, as in Serbia, exemption does not concern NGOs as such but the kind of goods themselves.

## **43. Lack or insufficiency of the inheritance tax exemption system for CSOs**

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Inheritance tax exemptions are a fundamental tool for creating an environment favourable to the setting up of charity foundations and institutions, but they are granted with some difficulty. In some countries, however, there is no CSO exemption from inheritance taxes, while in others legislation only exempts specific types of organisations (foundations, for instance). Sometimes, despite the fact there is an inheritance tax exemption system for CSOs, some important categories of institutions can be excluded from this system.

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## AREA IX

### FOREIGN CSOs

This ninth area of obstacles concerns **foreign CSOs** operating in a given country.

The obstacles contained in this area generally deal with the difficulties or even impossibility for these CSOs to be set up and/or be registered, with problems as regards tax-exemption and the excessive inspections.

In **Serbia**, this area of obstacles is currently **among the least important ones** if we consider that only one obstacle was found, out of the various ones that could potentially be identified. In any case, it is an obstacle that must seriously be taken into consideration.

Area IX Foreign CSOs	
Obstacle no.	Name of obstacle
44	Existence of legislative gaps relating to the registration of a branch office of a foreign CSO

This obstacle is defined as follows.

#### **44. Existence of legislative gaps relating to the registration of a branch office of a foreign CSO**

Many countries, including Serbia, reveal a gap in legislation regarding the registration of foreign CSOs, which are still widely found in the country. This lack of regulation means it is practically impossible for CSOs to register themselves and has a negative impact on social security aspects for their employees. Another negative consequence is the possible political blackmailing of the CSOs themselves. In some countries CSOs have developed a practice of registering themselves as subsidiaries of commercial firms.

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## AREA X

### PARTNERSHIPS AND SERVICE PROVISION

The tenth area of obstacles deals with **partnerships** between CSOs and public organisations. This area includes obstacles frequently dealt with in the international literature and which essentially concern the lack of effective legal mechanisms to support partnerships between the non-profit and public sector, including those envisaging **service** provision by CSOs.

In the **Serbian context**, this area of obstacles is **among the most significant**. It includes 11 obstacles (see list below), 3 of which (nos. 45, 47 and 48) rank among the most important of all the ones found. Indeed, **no. 45** ranks as the top juridical obstacle for the most important CSOs in this country (see chapter five).

Here is the list of 11 obstacles in this area.

Area X Partnerships and service provision	
Obstacle no.	Name of obstacle
45	Lack of legal mechanisms for co-operation practices between the public and private sector
46	Lack of criteria for selecting CSOs entering government advisory bodies
47	Lack of clear laws governing the new legal entity of "partnership" (or co-operation contract) between non-profit organisations, the government sector and for-profit private sector
48	Lack of standard national legislation governing the management of partnership projects
49	Lack of mixed methods for directing, managing and controlling partnerships that reflect the importance of the participation of different actors
50	Rigid delimitation of the sphere of action of the parties, in partnership constitutive documents or deeds
51	Impossibility of creating partnerships if the CSO does not have legal personality

52	Difficulty for governmental bodies to make fund transfers in favour of CSOs
53	Lack of explicit and clear laws or rules enabling CSOs to take part in calls for tenders for providing various kinds of services

Here follows a detailed description of each one of these obstacles.

#### **45. Lack of legal mechanisms for cooperation practices between the public and private sector**

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To promote the creation of partnerships there should be the introduction of clear, reliable and, especially, predictable incentive schemes. In many Eastern European countries the hostility shown to the non-profit sector has a natural consequence of lack of incentives for co-operation between non-profit organisations and the state. This cooperation – also found in Serbia – is currently mainly based on personal contacts and individual consultations, and there is still a lack of specific reference legislation.

#### **46. Lack of criteria for selecting CSOs entering government advisory bodies**

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One problem that arises in relation to the composition of mixed advisory bodies, which envisage the participation of members chosen by the government and others representing CSOs, is the lack of clear, transparent criteria for selecting the latter members. This problem is also strongly felt in Serbia. This leads to a risk of low qualification or poor representativeness of CSOs selected in an arbitrary way.

#### **47. Lack of clear laws governing the new legal entity of “partnership” (or cooperation contract) between non-profit organisations, the government sector and for-profit private sector**

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Cooperation between the state, CSOs and private enterprises has led to a new institutional entity, often still not formally acknowledged: that of bipartite or tripartite partnerships for providing services of common interest. A first obstacle

that frequently arises is that of confusion between the regulation of the traditional negotiation of services and the regulation of partnerships. The participation of public actors in partnerships with civil society actors in order to conduct joint projects of a general interest should instead be disciplined in a more flexible manner compared to traditional forms of service externalisation, which is subjected to public budgetary rules.

#### **48. Lack of standard national legislation governing the management of partnership projects**

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The legal forms of cooperation between state and CSOs have not yet been uniformly established in many countries and often vary within each country itself, between one department and another, and between one agency and another. This problem was also found in Serbia, even if it is not necessarily an obstacle in some local situations because some specific forms of ad hoc regulation may be created.

#### **49. Lack of mixed methods for directing, managing and controlling partnerships that reflect the importance of the participation of different actors**

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Since partnerships are created by subjects of different nature (public, private or non-profit), the management and control of their running (task allocation, evaluation of results, efficiency of fund use) must not be exclusively entrusted to the public sector, as is often the case, but must also involve CSOs and enterprises so that the weight of the different actors participating in the partnership is properly reflected.

#### **50. Rigid delimitation of the sphere of action of the parties, in partnership constitutive documents or deeds**

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The actors taking part in partnerships (public entities, CSOs of different kinds, private enterprises) all have their own juridical nature and typified range of action, generally well defined by laws governing each type. For the success of new partnerships it would instead be worth having a liberalisation process and

broadening of the field of action of each actor in order to facilitate integration with others.

### **51. Impossibility of creating partnerships if the CSO does not have legal personality**

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In countries – like Serbia – where informal CSOs are granted a very limited legal capacity, partnerships cannot be created with these organisations since they are not allowed to stipulate legally binding contracts.

### **52. Difficulty for governmental bodies to make fund transfers in favour of CSOs**

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The complexity of public balances and budgets and the lack of legal formulas for financing mixed (public-private) undertakings often underlie the difficulty for governmental entities (particularly at national level) to make money transfers to CSOs within partnerships.

### **53. Lack of explicit and clear laws or rules enabling CSOs to take part in calls for tenders for providing various kinds of services**

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With increasing use made of CSOs for providing public services traditionally supplied by state bodies, it is particularly important to have regulations governing the possibility to take part in calls for tenders through proper and transparent procedures. Since calls for tenders are an important source of income for many CSOs, an inadequate or deficient legislation is a serious obstacle to the sector's sustainability. In some countries the lack of national laws on the contracting out of public services allows municipal authorities to create standards that only government-created organisations can meet, while in others the law requires social service providing organisations to have a licence, but does not establish the procedure for obtaining it. In this way, local governments can deny it to organisations they do not like. In Serbia, some aspects have been found in this regard, such as the excessive complexity of tendering procedures

and the lack of relative national standards, and this risks encouraging informal practices of patronage and favouritism at a local level.

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## AREA XI

### SELF-REGULATION

The last area deals with the possibility for CSOs to **self-regulate their own internal affairs** and with the way this can be **done** by them.

The obstacles contained in this area can thus usually concern the legal recognition of a sphere of self-regulation for CSOs as well as the degree of effectiveness of CSOs themselves in guaranteeing their internal democratic life, transparency and accountability.

In **Serbia**, this eleventh area contains 4 obstacles which are described below. On the whole, this area is **relatively important** if we consider that two obstacles (in particular, no. 55 and no. 56) rank among the most important ones in the overall list of juridical obstacles, as illustrated in chapter five.

Here are the 4 obstacles belonging to this area that were found in Serbia.

Area XI Self-regulation	
Obstacle no.	Name of obstacle
54	Denial of registration for second-level associations (networks, consortia, federations and so-called "umbrella" organisations)
55	Lack of CSO statute clauses guaranteeing the integrity and ethical conduct of members and directors
56	Lack of regulations, in CSO statutes, for guaranteeing internal democracy
57	Lack of mechanisms, in the statutes, envisaging public access to the organization's documentation

Here is a detailed description of these obstacles.

#### **54. Denial of registration for second-level associations (networks, consortia, federations and so-called “umbrella” organisations)**

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There are countries where it is not possible to create CSO unions or federations, while in others umbrella organisations are not recognised by law as legal entities. These are instead horizontal, dynamic, interactive and flexible actors (networks or networks of networks) that have the greatest potential for spreading self-regulation in the sector. In some cases the authorities deny registration to umbrella organisations not considering them to be associations in a technical sense. In Serbia, the law does not envisage any specific status for second-level associations, but does not actually prohibit them.

#### **55. Lack of CSO statute clauses guaranteeing the integrity and ethical conduct of members and directors**

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The lack of regulations, in statutes, for guaranteeing the integrity of management and for preventing conflicts of interest does not favour transparency and confidence in CSOs on the part of the general public and the state. This also holds for the lack of any identification of regulations, criteria or parameters to avoid excessive directors’ remunerations not in line with the market.

#### **56. Lack of regulations, in CSO statutes, for guaranteeing internal democracy**

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A democratic nature enables CSOs to be considered representative of citizens’ interests and to thus have greater credibility and strength towards institutions. The lack of guarantees of democracy and participation within organisations is often reflected in the lack of internal electoral rules. The issue of CSO internal democracy is particularly stringent where there is a lack of a clear distinction between the responsibilities and powers of management and those of the board of directors: in many organisations the two bodies have the same people and so decision-making is monopolised by a small group and by the most active individuals, when not indeed by a single dynamic individual who concentrates

within him/herself all the powers and decision-making responsibilities that should be the task of several people.

## **57. Lack of mechanisms, in the statutes, envisaging public access to the organisation's documentation**

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In many countries, like Serbia, CSOs very often do not traditionally make information and documentation on their activities available to the public.

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## Chapter Three

# **Non-juridical obstacles**



The following pages will illustrate the part of the map of the **non-judicial obstacles** for civil society as regards Serbia.

As was done with the juridical obstacles (see previous chapter), **each section** of the non-judicial obstacles will include the following:

- A **short description of the themes and problems** each map section refers to.
- A **list of the obstacles** contained in that section.
- A **description of each obstacle**.
- Some of the **bibliographic and documentary sources** that served to identify the obstacles.





## SECTION A

### CULTURAL AND SOCIAL DYNAMICS

This set or section of non-juridical obstacles concerns a series of **cultural and social type dynamics** that can deeply influence the context in which CSOs operate.

Difficulties in accessing and relating to the **media**, the scant **knowledge** of public opinion on CSOs, the **prejudice** and stereotyping with regard to these organisations, the low development of a **voluntary work culture** and of **philanthropy** are all examples of social and cultural factors that can affect the very existence and growth of the so-called “third sector”, which is distinct from both the public and private sector.

Dynamics of this kind are seen everywhere there is an expanding third sector, and they have also been found in **Serbia**, with some **specificities** that will be highlighted in part two of these guidelines. One can anticipate here that non-juridical (nj) obstacles 11 and 12 are the most significant in the list of all the non-juridical obstacles and that another two (nj2 and nj6) still rank among the top twenty important ones.

Here follows a list of all the social and cultural type obstacles which, on the basis of the study, were actually found in Serbia.

Section a Cultural and social dynamics	
Obstacle no.	Name of obstacle
nj 1	Media hostility
nj 2	The media's lack of proper knowledge on the sector
nj 3	Impossibility or excessive difficulty of accessing the media
nj 4	Limited media freedom
nj 5	Public opinion's negative views of the non-profit sector
nj 6	The population's poor knowledge of the sector
nj 7	Negative views on lobbying in the non-profit sector

nj 8	Negative views on advocacy activities conducted by CSOs
nj 9	Political party diffidence of CSOs
nj 10	Lack of a voluntary work culture
nj 11	Poor development of individual philanthropy and lack of donations for the CSO sector
nj 12	Widespread expectations of receiving free services from CSOs

An analytical description of these obstacles and of their relative problems, both in Serbia and in other countries, is given below.

### **nj1. Media hostility**

---

In many Central and Eastern European countries, as well as in Serbia, the media, at least in part, tends to have a more or less explicit hostile attitude towards CSOs, particularly those dealing with human rights or advocacy, more directly concerned with political issues. When this is the case, the CSOs are frequently accused – in the press or on television – of spying, tax evasion and lack of transparency, as well as possessing too many resources and having an orientation and conduct contrary to national interests. Media coverage of the non-profit sector thus focuses on stories that create a bad impression for CSOs, by mainly reporting scandals and cases of corruption, which has a very negative impact on the public's image of the sector and thus on its sustainability. Moreover, despite there being no lack of best practices in this regard, the press and other media apply the same fees for commercial advertising and for CSO advertising of public services. This makes it impossible for most CSOs to advertise their activities.

### **nj2. The media's lack of proper knowledge on the sector**

---

Some damage to CSO image can also come from an inadequate knowledge of the subject by journalists in good faith who report incorrect data, disorienting public opinion. At times, media people are unaware of the importance of the role actually played by CSOs. This means the public is only occasionally informed of the results achieved by CSOs.

### **nj3. Impossibility or excessive difficulty of accessing the media**

---

It is often difficult, particularly for CSOs not based in capital or other important cities, to access the media, and this greatly limits the impact of the activities of CSOs, their chances of obtaining donations and support, and finally, their sustainability.

### **nj4. Limited media freedom**

---

Media hostility to CSOs is at times a symptom of insufficient freedom of the media themselves, that just reflect the attitude of certain sections of the political world towards the sector.

### **nj5. Public opinion's negative views of the non-profit sector**

---

In some countries, and frequently in Central and Eastern European ones, there is a stereotype of CSOs (also due to media influence) as artificial bodies imported from the West and bearers of elitist interests, when not downright of foreign interests. This was also found in Serbia, a country where there has been considerable progress in recent years, though, also linked to the changes taking place in politics. The public image of CSOs is sometimes so negative that these very organisations do not have a favourable opinion of their own sector in general. The most important CSOs protecting human rights are particularly under attack, while local CSOs generally have a more positive image since they are perceived as being active inside the community. Another widespread stereotype is that CSOs declare themselves to be non-profit entities in order to obtain tax benefits and yet they have considerable economic resources. Moreover, CSOs can be perceived as a source of instability in countries that have suffered wars and serious internal conflict. Another suspicion frequently found in the CSO sector is that of using up public subsidies without there being any benefit to the population. In other cases, CSOs are regarded as anti-government by nature and politically equated with the opposition, if not downright with subversion. In some countries, and especially in former socialist ones, people continue to expect the state and public administration to meet their

needs and reject the idea of receiving services from NGOs. Such a climate, when present, acts as a deterrent with respect to donations from individuals and private entities, and even as regards the population's participation in voluntary work.

#### **nj6. The population's poor knowledge of the sector**

---

In countries where public authorities and the media have (or used to have) a suspicious attitude or are openly hostile to CSOs, most of the population tends to remain ignorant of the activities carried out by CSOs – or even of their very existence. Many studies conducted in several Central and Eastern European countries show that, albeit with differences between countries, most of the populations say they have never had direct contacts with a CSO and that they do not know their activities.

#### **nj7. Negative views on lobbying in the non-profit sector**

---

At times, the word “lobbying” has a markedly negative connotation and is associated with illegal pressure on politicians in order to promote particular interests. Although lobbying is normally regulated, its excessive limitation or even prohibition decreases the public role of CSOs, along with the chances of positively influencing legislation in sectors where CSOs have gained experience and competence.

#### **nj8. Negative views on advocacy activities conducted by CSOs**

---

Even the advocacy carried on by non-profit organisations, which is more linked to mobilising the base rather than direct contact with political exponents (as with lobbying), is often accepted with some difficulty. There is a tendency to consider advocacy as not part of civil society functions and that CSOs should generally “steer clear” of politics. This attitude is more frequently found in former socialist countries in which there is still the prevalent idea that politics pertains to the state and that individuals should not directly promote their own interests and rights.

### **nj9. Political party diffidence of CSOs**

---

In some countries, even some political parties show – more or less openly – hostility and diffidence towards CSOs, which often only receive lip service and are in actual fact tolerated as an inevitable evil, their control and competition also being feared.

### **nj10. Lack of a voluntary work culture**

---

In some countries, CSOs lament a sort of “public apathy” and poor participation of citizens in campaigns launched by non-profit organisations. In the former socialist countries, and even in Serbia (bearing in mind its specificities), the concept of voluntary work must be rethought and updated to the new political context. This rethinking is more urgently needed in those countries where there is a tradition of forced voluntary work, whereby it was possible to oblige citizens to provide unpaid work on various kinds of public projects.

### **nj11. Poor development of individual philanthropy and lack of donations for the CSO sector**

---

One of the most serious tangible consequences of hostility or diffidence towards the non-profit sector, or the lack of any tradition of people’s participation, is the lack of understanding of the function of individual philanthropy and thus the lack of donations for CSOs. In general, according to various observers, in Serbia, as well as in Central and Eastern European countries, individuals donate very little, both owing to financial difficulties and to little confidence in the CSO sector.

### **nj12. Widespread expectations of receiving free services from CSOs**

---

Many beneficiaries of CSO services cannot afford to pay for them and/or are used to getting them free. In some countries there is the belief that CSOs should provide free essential services to the most needy sections of the population, and those organisations attempting to conduct cost-recovery practices are accused of commercialising their activities. Even when the law allows CSOs to receive payment for their services, this greatly limits their financial sustainability

strategies. Moreover, in this situation it is more difficult for CSOs to operate on a rigidly market basis, as is often expected of them so as not to be accused of unfair competition with commercial firms and to lose their own tax benefits.

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## SECTION B

### POLITICAL DYNAMICS AND LATENT FUNCTIONS

Another important set of obstacles of a non-juridical type concerns the relations between CSOs, on the one side, and governmental institutions and political parties, on the other.

It is well known in the international literature that **political dynamics** can both positively and negatively affect the CSOs' possibility to survive and develop in a given country. At times, these dynamics are immediately noticed and crystallise in strategies and decisions that have a strong public impact (such as the lack of policies in a certain sphere, the presence of a hostile political climate and of media attacks on CSOs, the exercising of undue forms of control, etc.). But they are mostly **not very conspicuous** because they are linked to prejudices, decisions, everyday behaviours, indecisions and inertia that often tend to escape the very awareness of the actors concerned.

In **Serbia**, it was seen that this set of non-juridical obstacles is one of the most important. As many as 6 obstacles in this set (and namely nos. 14, 15, 16, 17, 24 and 26) rank among the top 20 important ones (see part two).

Here is the actual list of non-juridical obstacles of this kind that were found in Serbia.

Section b <b>Political dynamics and latent functions</b>	
<b>Obstacle no.</b>	<b>Name of obstacle</b>
nj 13	Political instability
nj 14	Lack of any real decentralisation of the state
nj 15	The state's non-recognition of civil society's role
nj 16	A xenophobic political-cultural climate hostile to CSOs dealing with human rights
nj 17	Lack of any political will to involve CSOs in policy-making organisations

nj 18	Contrasts and uncertainties regarding which organisations are representative of civil society
nj 19	CSO harassment through inspections and arbitrary requests
nj 20	Illegal modifications of CSO statutes
nj 21	Use of licensing laws for controlling CSOs
nj 22	Lack of a governance culture
nj 23	Prejudice on CSO competencies
nj 24	Lack of partnership creation despite there being laws encouraging this
nj 25	Government inertia in accessing European Union funds
nj 26	No government policy for enhancing the non-profit sector's capacity to access European Union funds
nj 27	The need, in practice, to possess considerable assets before obtaining permission to set up a foundation
nj 28	Lack of independence, from the executive power, of bodies responsible for supervising CSOs

Here is a detailed description of each one of these obstacles.

### **nj13. Political instability**

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Frequent changes of government, both at local and national level, block relations between CSOs and public administrations, and damage the sector's sustainability since these organisations must each time build new relations of confidence with public officials and adapt to even very different policies and frameworks.

### **nj14. Lack of any real decentralisation of the state**

---

The centralising of administrative and government powers and responsibilities makes it more difficult for CSOs to have any weight in establishing public policies. If local governments do not have adequate resources, it is more difficult for them to support CSOs active locally. Incomplete decentralisation processes pose equally serious problems since they create confusion on the respective responsibilities of government and regional or local authorities.



### **nj15. The state's non-recognition of civil society's role**

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Governmental authorities' recognition of the role of civil society, above all in recently instituted democracies, is often merely formal and rhetorical. In many countries, CSOs – especially the ones dealing with human rights – are in actual fact looked on with suspicion and sometimes even denigrated through the media. In some cases, governments even confuse “non-governmental” with “anti-government” and feel threatened by CSOs. This orientation on the part of some sectors of the political sphere was also found in Serbia. The poor recognition of the value of this sector is also seen in the lack of support in projects carried on by CSOs even when they have a clear social importance.

### **nj16. A xenophobic political-cultural climate hostile to CSOs dealing with human rights**

---

A xenophobic climate often creates ostracism towards exponents of CSOs dealing with human rights, by creating stereotypes of NGOs as being anti-national organisations controlled by the West through foreign investors. This view is in many ways linked to the attitude of government officials, who generally regard the non-profit sector as a threat to their own political and economic power.

### **nj17. Lack of any political will to involve CSOs in policy-making**

---

Despite the existence of laws favouring CSO participation in policy-making, public administrations do not always share this goal. It may be the case that, despite the efforts made by the highest institutional offices to assure systematic CSO participation, medium-level administrators boycott this strategy since they often lack both the capacity and the will to implement such a policy.

### **nj18. Contrasts and uncertainties regarding which organisations are representative of civil society**

---

Where there are advisory bodies to enhance public participation in policy-making at a regional or local level, there is the problem of establishing which

organisations have the actual capacity to effectively represent their own constituencies and are thus the most qualified to negotiate on behalf of the non-profit sector in general. In these cases, it may be that independent CSOs are excluded from consultations and replaced with CSOs that support the government, or with those supported by public administrations (such as QUANGOs and GONGOs), co-opted in advisory bodies devoid of any real decision-making powers. CSOs normally kept away by the government are those dealing with educating citizens to vote, consumer rights and human rights.

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### **nj19. CSO harassment through inspections and arbitrary requests**

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At times, CSOs report being the object of inspections without prior notice and of arbitrary requests for tax documentation. Governments sometimes use tax inspections as a way of leaning hard on CSOs they consider “subversive”. Even the obligation to submit reports and auditing procedures are sometimes used in order to hinder the activities of CSOs that criticise the government or which do not have connections.

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### **nj20. Illegal modifications of CSO statutes**

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In some situations, there may be an administrative tendency to introduce changes in the statutes of private organisations when no laws actually allow this.

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### **nj21. Use of licensing laws for controlling CSOs**

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The need for licenses in order to provide services may be used by government officials to often create bureaucratic obstacles to CSOs they do not like.

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### **nj22. Lack of a governance culture**

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Often, delays in implementing outsourcing strategies for attributing services to CSOs are due to a lack of a governance culture that should consider CSOs as partners of equal dignity with which to cooperate in order to meet the increasingly differentiated needs of the population. This obstacle may also be

regarded as linked to the climate of mutual non-esteem often found between the two sectors concerned and a paternalistic attitude sometimes characterising the state's relations with CSOs. All this does not lead to building effective governance systems.

### **nj23. Prejudice on CSO competencies**

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Governmental institutions sometimes tend to support only some of the services offered by CSOs, and particularly the less technical ones such as social work or the cleaning of public spaces, while they are not interested in activities that CSOs carry on with competence, such as training courses, monitoring of the media, research and graphic designing.

### **nj24. Lack of partnership creation despite there being laws encouraging this**

---

Local governments' political unwillingness to enter into partnership agreements with CSOs often gets the better of innovative legislation which enables and encourages them.

### **nj25. Government inertia in accessing European Union funds**

---

One obstacle to sector development is the passive attitude of some governments in accessing funds made available by the European Union and which could be distributed to CSOs.

### **nj26. No government policy for enhancing the non-profit sector's capacity to access European Union funds**

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Governments do not always implement strategies for enhancing the CSOs' capacity to access EU funds. Some non-profit organisations at times lament not having received funds and training from their own governments in order to prepare themselves and qualify for EU funding, which implies performing complex bureaucratic procedures at both national and European level. Initiatives in this regard are often only the individual efforts of government officials.

## **nj27. The need, in practice, to possess considerable assets before obtaining permission to set up a foundation**

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In some cases, even when the law does not require the possession of certain assets in order to set up a foundation, the officials themselves deny registration on the basis of insufficient capital.

## **nj28. Lack of independence, from the executive power, of bodies responsible for supervising CSOs**

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The lack of independence from government creates a situation where CSOs are not safeguarded with respect to intrusive rulings that can even reject or cancel the organisation's legal personality. Similar problems arise when the task of supervising CSOs is entrusted to the judiciary.

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## SECTION C

### **BUREAUCRATIC DYSFUNCTIONS AND THE CAPACITY OF PUBLIC ADMINISTRATION AND JUDICIAL BODIES**

A further set of obstacles of a non-juridical type concerns the **dysfunctions of public bureaucracy** and the **capacities** within public administration and in judicial bodies, and namely the ones found in the latter two's contacts with civil society actors.

In the experiences mentioned in the international literature, the obstacles included in this section usually concern the **transparency** of public actors' procedures with regard to CSOs and the level of **training** of public officials on themes connected to civil society and to its relations with central and local governmental bodies.

In **Serbia**, this set of obstacles turned out to be relatively **less important than the others**. In any case, the study showed how particular obstacles have some importance (such as nj 34, concerning the lack of transparency in public contracting procedures).

Here are the 11 non-juridical obstacles of this section that were found in Serbia.

Section C <b>Bureaucratic dysfunctions and the capacity of public administration and judicial bodies</b>	
<b>Obstacle no.</b>	<b>Name of obstacle</b>
nj 29	Lack of training for officials charged with law administration
nj 30	Lack of flexibility of public administrations involved in partnership programmes
nj 31	Lack of transparency in commissions charged with distributing public funds to CSOs
nj 32	Inadequacy of CSO quality evaluation systems

nj 33	Unfair competition by CSOs financed by governmental or municipal agencies
nj 34	Lack of transparency in public contracting procedures
nj 35	Delays in public administration payments to CSOs
nj 36	Bureaucratic dysfunctions in handling European funds
nj 37	Excessive sluggishness or high cost of judicial actions against the government's arbitrary actions
nj 38	Harassment by tax authorities
nj 39	Difficulty in accessing CSO ledgers and records

Here is a description of each of the aforesaid obstacles.

### **nj29. Lack of training for officials charged with law administration**

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Officials' poor knowledge of legislation concerning CSOs sometimes leads to nullifying the effects of favourable legislation. For instance, in Latvia the law on foundations and associations allows CSOs to reimburse their voluntary workers. However, since the officials concerned do not understand or properly apply the law, the CSOs tend not to provide reimbursements in order to avoid fines. In Moldova, instead, the inexperience of many government officials pointlessly complicates and lengthens the CSO registration procedure, which is actually quite simple and quick in theory. Even in Poland the poor competence of officials hinders a registration procedure that is already rather complex in this country. Particular problems are posed by tax legislation, which is lengthy and complex and is often not completely understood in depth by the officials enforcing it. Several of these problems have been found in Serbia, too.

### **nj30. Lack of flexibility of public administrations involved in partnership programmes**

---

The management of partnership programmes with the institutions, which already have to comply with public legislation of greater complexity than that applied to simple organisations, risks becoming slow, fragmented and finally ineffective if the administration does not take on an attitude of flexibility in order to overcome



the many procedural and bureaucratic obstacles that may hinder the achievement of the common goals.

### **nj31. Lack of transparency in commissions charged with distributing public funds to CSOs**

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The national commissions charged with distributing public funds to CSOs are often involved in scandals and disputes over the lack of transparency in the criteria actually followed for fund allocation, over the accusations of preferential treatment accorded to those CSOs whose members also sit in these very commissions, and over whether there is respect for the regulations established by the institutive law. These accusations are even more pressing when the commissions' regulations do not provide guidelines for the conduct the commissioners should adopt when there are conflicts of interest.

### **nj32. Inadequacy of CSO quality evaluation systems**

---

In some cases there are complaints of the difficulty that national commissions charged with allocating public funds to CSOs have in distinguishing between active organisations which conduct projects and initiatives of some quality, and those which are inactive or unreliable.

### **nj33. Unfair competition by CSOs financed by governmental or municipal agencies**

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Access to foreign funding and to contracts with the public sector is often made more difficult for CSOs by the presence of organisations set up and supported by governmental and municipal agencies (the so-called QUANGOs and GONGOs: “Quasi Non-Governmental Organizations” and “Government-Organized Non-Governmental Organizations”), which disturb competition and limit the availability of funds for independent CSOs. Since these organisations receive funding from the public sector, their presence makes it difficult to assess the transparency of the system and the economic convenience of the services offered by CSOs.

### **nj34. Lack of transparency in public contracting procedures**

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It is sometimes lamented that public contracting procedures lack transparency, do not have very clear budgetary lines and use vague criteria for assigning contracts.

### **nj35. Delays in public administration payments to CSOs**

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When public administrations delay their payments to CSOs for services rendered or programmes carried out, the CSOs – many of which are small-scale – have to borrow in order to meet their liquidity needs. This situation, when protracted over time, can often force CSOs to close down.

### **nj36. Bureaucratic dysfunctions in handling European funds**

---

The CSOs of many countries have had to endure delays in payments, administrative difficulties and bureaucratic restrictions on the part of the national authorities handling European funds. This has led to serious problems of liquidity for these CSOs. Some governments have recorded delays of between nine and twelve months in defining contracts and transferring funds, and the CSOs have been asked to put up a great deal of money before they can even sign. The rigid accountability rules imposed by Brussels have also forced them to start up projects and to keep them on schedule despite everything, in order to nurture hopes of being reimbursed later. These delays weigh heavily on the financial sustainability of CSOs, particularly the smaller ones. Even the larger CSOs have had to use up their own reserves and have incurred serious losses.

### **nj37. Excessive sluggishness or high cost of judicial actions against the government's arbitrary actions**

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The right to initiate legal proceedings against public administration actions deemed to be illegitimate is an essential tool for safeguarding CSO rights. The effectiveness of this instrument is nullified if it takes too long or if it is too expensive in order to arrive at a decision.

### **nj38. Harassment by tax authorities**

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In some countries, even if the laws allow enterprises and individuals to deduct their own donations to CSOs, it is difficult to prevent tax authorities from conducting intimidating inspections and checks on donors. Moreover, CSOs sometimes do not advertise their activities for fear of attracting the harassment of tax authorities. Even opening a bank account can sometimes lead to oppressive conduct by inspectors.

### **nj39. Difficulty in accessing CSO ledgers and records**

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It is sometimes difficult for the public to have access to the CSOs' books even when they are kept at a national as well as local level. In some countries, access to them exclusively depends on the goodwill of the officials. The lack of any chance for the public to check these documents can favour discretionary and arbitrary behaviour on the part of the state.

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## SECTION D

### RELATIONS WITH THE PRIVATE SECTOR

The non-juridical obstacles included in this fourth section refer to relations between CSOs and the **private sector**.

There have historically been many problems everywhere in this regard, and not just of an **operational** and practical kind, but also of a cultural type and as regards mentality. In fact, besides a certain **diffidence** (often mutual) between CSO and private sector actors, it is not seldom to find, especially in the business sector, **poor knowledge** of the third sector and a certain **unwillingness** to cooperate with it. This situation is slowly changing with the spreading of theories and practices linked to **Corporate Social Responsibility**.

This kind of problem was found in **Serbia** as well, but it is still at a seminal stage. This particularly comes about through the following obstacles, which we shall come back to in part two of these guidelines.

Section d Relations with the private sector	
Obstacle no.	Name of obstacle
nj 40	Poor willingness of the private sector to implement cooperation strategies and partnerships with CSOs
nj 41	Occasional nature of private sector contributions
nj 42	Private enterprises' lack of confidence in CSOs
nj 43	Private enterprises' unwillingness to finance advocacy organisations

Here is a detailed description of these obstacles.

#### **nj40. Poor willingness of the private sector to implement cooperation strategies and partnerships with CSOs**

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Enterprises do not always consider relations with non-profit organisations as beneficial to their own interests. Although, in some contexts, enterprises tend to show an increasing sense of social responsibility, this does not always lead to cooperation with CSOs.

#### **nj41. Occasional nature of private sector contributions**

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Despite the expansion of corporate social responsibility, even in Serbia, private sector contributions are generally *ad hoc* and concern, for example, special events such as marathons for charity.

#### **nj42. Private enterprises' lack of confidence in CSOs**

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One obstacle to partnerships between CSOs and private enterprises is the latter's scant confidence in the CSOs' professional competences and expertise – considered to be fairly unreliable.

#### **nj43. Private enterprises' unwillingness to finance advocacy organisations**

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CSOs dealing with advocacy and which are critical of the government are not easily financed by the private sector, which considers them to be a risky investment.

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## SECTION E

### CSO CAPACITY AND SUSTAINABILITY

Another set of non-juridical obstacles deals with the **capacity** and **sustainability** of CSOs.

This is evidently a crucial issue involving important problems for the life, development and long-term survival of CSOs. The most widely known **problems** at an international level include such things as: the structural and financial fragility of the third sector as a whole and of its individual CSOs; the difficulty in accessing new technologies; the lack of financial management skills; difficulties in strategic planning or in internal human resource management, and other difficulties.

In Serbia's case, this set of obstacles turned out to be **the most important**, along with political dynamics. As may be seen from the following list of obstacles, many aspects concerning capacity and sustainability were found in Serbia, and they make up a very detailed and complex picture.

Section e CSO capacity and sustainability	
Obstacle no.	Name of obstacle
nj 44	Excessive structural and financial fragility of the non-profit sector
nj 45	Occupational instability of CSO personnel
nj 46	Insufficiency of self-financing mechanisms
nj 47	Conflicts of interest for advocacy organisations that receive public funding
nj 48	Gradual withdrawal of foreign funds
nj 49	Existence of a lower professional standard for CSO directors and board members compared to for-profit organisations
nj 50	Ineffectiveness of CSO governance

nj 51	Little willingness to promote second-level associations (networks, federations, consortia, umbrella organisations, etc.) that may represent points of reference for the sector's self-regulation
nj 52	Lack of CSO codes of conduct
nj 53	Difficulties in accessing technologies
nj 54	Difficulties in publishing reports on their own activities
nj 55	Poor CSO cooperation with international bodies
nj 56	Lack of strategic planning
nj 57	Difficulty in finding premises to establish a head office
nj 58	Lack of financial management skills
nj 59	Lack of fundraising skills
nj 60	Excessive donors' influence on CSO activities
nj 61	Poor self-promotion and public communication skills
nj 62	Poor availability of attorneys and expert advisers on non-profit sector legislation
nj 63	Lack of technical assistance infrastructures for CSOs

Here is a specific description for each of these obstacles.

#### **nj44. Excessive structural and financial fragility of the non-profit sector**

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In the new democracies of Eastern Europe, and thus also in Serbia, civil society is often still not well structured owing to the scant political weight of most CSOs and the lack of networks between them, and so they turn out to be fragmented and often in conflict with one another. The very sustainability of the sector is in jeopardy due to the lack of continuity in financing and the poor self-financing capacity of CSOs.

#### **nj45. Occupational instability of CSO personnel**

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In many European countries, most CSO personnel – above all, of smaller organisations – get by on short-term contracts with little continuity. Alternatively, where this is allowed, CSOs make use of voluntary work, but the people concerned only tend to work in these conditions for the time necessary to gain enough skills and experience in order to find a paid job elsewhere. There is



thus a kind of brain drain of more qualified personnel with a high staff turnover. The latter phenomenon is very significant in Serbia.

#### **nj46. Insufficiency of self-financing mechanisms**

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The funds collected through CSO members' contributions are almost always insufficient to finance the organisation's activities – especially in those countries with an economic crisis. In many Central and Eastern European countries, there are few local foundations supporting CSO projects and even when there are more, they often do not have enough funds. In this situation, there is the risk of excessive dependence of CSOs on public financing, which weakens CSOs dealing with advocacy and which are more critical of the government and can only survive with foreign donor support. Even dependence on foreign donors has its risks, given that the latter's priorities are not always in line with those of local CSOs and also bearing in mind that, as seen in Serbia over the last few years, the continuity of these contributions over time can never be taken for granted.

#### **nj47. Conflicts of interest for advocacy organisations that receive public funding**

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There are particular fundraising difficulties for CSOs dealing with advocacy, the safeguarding of human rights and which carry out watchdog activities on the government. Receiving public subsidies and financing can lead to conflicts of interest and decrease the credibility of their action. These associations must thus especially rely on public support which is not usually enough to cover all the costs.

#### **nj48. Gradual withdrawal of foreign funds**

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CSOs do not always manage to replace decreasing funds coming from governments or foreign organisations with local funding, and to adequately diversify their incomes, especially when the laws in force do not allow their full participation in the production of goods and services.

#### **nj49. Existence of a lower professional standard for CSO directors and board members compared to for-profit organisations**

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CSOs often lack qualified managers owing to the lower remunerations and lower prestige of the non-profit sector in general.

#### **nj50. Ineffectiveness of CSO governance**

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The smaller CSOs are often run by a single strong personality and lack the managerial skills and financial protection of a board of directors. Even when the CSO's governance is clearly defined, there is no clear distinction between members of the governing board and the rest of the staff, and the governance structure is generally only established in an approximate manner. Although some governing boards may look effective on paper, they are ineffective in practice.

#### **nj51. Little willingness to promote second-level associations (networks, federations, consortia, umbrella organisations, etc.) that may represent points of reference for the sector's self-regulation**

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This lack is often due to insufficient communication and cooperation between CSOs, and some consider that the sector's very sustainability depends on the existence and quality of these aspects. In some countries, including Serbia, there is even a difficulty for CSOs to understand the concept of network, which plays a fundamental role in creating CSO identity and awareness. In others, the obstacle is, above all, the sector's competitiveness, which makes networking difficult. In some cases, coalitions and networks tend to be created on the financiers' initiative, but they tend to last for the duration of the specific projects concerned. In others, there are small networks that tend to include only CSOs belonging to specific sectors of activity.

#### **nj52. Lack of CSO codes of conduct**

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The CSO sector often lacks a code of conduct establishing the obligation of a responsible attitude, both on the part of organisations and their members, and

that guarantee collegiality and transparency. This situation does not help CSOs to create a positive image with the general public. In some countries the sector agreement option prevails: that is, an agreement on ethical principles to be followed by a small number of organisations having the same statutory aims. The problem is generally due to insufficient understanding, on the part of CSOs, of the importance of self-regulation along with a lack of sufficiently representative umbrella organisations that can draw up an ethical code having the consensus of the various non-profit sector actors.

### **nj53. Difficulties in accessing technologies**

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A lack of adequate technology is sometimes the cause of insufficient communication between individual CSOs, and between CSOs as a whole and public opinion. In Central and Eastern Europe, for example, and especially as regards rural areas, only a minority of CSOs have essential equipment such as a fax machine, while still fewer are connected to the internet and are able to use e-mail.

### **nj54. Difficulties in publishing reports on their own activities**

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The inability of many CSOs to draft and publish annual reports on their activities is an obstacle to transparency and to gaining the trust of the general public, who the CSOs themselves turn to.

### **nj55. Poor CSO cooperation with international bodies**

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Many CSOs, and especially the smaller ones and those not based in cities, do not know the potential – in terms of impact on their own activities and as regards financial sustainability – of cooperation with international bodies or do not have the capacity to start it up. Moreover, very few Serbian CSOs have a consultative/advisory status with international organisations.

### **nj56. Lack of strategic planning**

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Most small and smallish CSOs get by with difficulty from one project to the next, still anchored to a short-term perspective, while their managers do not have sufficient grounding in strategic planning and management. There are thus many fundraising events (marches, marathons, etc.), but CSOs need to start from scratch every time and are unable to build solid ties with their own supporters or to establish relations with government authorities or the private sector market. In many cases, CSOs tend to rely on one or at most two sources of income and do not try to further diversify their own income sources. This is the result of inadequate administrative management – only concerned with the day-to-day running and unable to devise any long-term planning strategy. Moreover, many CSOs do not carry out any cost-benefit analysis or long-term strategic planning, and the services they offer generally change according to their financial situation and not to their beneficiaries' needs.

### **nj57. Difficulty in finding premises to establish a head office**

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CSOs find it difficult to own premises in which to conduct their own activities (in Serbia only 6% of CSOs have them). More often, CSOs rent premises or have other ownership arrangements (72%), while some do not even have a head office (as many as 22% in Serbia).

### **nj58. Lack of financial management skills**

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CSOs do not often have adequate access to expert accountants and administrators on issues concerning this particular kind of organisation, and are unable to meet financiers' requirements as regards reporting and complex project management, or the management of donor funds. Many lack the capacity to act as project leader, from an administrative standpoint, in large scale projects financed by the European Union.

### **nj59. Lack of fundraising skills**

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Particularly in former socialist countries, CSOs do not know the various ways of producing income or how to compete for contracts with public administration, and to adequately exploit existing markets. CSOs do not usually have marketing experience and are hesitant in offering their own products and services on the market, while their knowledge of European legislation regarding their activities is still scant.

### **nj60. Excessive donors' influence on CSO activities**

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Owing to their financial weakness, CSOs are sometimes too influenced by donors (are donor-driven) – who are often foreigners – and have too tenuous relations with their own beneficiaries. For this reason, they may carry out projects which may be a priority for their donors but not for their constituencies. Even in strategic planning and in defining their mission, there is often excessive dependence on available financing opportunities (project thinking vs. mission thinking).

### **nj61. Poor self-promotion and public communication skills**

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Many CSOs lack the necessary skills for dealing with the media and for building a positive image of themselves with the public, conveying their own activities and achievements. Moreover, many organisations are unable to grasp the importance of developing good relations with journalists and have difficulty in launching public communication campaigns.

### **nj62. Poor availability of attorneys and expert advisers on non-profit sector legislation**

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In Serbia there is a lack of expert attorneys in legal issues concerning CSOs and of consultants in general, especially in rural areas. Those who are available are generally too expensive and most CSOs, especially small-scale ones, cannot afford them.

## **nj63. Lack of technical assistance infrastructures for CSOs**

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In many countries there is insufficient availability of technical assistance infrastructures, particularly in the remotest rural areas, such as resource centres which provide CSOs with access to information, technologies, training and technical assistance. The quality and extension of these services vary. Often, what is offered is only basic assistance on registration procedures. When resource centres are set up with foreign donor financing, the question then becomes whether they can survive when their funding switches to local financiers.

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Chapter Four  
**The thematisation of obstacles:  
a summary**



## 1. The map of obstacles as a knowledge tool and a basis for action

At this point, it may be worth making some **final remarks** on the **thematization** of obstacles for civil society in Serbia, according to the work illustrated in the previous chapters, which dealt with **mapping the 120 obstacles of both a juridical and non-juridical nature** within the study carried out.

If we firstly consider the **juridical obstacles** identified, and thematised by dividing them into **11 areas**, a legislative framework on civil society quite clearly emerges that seems to call for a **refinement** of certain aspects.

These aspects, as we have seen, have as much to do with the general juridical context that the CSOs refer to for their establishment and activities as to specific key issues (such as taxation and political activities). An attempt has been made to provide an overview and analytical assessment of this problem.

It must be stressed that **this picture is changing**. It is worth recalling that, for instance, a **law bill on associations** was drafted in July 2007 – the joint product of a team consisting of government members, experts and civil society exponents.

The **improvements** that this law bill proposes compared to the current legislative situation include the following:

- The fact that informal associations are permitted – since registration becomes voluntary.
- The minimum number of people required for setting up an association changes from 10 to 3.
- Foreign subjects can be founders and members of associations.
- Rules are established for registering local branches of foreign organisations (but not NGOs).

Once this law is approved, it can contribute to making **significant changes**. In any case, a series of juridical problems remain, especially as regards – as already noted – **tax matters, economic activity, partnerships** between CSOs and private and public actors, and other issues such as the **professional status** of CSO members.

Getting back to the reflection on the thematisation of the obstacles for civil society, as regards the **non-juridical ones**, it emerges quite clearly that there is a broad range of impediments of a cultural, organisational and logistical kind as regards political relations, relations with other private and public actors in the field, and more besides. These obstacles interweave with juridical ones and greatly contribute to making non-profit sector life and growth in Serbia more difficult.

If we look at the overall juridical and non-juridical obstacles, different **problems** arise which are both **operational** (that is, linked to laws, powers and resources) and **cognitive** (that is, linked to ideas, views of reality, information and knowledge), and affect the public presence of CSOs. These elements should require – as we shall see in the next part of the guidelines – a serious commitment as regards more in-depth analysis and action at various levels.

These are problem aspects that are **little known** as a whole and especially at an individual level, even by the many people working in civil society or in contact with it. Being little known, these aspects remain – at least for now – **poorly controlled** and not subjected to any form of joint management among the various actors concerned.

A fundamental step is thus to **thematise the problem of obstacles** in order to provide more accurate knowledge and to establish more effective lines of action. The **map** constructed in the PRAVOK project that was presented in the previous chapters must be regarded as a **proposal** in this direction.

The map may be regarded as a **knowledge tool** and point of reference (even a comparative one) **for those aiming to work** – in various capacities and according to different action methods – in order to solve the problems encountered.

As we shall see below, without going into the details of the specific provisions (such as the legislative ones) that may be adopted to handle these obstacles, part two of the guidelines will make some recommendations at an operational level, especially in order to propose an **integrated approach to the complexity of the issues** found.

## 2. The ways of thematising the obstacles

On the basis of the experience gained in drafting the map, it may be worth providing some **indications** as of now, specifically regarding the way civil society obstacles can be **thematized**.

- Firstly, in thematising the obstacles, it is important to adopt a **comparative approach**. In particular, the idea of starting from an international checklist of obstacles taken from the literature and documentation of experiences and policies is particularly useful and suitable in order to see whether these obstacles exist or not, even within one's national context, and whether at a national level there are instead others not found elsewhere. Moreover, such an approach would allow comparing different national situations and assessing their development over time.
- Secondly, it must be stressed that, to be useful, a map of obstacles for civil society must be **analytical**. Once the various problem areas or spheres are identified, the specific obstacles must then be identified by describing and appropriately naming them. Moreover, a map of obstacles must also be able to grasp any differences within the same national context (such as when dealing with a federal context or with regions that have specific political and administrative autonomy).
- Thirdly, the map must be **screened or validated by different actors**, who must have a certain degree of convergence in judging the existence or significance of the various obstacles it contains. In this case, obtaining the consensus of civil society leaders, experts in the juridical field and other interlocutors and key actors on the obstacles found is decisive.
- In identifying the obstacles, it is also worth establishing how the obstacles **come about** and create **impacts**, which can vary according to the different territories and different type of CSOs concerned.
- Moreover, once an obstacle map is constructed, it must be **constantly updated** on the basis of changes at a juridical and political level. To this end, the actors concerned (government, political parties, CSOs and their associative networks, advisory and service bodies, etc.) could set up information services or even specific monitors to follow up the problems encountered and their possible solutions.

In conclusion, the map constructed according to this approach to thematisation of the obstacles for civil society is a tool which could be useful for more in-depth **knowledge** of these obstacles and for establishing **specific actions** to be taken.

The actions could be on both a **strictly legislative level** and **policymaking** one in order to create a **favourable environment** for greater and better presence of CSOs in Serbian social life.

Other suggestions for interpretation and for action will be provided in **part two**. In fact, starting from a further transverse interpretation of the map of obstacles (both juridical and non-juridical) it will be possible to identify some **key problem spheres** or, rather, some **risk areas**, to come to terms with in a strategic and as systematic a manner as possible.

PART TWO

**GUIDELINES FOR  
INTERPRETATION AND ACTION**





Chapter Five

**A ranking of the mapped obstacles  
and the identification of five clusters**



## 1. Further detailed analysis of the map obstacles as a basis for interpretation and action

As we saw in part one of these guidelines, constructing a map of the obstacles led to accurately and analytically thematising and identifying the civil society obstacles found in Serbia.

This thematisation yielded an initial important set of information on **the overall problems** of a juridical and non-juridical nature that exist and which call for action.

The obstacle map illustrated above thus enables establishing the critical elements on which to define a **new legislative framework** for civil society in Serbia, and to outline an **administrative and participation practice** for developing civil society itself.

The map can also be used (both in its juridical and non-juridical part) in order to obtain specific **information on the state, problems and dynamics of CSOs within Serbian society** as a whole, and to devise suitable strategies and policies.

In part two of these guidelines, by **further analysing** the map in detail, we shall try to provide some **indications for interpretation and action** concerning the way CSOs are and can be present in the public space of Serbia.

## 2. A ranking of the obstacles

### *2.1. Constructing some indices*

In part one, the obstacles contained in the map were presented in the form of a list and according to their specific area.

However, these obstacles **do not all have the same weight**. To **measure** this inequality, some **indices** were constructed and applied to each obstacle. The indices were calculated on the basis of the responses of the **key informants** consulted, that is, the CSO leaders, who made up a total of 53 people belonging to different kinds of CSOs operating in various parts of Serbia.

In particular, the indices were the following:

- The **index of attention** of each obstacle was constructed in order to weigh up the votes obtained for its **actual existence**. Actually, the obstacles were sometimes voted by a different number of informants and thus, for each obstacle, the ratio between mentions of its actual presence compared to the total number of key informants called upon to assess it was calculated, in order to attribute a proportional weighting to the votes received.
- Secondly, the **importance** of each obstacle was measured, starting from the evaluations given by the respondents. The ratio was then calculated between the attributions of importance (“very important” or “quite important”) and the total judgements on importance recorded from the key informants.
- Thirdly, a **distribution** index was constructed. In particular, the distribution of each obstacle was measured according to **geographical area** of Serbia and to the **size of the CSOs**.
- Finally, to obtain an **overview** of the data emerging from the previous indices, a fourth index was constructed which **summarised** the values of the other three, by calculating the average value. This index was called the **general intensity index** of the obstacles.

## *2.2. The ranking of juridical obstacles*

Starting from the work presented in the previous section, it became possible to construct a **ranking** of the **juridical type obstacles** contained in the map.

So as not to overly burden the exposition, the analytical data of the first three indices will not be given here, but only the values of the **fourth index** that summarises them.

The ranking of the juridical obstacles in a decreasing order of **general intensity index** score will thus be presented below.

**Table 4 – General Intensity Index – Juridical obstacles** (ranked according to the Index)

Ranking	Obstacle no.	Area	Name of obstacle	General Intensity Index
1	45	X	Lack of legal mechanisms for co-operation practices between the public and private sector	9.87
2	3	I	Lack of a clear, univocal and up-to-date legal definition of “non-profit organisation”	9.15
3	41	VIII	Lack of public policy instruments (public funds, for instance) to mitigate the burden VAT imposes on non profit entities engaged in activities deemed for public benefit	9.14
4	30	VII	Lack of transparency of government funding	9.11
5	33	VII	Lack of tax incentives for individuals making donations to CSOs	8.96
6	25	VI	Lack of effective mechanisms for appointing exponents for properly representing civil society in sectoral public bodies	8.89
7	46	X	Lack of criteria for selecting CSOs entering government advisory bodies	8.66
8	36	VIII	Existence of CSO tax reporting standards of the same level of for-profit enterprises	8.63
9	47	X	Lack of clear laws governing the new legal entity of “partnership” (or co-operation contract) between non-profit organisations, the government sector and for-profit private sector	7.62
9	34	VII	Few tax incentives for firms making donations to CSOs	7.62
11	48	X	Lack of standard national legislation governing the management of partnership projects	7.53
12	5	I	The non-systematic nature of CSO legislation	7.51
13	19	V	Lack of clarity of the definition of “economic activity of CSOs”	7.34
14	24	VI	Lack of legal mechanisms allowing CSOs to actively take part in defining public policies in their field	7.29
15	20	V	Uncertainty as to the possibility of conducting certain economic activities	7.17
16	56	XI	Lack of regulations, in CSO statutes, for guaranteeing internal democracy	7.03
17	13	III	Disparity between the framework regulation and tax law in defining Public benefit organisation (PBO) (i.e. activities deemed for public benefit)	6.96

18	35	VIII	Insufficient tax benefits for CSOs	6.88
19	42	VIII	Lack or ineffectiveness of a tax system favourable to CSOs for customs duties	6.86
20	55	XI	Lack of CSO statute clauses guaranteeing the integrity and ethical conduct of members and directors	6.77
21	6	I	Existence of uncoordinated consecutive provisions concerning CSOs	6.76
22	8	I	Lack of legal recognition of voluntary work	6.74
23	4	I	Lack of any clear system for classifying the various types of CSOs	6.73
24	49	X	Lack of mixed methods for directing, managing and controlling partnerships that reflect the importance of the participation of different actors	6.60
25	1	I	Insufficient recognition of the right of association	6.33
26	31	VII	Existence of laws that create difficulties and restrictions for accessing foreign funds	6.22
27	23	VI	Existence of a hazy borderline between permitted and non-permitted political activities	6.21
27	57	XI	Lack of mechanisms, in the statutes, envisaging public access to the organisation's documentation	6.21
29	10	II	Establishing a minimum or maximum number of members for setting up an association	6.13
30	40	VIII	Taxation of CSO real estate property	5.94
31	53	X	Lack of explicit and clear laws or rules enabling CSOs to take part in calls for tenders for providing various kinds of services	5.64
32	51	X	Impossibility of creating partnerships if the CSO does not have legal personality	5.59
33	26	VII	Difficulties in obtaining credit	5.50
34	2	I	Ordinary legislation contradicting the rights to free association established in the Constitution	5.37
35	7	I	Discrepancies in compliances requested of organisations by different administrative authorities	5.32
36	9	II	Obligation of registration	5.29
37	37	VIII	The need for a formal procedure before the administrative authorities in order to enjoy tax benefits, despite there being a legal exemption system	5.26
38	50	X	Rigid delimitation of the sphere of action of the parties, in partnership constitutive documents or deeds	5.05

39	29	VII	Prohibition or restrictions on government funding	4.79
40	32	VII	Difficulties in exchanging currencies at real market rates	4.73
41	15	III	Lack of standardisation in dealing with PBOs in relation to the different organisational forms adopted	4.68
42	44	IX	Existence of legislative gaps relating to the registration of a branch office of a foreign CSO	4.49
43	43	VIII	Lack or insufficiency of the inheritance tax exemption system for CSOs	4.38
44	17	IV	Existence of administrative regulations allowing inspections on organisations when the law does not establish particular regulations on the matter	4.03
45	14	III	Existence of peremptory lists of aims defining the public benefit concept	3.95
46	12	II	Prohibition for legal entities to set up CSOs	3.78
47	11	II	Not recognising foreigners' rights to set up associations	3.44
48	52	X	Difficulty for governmental bodies to make fund transfers in favour of CSOs	3.39
49	16	IV	Excessive governmental powers of CSO inspection	2.86
50	22	V	Absolute assumption of a for-profit nature of economic activities of a certain scale	2.61
51	18	IV	The obligation of notifying memberships of international organisations	2.49
52	21	V	No distinction, for tax purposes, between occasional economic activities and on-going ones	2.34
53	39	VIII	The need to renew the status of tax-exempt organisation every few years	2.30
54	27	VII	Fundraisers' need to meet complex legal criteria which sometimes come from different levels of authority	1.92
55	38	VIII	Impossibility for CSOs to apply for tax exemptions before some years have elapsed since the start of their activities	1.82
56	54	XI	Denial of registration for second-level associations (networks, consortia, federations and so-called "umbrella" organisations)	1.08
57	28	VII	Prohibition for foundations financed by private enterprises to do fundraising or to ask for donations	0.96

Source: CERFE, 2008

As we can see, the top 20 obstacles include a prevalence of those contained in area X concerning **partnerships** and service provision (4 obstacles) and in areas V, VII and VIII, which include **economic and financial activities** and **resources** and **tax benefits** (9 obstacles altogether).

Particularly significant is the presence of obstacle 5, concerning the **non-systematic nature of legislation on CSOs**, and obstacle 3, regarding the **lack of a clear definition of non-profit organisation**. One should also note the presence of obstacles 24 and 25, referring to the **difficulties faced by civil society members in participating in public consultation bodies** and in **public policymaking**, as well as two obstacles (55 and 56) connected to **CSO self-regulation** as regards internal democracy and behaviour.

The following table gives an **overview** of the weight of the different **areas** of obstacles according to the summary index, and shows the **mean values** of the index **for each area**.

**Table 5 – Mean values of each area of juridical obstacles according to the General Intensity Index** (ranking according to the mean value of the Index)

Ranking	Area	No. of obstacles	General Intensity Index
1	VI. Political activities	3	7.47
2	I. Constitutional rights and general issues	8	6.74
3	X. Partnerships and service provision	9	6.66
4	VIII. Tax benefits	9	5.69
5	VII. Economic and financial resources	9	5.53
6	XI. Self-regulation	4	5.27
7	III. Public benefit organisations	3	5.19
8	V. Economic and financial activities	4	4.86
9	II. Juridical existence of CSOs	4	4.66
10	IX. Foreign CSOs	1	4.49
11	IV. Internal governance and structure	3	3.13

Source: CERFE, 2008



Note that the areas of obstacles with **higher mean values** concern **political activities**, constitutional rights and general themes, **partnerships** and service provision, **tax benefits**, and **economic and financial resources**. Those with lower mean values instead concern the juridical existence of CSOs, foreign CSOs and internal governance and structure.

This information can be useful not only for identifying blocks of problems of a strictly juridical kind, but also (as we shall see better in the next chapter) for identifying deeper **social phenomena** to be dealt with.

### 2.3. The ranking of non-juridical obstacles

The importance and distribution indices were also calculated for **non-juridical obstacles**<sup>13</sup>. Here follows the ranking of the non-juridical obstacles according to the **index of importance**, which was more significant and able to distinguish the different weights of the obstacles in this case.

**Table 6 – Index of Importance - Non-juridical obstacles** (ranked according to Index)

Ranking	Obstacle no.	Section	Name of obstacle	Index of Importance
1	nj11	a	Poor development of individual philanthropy and lack of donations for the CSO sector	9.72
1	nj 12	a	Widespread expectations of receiving free services from CSOs	9.72
3	nj 45	e	Occupational instability of CSO personnel	9.71
3	nj 46	e	Insufficiency of self-financing mechanisms	9.71
5	nj 15	b	The state's non-recognition of civil society's role	9.44
5	nj 24	b	Lack of partnership creation despite there being laws encouraging this	9.44
7	nj 14	b	Lack of any real decentralisation of the state	9.43
7	nj 40	d	Poor willingness of the private sector to implement cooperation strategies and partnerships with CSOs	9.43
7	nj 41	d	Occasional nature of private sector contributions	9.43
7	nj 44	e	Excessive structural and financial fragility of the non-profit sector	9.43

<sup>13</sup> Only these two indices were calculated for these kinds of obstacles and not the one of attention because the questionnaire only envisaged a judgement of importance for these obstacles.

7	nj 63	e	Lack of technical assistance infrastructures for CSOs	9.43
12	nj 2	a	The media's lack of proper knowledge on the sector	9.17
12	nj 16	b	A xenophobic political-cultural climate hostile to CSOs dealing with human rights	9.17
12	nj 17	b	Lack of any political will to involve CSOs in policy-making	9.17
12	nj 26	b	No government policy for enhancing the non-profit sector's capacity to access European Union funds	9.17
17	nj 57	e	Difficulty in finding premises to establish a head office	9.14
18	nj 48	e	Gradual withdrawal of foreign funds	9.12
19	nj 13	a	Political instability	8.89
20	nj 42	d	Private enterprises' lack of confidence in CSOs	8.86
20	nj 43	d	Private enterprises' unwillingness to finance advocacy organisations	8.86
20	nj 51	e	Little willingness to promote second-level associations (networks, federations, consortia, umbrella organisations, etc.) that may represent points of reference for the sector's self-regulation	8.86
20	nj 61	e	Poor self-promotion and public communication skills	8.86
24	nj 55	e	Poor CSO cooperation with international bodies	8.82
25	nj 5	a	Public opinion's negative views of the non-profit sector	8.61
25	nj 22	b	Lack of a governance culture	8.61
25	nj 25	b	Government inertia in accessing European Union funds	8.61
28	nj 34	c	Lack of transparency in public contracting procedures	8.57
28	nj 52	e	Lack of CSO codes of conduct	8.57
28	nj 56	e	Lack of strategic planning	8.57
28	nj 58	e	Lack of financial management skills	8.57
32	nj 10	a	Lack of a voluntary work culture	8.33
32	nj 23	b	Prejudice on CSO competencies	8.33
34	nj 1	a	Media hostility	8.29
34	nj 50	e	Ineffectiveness of CSO governance	8.29
34	nj 59	e	Lack of fundraising skills	8.29
37	nj 9	a	Political party diffidence of CSOs	8.13

38	nj 3	a	Impossibility or excessive difficulty of accessing the media	8.06
38	nj 8	a	Negative views on advocacy activities conducted by CSOs	8.06
40	nj 29	c	Lack of training for officials charged with law administration	8.00
40	nj 31	c	Lack of transparency in commissions charged with distributing public funds to CSOs	8.00
40	nj 49	e	Existence of a lower professional standard for CSO directors and board members compared to for-profit organisations	8.00
40	nj 60	e	Excessive donors' influence on CSO activities	8.00
40	nj 62	e	Poor availability of attorneys and expert advisers on non-profit sector legislation	8.00
45	nj 30	c	Lack of flexibility of public administrations involved in partnership programmes	7.94
45	nj 32	c	Inadequacy of CSO quality evaluation systems	7.94
47	nj 4	a	Limited media freedom	7.78
47	nj 7	a	Negative views on lobbying in the non-profit sector	7.78
47	nj 18	b	Contrasts and uncertainties regarding which organisations are representative of civil society	7.78
50	nj 36	c	Bureaucratic dysfunctions in handling European funds	7.71
51	nj 47	e	Conflicts of interest for advocacy organisations that receive public funding	7.14
52	nj 33	c	Unfair competition by CSOs financed by governmental or municipal agencies	6.94
53	nj 35	c	Delays in public administration payments to CSOs	6.86
54	nj 53	e	Difficulties in accessing technologies	6.57
55	nj 37	c	Excessive sluggishness or high cost of judicial actions against the government's arbitrary actions	6.29
56	nj 54	e	Difficulties in publishing reports on their own activities	6.00
57	nj 28	b	Lack of independence, from the executive power, of bodies responsible for supervising CSOs	5.83
58	nj 38	c	Harassment by tax authorities	5.71
59	nj 39	c	Difficulty in accessing CSO ledgers and records	5.14
60	nj 19	b	CSO harassment through inspections and arbitrary requests	4.71
61	nj 20	b	Illegal modifications of CSO statutes	3.06

62	nj 21	b	Use of licensing laws for controlling CSOs	2.57
62	nj 27	b	The need, in practice, to possess considerable assets before obtaining permission to set up a foundation	2.57

Source: CERFE, 2008

On the whole, it may be noted how the top ranking non-juridical obstacles mainly include some referring to the areas of “Political dynamics and latent functions”, “CSO capacity and sustainability” and, to a slightly lesser extent, “Cultural and social dynamics”. This result generally highlights the existence of persistent problems in the relations of Serbian CSOs with the **political sphere**, the difficulties these organisations have in maintaining **stability over time** and – as we shall see better further on – the weight of **cognitive factors** in shaping their kind of public presence.

It must also be noted that some obstacles which rank fairly highly in the list concern further crucial aspects such as relations with the **private sector** (see obstacle nj 42 “private enterprises’ lack of confidence in CSOs”) or the functioning of **public administration**, at least as regards some key aspects of CSO life (see, for example, obstacle nj 34 on the lack of transparency in public contracting procedures).

These and other results will be dealt with in more detail in the next chapter.

### **3. A transverse interpretation of obstacles: the identification of five clusters**

#### *3.1. Obstacles as indicators of social problems*

The information on the map of obstacles and the processing of the relative results do not only have a **technical-juridical value**. In fact, the map may provide even further important **social, anthropological and political knowledge**.

On the basis of the study carried out within PRAVOK, it was possible to identify **critical issues** which often **cut accross** different juridical areas. In this sense, the obstacles or sets of obstacles can be considered symptoms or rather **indicators of deeper problem structures**. Thus, the obstacles to civil society

development could be grouped also according to a **logic based on real problems** and not just on the form or juridical status.

The same can be said, as will perhaps be clearer further on, also for the non-juridical type obstacles which, taken as a whole and along with the juridical obstacles, can reveal some important **information of a social kind** on the presence of CSOs in the public life of Serbia.

This type of transverse in-depth interpretation of the results of the obstacle map could, perhaps more clearly, allow the identification of existing problems in order to enable the proposal of action strategies and complex integrated policies.

### *3.2. Five clusters of obstacles for civil society*

The aforesaid approach was thus adopted in order to assess whether the **research results**, and particularly the interpretation of the map of obstacles, yielded specific **recurrent social problems and structures** for Serbian civil society.

To this end, it was decided to proceed mainly by:

- Examining the substance of the various areas of obstacles, as they stand in the map.
- Examining the ranking of the obstacles in the map (both juridical and non-juridical ones).
- Examining the answers that the CSOs gave to certain open questions of the questionnaire, concerning the obstacles in the map, their intensity, the way these obstacles come about, and the way the various actors – CSOs, public administration, etc. – come to terms with the obstacles (a total of 1,490 written responses).
- Examining the information and evaluations of the experts concerning the map obstacles (a total of 315 written responses).

Therefore, a first **re-interpretation and re-systemising** of a “**transverse**” kind was made of the research results produced so far in order to progressively highlight the social, cultural, organisational and political aspects of the problems that the juridical and non-juridical obstacles (or sets of obstacles) seem to indicate.

On the basis of this work, it became possible to identify **5 clusters of obstacles** corresponding to 5 areas of **problems** concerning the **presence of CSOs in Serbian society** and which appear in some way “**structural**” and thus particularly rooted and widespread. These clusters do not exactly match the aforesaid socio-juridical categories (that is, the 11 areas of juridical obstacles and the 5 sections of non-juridical obstacles), but are the result of their partial grouping or re-grouping, carried out by bearing in mind the anthropological and political problems that the obstacles they contain seem to show.

The **5 clusters**, which will be illustrated in more detail in the next chapters, are:

- Cluster 1: **Fundamental rights**
- Cluster 2: **Sustainability**
- Cluster 3: **Autonomy**
- Cluster 4: **Capacity and professionalism**
- Cluster 5: **Public presence**

It must be said that the construction and examination of these clusters sheds light not only on the **difficulties** for CSOs, but also on the **possibilities, opportunities** and **concrete solutions**.

For each cluster there will be a short description of its **composition** and of some aspects of the **situation** that the obstacles contained in it give rise to (with particular regard to the practices of the actors involved), also highlighting some reasons or causes that seem to underlie the situation and, in some cases, also positive experiences and practices.

For mere exemplification purposes, for each cluster some **excerpts** of the answers to the open questions of the questionnaire will also be provided. These excerpts will be indicated with a code containing the source (**O** if coming from an organisation and **E** if from an expert).

In the presentation of the various clusters, **the individual obstacles will not be specifically mentioned** (for which the reader is referred to the map), but an attempt will be made to illustrate a series of **cross cutting** phenomena that some sets of obstacles can highlight.

Chapter Six

**Cluster 1**

**“Fundamental rights”**





## 1. Cluster 1 and its constituent obstacles

A transverse and more in-depth interpretation of the **map of obstacles** firstly allows identifying a first set, or “cluster”, of obstacles, concerning recognition of **human and juridical rights** that are **fundamental** for the life of CSOs.

An essential condition to increase and qualify the presence of CSOs in public life is the existence of a context which guarantees a basic **juridical and political accessibility** for these organisations.

For CSOs everywhere, certain aspects are important such as being able to be set up without excessive restrictions, being recognised publicly, making reference to a clear and consistent legislative framework, being able to operate without excessive controls, having careful interlocutors sufficiently close by in the geographical area of intervention, and more besides.

In the Serbian context, this set of problem elements has, over time, been quite important, even if we are witnessing great improvements in recent years. In any case, an examination of the map shows, as already said, a specific cluster of obstacles concerning these aspects. This cluster in some way takes a snapshot of the situation in which some problems in recognising fundamental human and legal rights still persist or – even if overcome on paper or in intentions – continue to produce negative effects on the life of CSOs and on the possibility of their positive cooperation with public actors.

The cluster is firstly composed of juridical obstacles belonging to area I (“Constitutional rights and general themes”), which ranks among the most important ones in the lists shown in chapter five. Moreover, two of the obstacles of this area (nos. 3 and 5) rank among the top 20 most important in the general intensity index.

To these obstacles may be added others which refer in various ways to problems in the general juridical context for CSOs. These are some obstacles (not all) belonging to area II (“Juridical existence of CSOs”), area IX (“Foreign CSOs”) and area VI (“Political activities”). Finally, a series of non-juridical obstacles have been added to this cluster since they are related in some way to the CSOs’ freedom of action.

The list of obstacles included in this cluster is reported below.

CLUSTER OF OBSTACLES No. 1  
**FUNDAMENTAL RIGHTS**

**Juridical obstacles**

AREA I "Constitutional rights and general themes"

- 1 Insufficient recognition of the right of association
- 2 Ordinary legislation contradicting the rights to free association established in the Constitution
- 3 Lack of a clear, univocal and up-to-date legal definition of "non-profit organisation"
- 4 Lack of any clear system for classifying the various types of CSOs
- 5 The non-systematic nature of CSO legislation
- 6 Existence of uncoordinated consecutive provisions concerning CSOs
- 8 Lack of legal recognition of voluntary work

AREA II "Juridical existence of CSOs"

- 9 Obligation of registration
- 10 Establishing a minimum or maximum number of members for setting up an association
- 11 Not recognising foreigners' rights to set up associations
- 12 Prohibition for legal entities to set up CSOs

AREA VI "Political activities"

- 23 Existence of a hazy borderline between permitted and non-permitted political activities

AREA IX "Foreign CSOs"

- 44 Existence of legislative gaps relating to the registration of a branch office of a foreign CSO

**Non-juridical obstacles**

- nj4 Limited media freedom
- nj14 Lack of any real decentralisation of the state
- nj21 Use of licensing laws for controlling CSOs
- nj27 The need, in practice, to possess considerable assets before obtaining permission to set up a foundation
- nj28 Lack of independence, from the executive power, of bodies responsible for supervising CSOs
- nj37 Excessive sluggishness or high cost of judicial actions against the government's arbitrary actions
- nj39 Difficulty in accessing CSO ledgers and records

## 2. The current situation and open issues

On the whole, the analysis of the obstacles included in this first cluster shows a **changing situation** as regards creating a **general juridical and political context** that is favourable to the setting up and development of CSOs. However, this situation still appears characterised by **strong elements of uncertainty and conflict**.

Firstly, it must be recalled that the new law bill on associations (see above), as well as, for example, art. 55 of the new Constitution of the Republic of Serbia (November 2006) which mentions freedom of association, constitute important novelties in this regard.

However, in this **transition phase**, the general juridical context, from a CSO standpoint, still appears characterised by various kinds of **deficiencies, inconsistencies and rigidities in legislation**, as clearly comes to light in the map of juridical obstacles presented.

Without repeating the whole list of obstacles included in this cluster, it is worth recalling that the respondents mentioned the following problem aspects, amongst others:

- The poor clarity of the current legislation on associations.
- The uneven regulation of the right of association.
- The lack of legislative definition of the civic sector.
- The lack of recognition of informal associations.
- The uncertainty on opportunities and the limits of political action of actors (political party and social ones).
- Excessive control on CSO activities and on any changes in them.
- The existing juridical restrictions on foreign CSOs operating in Serbia.

We shall now report some **passages** taken from the open answers in the questionnaire (as we shall do from now on in this document) given by CSO leaders and, in some cases, by the experts asked<sup>14</sup>.

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<sup>14</sup> The questionnaire code from which the passage is taken is given in brackets, according to whether the respondent is a CSO (code letter O + a progressive number) or an expert (code letter E + a progressive number).

"The current law on associations of citizens is insufficiently precise, not very clear and not in line with the new law and with international standards". (O38)

"The lack of an up-to-date legislation regulating the right of association in a homogeneous manner creates non-homogeneous criteria in the recognition of associations, leading to exclusions or limitations". (O10)

"Ancient laws that regulate CSOs do not give the clear definition of civil sector. That is the reason why the enterprises including the profit organizations and profit sport clubs still have the status of CSOs. Also, the Serbian law (coming into force in 1982) lays down some forms of association characteristic for Socialism. Those forms of associations still exist in the Serbian reality." (E1)

"Informal associations do not have juridical recognition, which means that, for example, they do not have the possibility of having a bank account and they cannot appear before a court to sue as *parte civile*". (O45)

"In our country, the activity of political subjects is regulated by the law on political organisations. I believe that even in our society there is a legal obstacle in the sense that with the current legislation the limits of action of political parties and of other important actors on the political scene of today's Serbia are not clearly defined". (O41)

"According to the laws, only citizens having the right to vote may be members of associations i.e. their founders. However, foreign organisations can have their premises in Serbia and their staff, but not based on the laws on associations of citizens. However, with regard to foundations and funds can be established by foreign legal entities and citizens without limitations (Law on Funds and Foundations, Republic of Serbia 1989)" (E3)

This sphere must also consider the importance of non-juridical obstacles such as the one regarding **freedom of the press** (nj4) and the lack of any real **decentralization of the state**, which is evidently still considered in many ways far removed from the reality of the CSOs (nj14).

Forms of denial of fundamental rights can occur also in the **enforcement** of legislation. These enforcement practices can relate to such things as:

- Uncertainty as regards which institutional and administrative interlocutors to turn to in order to obtain information on setting up new CSOs.
- Discrepancies in the interpretation of laws at a local level.

"It often happens that you don't know which institution to turn to in order to set up an association. On the basis of the indications given by those working in the front offices, I see that even the employees don't know the laws they have to implement". (O20)

"There is a different treatment of organisations by public administration, which creates further confusion for people working in the non-profit sector. It has already happened that the very laws concerning local organisations are interpreted in different ways from one city to the next, or from one region to the next. I repeat, the main reason for this is the lack of a law which should govern the functioning of NGOs within financial policy". (O42)

Some sources have also pointed to the problem of **libel lawsuits** promoted against CSO leaders by politicians for dissuasion purposes.

The **degree of seriousness** of the situation, in any case, **is not recognised or evaluated by everyone in the same way** since different informants have pointed to the fact that, for instance, existing legislation does not impose particular obstacles for setting up CSOs and that, at least in their experience, there are no specific difficulties in registration.

"I believe that our legislation does not hinder the activities of informal groups even if they do not have the status of legal entity. Informal groups in Serbia actively operate and I wouldn't like them to have the same status as legal entities because, when we talk of legal entities, the obligations and responsibilities of the individual can clearly be established (which can be easily abused), while this is not the case with informal groups. Even if for registering associations in Serbia one turns to the Ministry concerned, the procedure is simple and very liberal, so that for informal groups this does not represent an obstacle in formalising their own activities and in acquiring the legal connotations they lacked during informal activities". (O42)

Particularly felt is also a problem that heavily affects the full operative condition of CSOs, that is, the **use of voluntary work**, which is **insufficiently regulated**, thus damaging both CSO functioning and the staff working in them. Besides, this situation prevents **valorising important human resources** (see also cluster 4).

"In Serbia there is no law on voluntary work and on voluntary workers, which obliges CSOs to regulate voluntary workers' activities with internal rules; this makes the work of CSOs more difficult and also people are not motivated to do voluntary work because this activity is not officially recognised by anyone (neither as work nor as experienced gain, and it leads to no qualification)." (O45)

"Our legislation on employment envisages the juridical figure of legal-voluntary worker, but the hiring of these people is no different from employing them. The procedure for regularising the position of a legal-voluntary worker is complicated and not worth doing for organisations." (O42)

"There are no penalties in the practice related to the volunteer's work in CSOs, but, according to the Labour Act, this possibility exists." (E1)

"In the present reality in Serbia there is an enormous number of unemployed people. There is no special benefit from the volunteer's work, and that form of work, without the special law regulating this area, does not represent some advantage in employing, especially for youth." (E1)

In this picture, in any case, in CSOs there is a sort of "**do it yourself**" culture in order to guarantee the birth and survival of one's organisation – not rarely without adequate means and knowledge (see also cluster 4). This happens, for instance, by practising **case-by-case forms of protection**, using the **internet** to overcome the lack of information, or operating without exactly knowing the laws.

"Most organisations try to defend their own rights by themselves and in piece-meal fashion". (O39)

"If it weren't for the internet, people wouldn't know who to turn to for answers to their questions because some personnel, although they should give you information, are not interested in doing so". (O27)

"Fragmentation, different customs in various cultural spheres, a general attitude on everyone's part to "get by" as best one can, and the unscrupulous ones are often the most successful, too (...)" (O38)

"CSOs operate without fully knowing what the laws actually envisage (...)" (O38)

Behind the problems mentioned, there is – according to widespread opinion – a persistent attitude of **suspicion** of broad areas of **public authorities** towards the CSO sector. Moreover, there are some **rooted cultural dynamics** that can come about in various ways, such as:

- A **traditional representation of politics**, as a sphere solely limited to political parties.
- The persistence of an **etatist view** of political and social problem-solving.
- The negative effects of recent conflicts on personal and collective **identity**.

- **A representation of CSOs as factors of imbalance and disturbance of social life.**

"The actors of political society must understand that democracy is not only a struggle for power (...). Politics is not the monopoly of government, parliament and political parties, but is a field in which social needs must be solved". (O12)

"In our society there is still no social activism to the extent and type expected in democratic societies. Citizens are still of the idea that the state should solve their problems and that they should not do so themselves. This further increases the state's intolerance of the NGO sector so that the state does not support it, does not promote it, and does not develop partnerships with it; however, it exploits any successes as if they were the state's every time it recognises a solution useful to the state. The state still does not acknowledge citizens' interests as its own". (O28)

"Thus, the NGO sector is generally viewed negatively. One of the most important problems is the irrational fear of the unknown which, even if we can explain it by the social-economic situation of some past decades, we cannot overlook. The mutilation in wars did not just refer to the deaths but also to a mutilation of national identity and of an individual's integrity. The state of the economy has only increased this problem". (O47)

"There are two sides to the current cultural and social dynamics: a) one is a continuing anti-reformist political campaign that targets NGOs as agents of social change and preventively discredits them in the public eye because they are a potential, if not an actual, threat to the status quo; and b) a generally accurate public perception that NGOs are overly responsive to rather than pro-actively guiding international donor strategies and that there is no systematic effort to ensure intra-sectoral accountability or broader stakeholder accountability because there are no real leveraging points for the "ordinary citizen"." (E6)

The **perception** of CSOs (by politicians and especially by public opinion) will in any case be studied in greater depth for its specific importance with reference to **cluster 5**.





Chapter Seven

**Cluster 2**

**"Sustainability"**



## 1. Cluster 2 and its constituent obstacles

A second, very important, cluster emerging from a transverse reading of the map includes a series of obstacles to the life and growth of CSOs as regards **economic and financial activities, resources, and tax benefits**, thus affecting **CSO sustainability**.

This cluster deals with such aspects as whether CSOs have the possibility to conduct certain economic activities, their taxation treatment (also with respect to other organisations, such as private ones), their opportunity to access credit, the way to obtain government funding and funds from abroad, tax incentives for individuals and firms wishing to make donations to CSOs, and more besides.

The cluster is thus especially composed of **juridical obstacles** belonging to areas V (“Economic and financial activities”), VII (“Economic and financial resources”) and VIII (“Tax benefits”). To stress the **importance** of this cluster, it should be recalled that as many as 9 obstacles belonging to these three areas rank among the top 20 obstacles reported in chapter five. The problems concerning the economic, financial and fiscal aspects are also at the heart of many studies and programmes carried out in Serbia also by other organisations, especially by the ECNL.

To complete this cluster, as we shall see in the chart below, the obstacles just mentioned have been supplemented with another three, belonging to areas III and X, which concern in various ways aspects of sustainability like taxation of activities and public funding in favour of CSOs.

This cluster can also include other obstacles, of a **non-juridical** type, specifically referring to **political and cultural aspects** of CSO sustainability, and which mostly rank in the top places of the list of this type of obstacles. The cluster consists of the following obstacles.

CLUSTER OF OBSTACLES No. 2 <b>SUSTAINABILITY</b>	
<b>Juridical obstacles</b>	
AREA III “Public Benefit Organizations”	
13	Disparity between the framework regulation and tax law in defining Public benefit organisation (PBO) (i.e. activities deemed for public benefit)

15. Lack of standardisation in dealing with PBOs in relation to the different organisational forms adopted

AREA V "Economic and financial activities"

19. Lack of clarity of the definition of "economic activity of CSOs"
20. Uncertainty as to the possibility of conducting certain economic activities
21. No distinction, for tax purposes, between occasional economic activities and on-going ones
22. Low threshold of tax-exempt income generated from CSO's economic activities

AREA VII "Economic and financial resources"

26. Difficulties in obtaining credit
27. Fundraisers' need to meet complex legal criteria which sometimes come from different levels of authority
28. Prohibition for foundations financed by private enterprises to do fundraising or to ask for donations
29. Prohibition or restrictions on government funding
30. Lack of transparency of government funding
31. Existence of laws that create difficulties and restrictions for accessing foreign funds
32. Difficulties in exchanging currencies at real market rates
33. Lack of tax incentives for individuals making donations to CSOs
34. Few tax incentives for firms making donations to CSOs

AREA VIII "Tax benefits"

35. Insufficient tax benefits for CSOs
36. Existence of CSO tax reporting standards of the same level of for-profit enterprises
37. The need for a formal procedure before the administrative authorities in order to enjoy tax benefits, despite there being a legal exemption system
38. Impossibility for CSOs to apply for tax exemptions before some years have elapsed since the start of their activities
39. The need to renew the status of tax-exempt organisation every few years
40. Taxation of CSO real estate property
41. Lack of public policy instruments (public funds, for instance) to mitigate the burden VAT imposes on non profit entities engaged in activities deemed for public benefit
42. Lack or ineffectiveness of a tax system favourable to CSOs for customs duties

43 Lack or insufficiency of the inheritance tax exemption system for CSOs

AREA X "Partnerships and service provision"

52. Difficulty for governmental bodies to make fund transfers in favour of CSOs

**Non-juridical obstacles**

- nj11 Poor development of individual philanthropy and lack of donations for the CSO sector
- nj12 Widespread expectations of receiving free services from CSOs
- nj25 Government inertia in accessing European Union funds
- nj26 No government policy for enhancing the non-profit sector's capacity to access European Union funds
- nj31 Lack of transparency in commissions charged with distributing public funds to CSOs
- nj32 Inadequacy of CSO quality evaluation systems
- nj33 Unfair competition by CSOs financed by governmental or municipal agencies
- nj34 Lack of transparency in public contracting procedures
- nj35 Delays in public administration payments to CSOs
- nj36 Bureaucratic dysfunctions in handling European funds
- nj41 Occasional nature of private sector contributions
- nj44 Excessive structural and financial fragility of the non-profit sector
- nj46 Insufficiency of self-financing mechanisms
- nj47 Conflicts of interest for advocacy organisations that receive public funding
- nj48 Gradual withdrawal of foreign funds

## **2. The current situation and open issues**

The existence of serious problems of sustainability for Serbian CSOs clearly emerges from the analysis of the obstacle map drafted on the basis of the research carried out. The map analytically shows what the **various kinds of impediments** are in this sphere. It has also been recalled just how many obstacles there are concerning sustainability in the top places of the ranking of obstacles presented in the previous chapter.

On the whole, the obstacles linked to this cluster firstly show the **difficulty of CSOs to operate in the economic space**.

This difficulty emerges in many obstacles (see the above list) which highlights the existence of **restrictions** to CSOs' **economic activities** and the resulting difficulty in generating **income** for the organisation's operations and for its staff.

There is also a significant problem of **lack of confidence** and **lack of recognition** regarding CSOs. On the economic and financial side, this problem is seen through things like:

- The difficulties in obtaining credit.
- The lack of tax exemptions and facilitations for CSOs, both Serbian and foreign ones.
- The poor clarity of public financing procedures for CSOs.

"There is no chance of obtaining credit without offering real estate as collateral". (O44)

"The fact that banks do not wish to grant credit to CSOs is part of their internal policy." (O21)

"In Serbia there is no transparent, coherent and substantial financing of CSO activities from the state budget – either directly or indirectly. Even the tax system is not very convenient for CSO activities and development (for example, tax is paid on donations – i.e. 5% of the value of the donation itself)". (O14)

"The formal procedures are a great problem and a burden for the continuity and effectiveness of the CSOs' work. It is simply a matter of deciding who can obtain benefits and then putting this into practice without complicated administrative formalities". (O44)

"(...) A symptom of these problems is that the NGOs are not exempted from taxes and are forced to operate as agencies and not as NGOs. Thus, everything they achieve outside projects and every means (money) that is left over at the end of the tax year is subjected to value added tax (VAT). Therefore, NGOs in Serbia, by solving the problems that the state cannot solve, are even penalised and must pay VAT and are hindered in their search for the means with which to plan any possible change in their activities when the NGO sector becomes less needed in the future". (O28)

The lack of confidence often comes about in forms of **conflict** or open **competition** between CSOs and other public or private actors. This can occur through such things as:

- The procedural obstacles to financing.
- The poor transparency of fund allocation criteria.

- The presence of forms of explicit blockage of financial provisions in favour of CSOs.
- The presence of forms of unfair competition in public competitions.

In this picture, there is a strong problem of competition also found **within the CSO sector itself**, in which the study found a great **perception of disparity** in fund access, such as between large and small organisations, between those closer to political centres and those less so, or between organisations based in Belgrade or in other large cities compared to those operating in small towns.

"The budget is – without any forms of control – used in order to finance those organisations closer to politics. It is a characteristic of Serbia to spend budget funds in a non-transparent manner, as well as the existence of corruption in this sector, even at a local level". (O49)

"In Serbia there is no possibility of controlling existing funding dedicated to CSOs. It is not clear which organisations have a right to financing and what the criteria are". (O44)

"It is almost impossible to track how much money and to which organizations public funds are distributed. This causes situation in which certain organisations always receive governmental support, and others cannot access them at all." (E4)

"Local organisations that have ad hoc aims often receive greater support compared to those with long-term objectives at national level or those linked to the work of the main bodies of the state". (O13)

One need hardly say that all this makes for considerable **risk for the very survival** of CSOs – even the most important ones. The possibility of a prolonged interruption (or great downsizing) of activities, or closure, is something very real for many organisations.

"There is the impossibility of making some CSOs work and survive". (O21)

"There are some good organizations that have achieved concrete and tangible results and are still unable to secure their operating budgets, even after 20 years of existence and major contributions to the sector as a whole. An example is the Belgrade Center for Human Rights which is now sinking into donors' oblivion and it has no way of developing a local funding base. Their contribution in human rights training is invaluable and they have opened up major debates, nurtured generations of leading human rights lawyers, provided a major contribution to training of judiciary and public education on human rights, and published a number of books and manuals.

However, this organization is now struggling to survive. Obviously, their financial and organizational management skills were not at the level of their legal and educational skills but it would be a shame to lose such a respected institution. This is an illustration of the fact that, in Serbia, even the strongest NGOs are in fact very vulnerable.” (E6)

All this may lead to **stress, demoralisation** and demotivation for CSOs.

“There is no motivation for establishing greater aims”. (O35)

“Another difficulty is that donors do not recognise this budgetary problem so that we have to keep several projects going in order to guarantee the functioning of offices and staff. This leads to an increase in activities and a decrease in quality, that is, to the constant weariness of workers and their loss of motivation”. (O28)

However, there are **signs**, albeit contradictory ones, of **change in relations between CSOs and fundraising** that can deeply affect the way CSOs can guarantee their sustainability. These include such things as:

- The existence of **best practices** of cooperation between the public and non-profit sector, and the resulting ways of **CSO financing**, such as in the case of governmental programmes for **combating poverty**.
- Forms (even ad hoc ones) of **operative convergence** between political leaders and CSOs that can also thus generate funding opportunities.
- The emergence of a **new generation of CSOs** that are more careful of **strategic aspects of sustainability**.

“With regards to transparency in public contracting procedures, the situation varies from good to poor, depending on the sector/public agency. Probably the shining star is the Poverty Reduction Strategy Unit within the Deputy Prime Minister’s Office. To my knowledge, they cooperate with NGOs based on clear and public procedures and on-going consultations and exchanges. At the local level, the situation ought to be significantly improved.” (E6)

“Political parties and CSOs often cooperate when they have common interests.” (O17)

“The approaching funding gap will leave many NGOs unprepared and we will see a sea change, i.e. dissolution of old and birth of new NGOs. To a certain extent, this is good news because it will challenge a learned reactive mode of a good part the NGO community. It is my perception that many NGOs received funding simply because they were based in a major donor’s target location/sector. Hopefully, some of these NGOs will successfully transition into a new phase that will be more focused on actual results, which will hopefully condition a more pro-active behavior of the NGO community.” (E6)



New practices are also emerging, especially as regards **corporate social responsibility** (CSR). In this regard, there is an initial **spreading of theories and practices** linked to CSR, also due to drives on the part of international and foreign organisations, and multinationals as well as CSOs and their networks, such as Civic Initiatives, FENS or the Balkan Community Initiative Fund.

However, CSR is only **slowly** and **very unevenly** spreading with regard to the areas of action. In this context, the study found:

- The persistence of a **culture** still linked to state intervention and thus poorly inclined to considering private initiatives favourably.
- The **entrepreneurs' poor awareness** of the role of CSOs and the resulting tendency to finance just **sporting and cultural** initiatives rather than CSO activities themselves.
- Private firms' lack of confidence in CSOs' **operative capacities**.
- The tendency for firms to associate their image to **success themes** rather than to those of support to marginal people (the main activity of many CSOs).
- The lack of tax **incentives** (see also below).

"A number of local and international organisations are promoting the concept and practice of corporate social responsibility in Serbia. In my own view, the concept has not yet taken very deep roots because there is no real pressure on the corporate sector firms to mind their image. Citizens still look primarily for state interventions in the range from community development to environment protection. Any corporate giving is welcome but is still not really expected and is much less requested. Youth employment is an area in which corporations are more readily interested than some of the other areas. Other than that, typical issues that are publicly supported by the corporate sector are not the deeply felt problems but rather easy and popular solutions, such as fixing sports courts and playgrounds, providing scholarships to the most talented students, supporting music festivals and sports events, etc." (E6)

"Private firms mainly finance various sporting and cultural events instead of CSO activities because they do not know their role or importance". (O06)

"The corporate sector in Serbia wants to be associated with the best and the most successful and it is still only the state that is expected to provide for the marginalized. " (E6)

"The private sector is not interested in financing the work of NGOs because there are no banking supports or advantages for funding of this kind". (O52)

"Private enterprises are not convinced of the CSOs' ability to perform certain kinds of service." (O12)

"The private sector is still strongly influenced by state and semi-state institutions. The private sector of foreign societies has a good attitude and finances various projects. The role of multinationals in Serbia is very important for promoting civil society values". (O07)

"The state has not created a fiscal context in which private enterprises can find interest in financing the work and activities of CSOs (tax breaks or other incentives). At the same time, the idea of socially responsible management of affairs is still in a seminal stage in Serbia" (O14)

"Corporations have no incentives, or at least no significant incentives, in the form of tax exemptions to give donations to CSO. That is why CSOs are mainly oriented to foreign donors." (O08)

"Some foreign donors are tax exempt, based on bilateral agreements, and their donations are then exempted when they come to a local CSO from certain taxes, but municipal tax authorities have the possibility to impose taxes on donations." (O08)

Underlying the CSOs difficulties in sustainability are particularly some elements of a **juridical** nature:

- The **lack** of legislation (such as tax incentives for CSOs and for donors, or the attribution of PBO status).
- The existence of **restrictive legislation** on such things as the possibility to carry on certain economic activities or to transfer government funds to CSOs.
- **Legislative uncertainty** on aspects such as the definition of economic activity applicable to CSOs.
- The lack of CSO **classification** criteria in order to provide funding.

"There is no legal regulation attributing the status of common interest organisation to certain organisations". (O45)

"There are no criteria for distinguishing organisations according to their importance". (O35)

"In Serbia the VAT system does not distinguish between for-profit enterprises and non-profit organisations, both subject to VAT." (E4)

Here, too, the reasons underlying the obstacles in this cluster include a history, albeit a recent one, characterised by – more or less explicit – mutual suspicion or forms of **conflict** between state actors and civil society ones.

To this may be added the existence of inadequate **cultural and professional models** – inside some contexts, both as regards public administration and CSOs – for dealing with the need to financially support civil society, and that are characterised by a certain degree of **self-referencing**. In this regard, the respondents stressed the following aspects.

- *As regards public administration:*
  - The existence of a public “machine” that is still **backward** and little inclined to relations with external actors like CSOs.
  - Public administration’s poor support in enabling CSOs to access **European funds**.
  - The lack of formalised criteria for **evaluating the quality** of CSO activities in order to take public funding decisions.

“It seems that the structure of public administration, archaic and little flexible, will continue to create these problems that only time and a complete “generation turnover” can solve”. (O11)

“We registered towards the end of March of last year and handed in our documents about seventy days later. The administration is extremely slow, they tend to ask for additional documents later instead of seeing whether some document is missing at the time of initial submission. All this greatly affects the motivation of NGOs”. (O20)

“The non-profit sector does not have state support in using EU funds: indeed, there is rivalry and hostility towards the CSO sector.” (O06)

- *As regards CSOs:*
  - The attitude of many CSOs to **attribute to external subjects the responsibility** of solving their own financing problems.
  - The **little interest** of many **CSOs to have relations** with public administration.

“Any interested person can set up a CSO. However, the problem of survival cannot be solved by others”. (O17)

"The problem consists of the NGOs' unwillingness and lack of interest in financing themselves through the budget of local administrations". (O49)

To this must be added, as already mentioned, the poor dissemination of a **donor culture** (see above).

The situation appears aggravated also by the **gradual withdrawal of international donors**, which is driving CSOs towards new forms of financing compared to the ones they were used to.

"The CSOs are undergoing a difficult transition period from being funded mostly by foreign donors, to an attempt to seek resources from the still weak State funds." (E2)

This is a serious problem – at least until such time as an appropriate system of financing by also local actors comes into operation.

Chapter Eight  
**Cluster 3**  
**“Autonomy”**



## 1. Cluster 3 and its constituent obstacles

A third cluster emerging from a transverse reading of the map, in the manner indicated in the previous chapters, consists of a set of obstacles found in the study that specifically concern **CSO autonomy** in running their own internal affairs. This deals with both the **existence** of this autonomy compared to **external actors** and also to the **practising** of autonomy as regards **internal governance**.

In essence, it appears fundamental for a CSO not only to have a juridical context that is favourable to its creation and operation, or even to have sustainability, but also to be able to **autonomously establish the rules** for governing its own functioning and activities.

This need usually first meets with **obstacles and restrictions outside** the CSO, which can take the form of **interference** of various kinds. Another side of the problem is instead **the use that a CSO makes of its own autonomy** in regulating its internal relations and its relations with external actors. At times, as we shall see, various problems may arise in this regard which affect the quality of a CSO and of its contribution to public life.

This third cluster, in particular, is firstly composed of juridical obstacles of areas IV (“Internal governance and structure”) and XI (“Self-regulation”), to which can be added an obstacle of area III (“Public benefit organisations”), referring to the existence of pre-codified lists of aims, and some non-juridical obstacles concerning the interference of public inspectors, the codes of conduct inside CSOs and the influence of donors on CSO activities. It is worth stressing that some of the juridical obstacles belonging to this cluster (nos. 55 and 56) rank among the top 20 most important obstacles listed in chapter five.

The cluster is composed of the following obstacles.

CLUSTER OF OBSTACLES No. 3	
AUTONOMY	
Juridical obstacles	
AREA III “Public benefit organisations”	
14	Existence of peremptory lists of aims defining the public benefit concept

AREA IV "Internal governance and structure"

- 16 Excessive governmental powers of CSO inspection
- 17 Existence of administrative regulations allowing inspections on organisations when the law does not establish particular regulations on the matter
- 18 The obligation of notifying memberships of international organisations

AREA XI "Self-regulation"

- 54 Denial of registration for second-level associations (networks, consortia, federations and so-called "umbrella" organisations)
- 55 Lack of CSO statute clauses guaranteeing the integrity and ethical conduct of members and directors
- 56 Lack of regulations, in CSO statutes, for guaranteeing internal democracy
- 57 Lack of mechanisms, in the statutes, envisaging public access to the organisation's documentation

**Non-juridical obstacles**

- ng19 CSO harassment through inspections and arbitrary requests
- ng38 Harassment by tax authorities
- ng52 Lack of CSO codes of conduct
- ng60 Excessive donors' influence on CSO activities

## 2. The current situation and open issues

This cluster of obstacles firstly highlights, as already said, the existence of certain problems concerning the **actual autonomy** of CSOs **with respect to external actors**.

When pointed out, these problems mainly concern – although not exclusively so, if we consider the aforesaid list – the possibility for public actors to carry out **"targeted" inspections** on certain kinds of organisation or threats of administrative penalties in order to **pressurise** these organisations.

"This legal objection is manifested through the right of competence authority to monitor all financial activities of a CSO including the contracts signed by the donors and CSOs, although the CSOs and donors are the subjects of civil law. Monitors are implemented selectively, and in practice, the objects of such monitoring visits are the CSOs which criticize the government." (E1)



"If the NGO has come into conflict with anyone, then something wrong will surely be found and it will be forced to pay huge fines". (O51)

"In administrative practice, after the ending of the administrative procedure, high sanctions are sentenced. As a rule, the next phase results in a delaying of their implementation and after the appeal, the sentence is often revoked. These acts of administrative bodies are used as the instruments of pressure on "unwanted " CSOs. In this way, government indirectly has an influence on the CSOs activities." (E1)

On the whole, though, it would seem that interference and inspections have a **relatively low** impact on CSO life and, in any case, this impact is **different** depending on the situation.

"We feel that an association, if it manages to acquire legal entity status in accordance with the law, must respect all the legal obligations like any other legal entity, which also means having its accounts inspected". (O33)

"I think this legal provision is not repressive – organisations have some time before the deadline to declare they are members of other international organisations." (O45)

One can say that the incidence of inspections very much depends on **local factors** and on specific types of relations that can be established between the actors concerned.

Another aspect of autonomy pointed out by many informants is the **excessive dependance of CSO activities on donor orientations**. As we saw in the previous chapter, this problem also concerns sustainability and can generate forms of **isolation** and **poor relevance** of CSO activities with respect to the Serbian context. The impossibility of registering "**second level**" organisations, such as umbrella-organisations, is also indicated as a problem.

As regards the practising of autonomy, some obstacles affecting the internal life of CSOs – with negative effects also on public image (see cluster 5) – may concern:

- The little formalisation of **self-governance** mechanisms (codes of conduct and the like).
- The excessive **personalisation in leadership**.
- The difficulty of some CSOs to be **transparent** regarding their sources of financing.

"There are many associations that do not have any code of conduct." (E3)

"There is a monopolising of organisations on the part of a smaller group of individuals". (O35)

"Though there are associations where a collective board is taking a lead, in practice it is usually one person taken as a personification of the association. (...) image and work of the association is often seen through the image of its leader, and usually his/her reputation (particularly if he/she is more politically involved) is not always seen as positive." (E3)

"The 'strong' organisations generally suffer from a "guru" syndrome as they continue to be guided rather than governed by their founder. Internal rules and procedures are at a standstill and internal democracy is questionable – as is the case in political parties and government". (E6)

"CSOs tending to be more professional would adopt such a code or provide reliable information on their work and even funding as this could gain or regain public trust" (E3)

"There is suspicion on the part of society as regards the integrity of CSO managements". (O35)

"We agree that CSOs traditionally do not provide the public with information on their activities, but the public has a legal right to this information and so CSOs are obliged to show their documentation and reports on their activities when asked to do so". (O45)

"There are few organisations that in a transparent way reveal their financial sources; however, this is still quite rare." (E3)

Both aspects of autonomy, with regard to external actors and internal governance, seem strongly interconnected and are linked to some phenomena found in Serbian society and culture, as pointed out by the CSO leaders and experts in the study. The **reasons** given for the above situation include the following.

- As regards **public actors'** orientations and decisions, there is a persistence of a **etatist culture** that leads to considering the existence and activities of CSOs with suspicion.
- As regards **civil society actors**, there is both a sort of withdrawal into oneself and the presence of a "strong" leader culture. These aspects have certainly been affected by the known difficulties that CSOs have had in their history.

- As regards **public opinion**, there is a widespread negative attitude towards CSOs and this is changing only slowly (this aspect will be examined in cluster 5).

The problem of autonomy thus consists of various elements stemming from deep **social and cultural dynamics** to be borne in mind.



Chapter Nine  
**Cluster 4**  
**“Capacity and professionalism”**



## 1. Cluster 4 and its constituent obstacles

A fourth cluster that can be identified brings together obstacles concerning, on the whole, **knowledge and skills** present in CSOs as well as the introduction of elements of **professionalism** of CSO staff.

At a time when civil society all over the world is reflecting on the way to guarantee a more continuous, effective and quality presence in the social life of their respective countries, the theme of professionalism and, generally, of knowledge and skills, is becoming **unavoidable**. In a context like the one found in **Serbia**, the issue is particularly important if we consider the overall fragility of the civil sector. In particular, with the lack of support to **human resources**, to the “brains”, then not only is the future of civil society at risk as such, but even its possibility to significantly contribute to the country’s social and economic growth.

This cluster also includes obstacles which refer to the knowledge and skills found in the world of **public administration**, at least specifically for the ability to relate to and cooperate with civil society.

The fourth cluster completely consists of **non-juridical obstacles**, which are reported below. These obstacles concern particularly important aspects. Some of them (nj45 and nj57) also rank highly in the list of top non-juridical obstacles presented in chapter five.

The obstacles making up this cluster are as follows.

CLUSTER OF OBSTACLES No. 4	
CAPACITY AND PROFESSIONALISM	
Non-juridical obstacles	
ng29	Lack of training for officials charged with law administration
ng30	Lack of flexibility of public administrations involved in partnership programmes
ng45	Occupational instability of CSO personnel
ng49	Existence of a lower professional standard for CSO directors and board members compared to for-profit organisations
ng50	Ineffectiveness of CSO governance

ng51	Little willingness to promote second-level associations (networks, federations, consortia, umbrella organisations, etc.) that may represent points of reference for the sector's self-regulation
ng53	Difficulties in accessing technologies
ng54	Difficulties in publishing reports on their own activities
ng55	Poor CSO cooperation with international bodies
ng56	Lack of strategic planning
ng57	Difficulty in finding premises to establish a head office
ng58	Lack of financial management skills
ng59	Lack of fundraising skills
ng61	Poor self-promotion and public communication skills
ng62	Poor availability of attorneys and expert advisers on non-profit sector legislation
ng63	Lack of technical assistance infrastructures for CSOs

## 2. The current situation and open issues

Many obstacles included in this cluster seem to show the existence of serious problems in the **professional identity** of CSO staff. These problems can affect their actual capacity to control the environment in which they operate.

These problems are seen in such things as:

- The **indefinite nature of the professional status** of CSO staff and leaders
- The **uncertainty** as regards employment
- The difficulties in **logistics**
- The lack of **technologies** and **technical tools**

On the whole, if we also consider what emerged from the sustainability cluster, we see a picture characterised by a real **struggle for the survival of the professional identity of CSOs**. This identity appears threatened from several points of view and thus strongly affects the degree and type of CSO presence in Serbian society.

"Everyone "fights" to assure – locally – the means coming from local budgets for their own organisation; the unity of the civil sector is lost and thus it decreases its own strength and capacity to really have an influence on changes." (O38)



"The survival capacities of CSOs in Serbia are very different. Apart from 50-60 CSOs that have good capacities, other organisations are more or less informal groups with one or more projects without any prospects enabling CSO survival." (O06)

A further, crucial, problem aspect concerns the **brains**, human resources, knowledge and skills of **CSO actors** and also of the **public administration** actors who should interact, and possibly cooperate, with CSOs.

There are various problems and deficiencies in this regard, too, firstly with respect to training needs.

In particular, the emerging **training needs** of **CSOs** include those in spheres such as:

- fund raising,
- organisational management,
- strategic planning,
- evaluation,
- administration,
- use of management and data analysis software (e.g. for research),
- human resource management,
- teamwork,
- career development,
- legislation concerning civil society,
- public communication,
- research capacity in the development field,
- political and economic analysis,
- local, national and international partnerships.

As regards **public administration**, training needs were found in spheres such as partnerships, service quality, administrative management and, of course, legislation on civil society matters (see also cluster 1).

"In addition to the contextual obstacles, NGOs have internal weaknesses. In my view, human resource management and outsourcing skills constitute a vast gap area. (...) NGOs are often times unable to articulate what areas they need assistance in and so they take what is available instead of driving the technical assistance market development.

NGOs are used to receiving free technical assistance and they do not question whether what is available to them is what they actually need in terms of kind/depth.” (E6)

“There may be a partnership orientation but with insufficient knowledge on how to set one up or based on the wrong assumptions, e.g. that in a partnership the CSOs must have a guiding role.” (O38)

“In administrative practice, civil servants mostly are not cognizant with new forms of partnerships.” (E1)

“The majority of civil servants do not have conscience of necessity of this co-operation, and internal regulations is rare, as well.” (E1)

Even other kinds of actors interacting with CSOs, such as **the media**, are concerned with the problem of skills and competencies, at least as regards the knowledge necessary to interact with a reality that is in many respects new and, above all, complex as the one of CSOs in Serbia.

It is also true that NGO counterparts, including journalists lack adequate skills, and to have a meaningful interaction, both need to reach a certain level. (E6)

The situation described above tends to create high **staff turnover** and, in effect, a real **brain-drain** from the CSO sector. In this way, civil society paradoxically risks losing the skills to significantly influence Serbian society, right at a time when important spaces are opening up for its activities.

“The CSOs are undergoing a difficult transition period from being funded mostly by foreign donors, to an attempt to seek resources from the still weak State funds. As a result, a number of experts working with the third sector, have sought employment elsewhere, decreasing the level of expertise in the CSO sector.” (E2)

“Financial instability and the survival of CSOs is increasing the obstacles for this sector, especially owing to the continuous staff turnover in CSOs in the third sector”. (O11)

“Voluntary work is not very appealing for people in Serbia specifically because it is unpaid”. (O32)

The picture emerging from the description of this cluster of obstacles seems to be also due to the **relatively recent structuring of civil society in Serbia**, besides the factors already mentioned previously, with all the consequences as

regards the culture and approaches to the reality on the part of the actors concerned and their operational, and especially interaction, capacity.

Various specific **experiences** in the field of training and professionalism were found, which must be taken into consideration, such as:

- Seminars and courses for activists and their partners of local authorities, professional agencies and others, promoted by international NGOs or entities.
- Courses with European funds for public administrators, also containing a part concerning relations with civil society.
- Training activities carried out within international partnership projects.
- Courses on European project-designing.
- The devising of CSO capacity evaluation and self-evaluation tools.
- Courses on advocacy.
- Courses on gender issues.

These experiences can be a useful point of reference for anyone aiming to operate for programmes geared to strengthening and constructing the capacities of CSO personnel and of other actors, especially public ones, that interact with this reality, or find themselves increasingly doing so.



Chapter Ten  
**Cluster 5**  
**“Public presence”**



## 1. Cluster 5 and its constituent obstacles

A fifth cluster of obstacles concerns the **public presence of CSOs**. On the whole, this cluster refers to two kinds of phenomena, one of which deals with the cognitive sphere, culture and mentality, and the other the operational one. In particular, this cluster of obstacles concerns, on the one hand, the way CSOs are **represented by other actors** and, on the other, the **role** that these organisations are playing, can play or have difficulty in playing, in Serbian society.

The importance of this cluster of obstacles is quite evident. Over and beyond having fundamental rights, being sustainable and autonomous, or having capacity and professionalism, for a CSO it is important to be **socially accepted**, recognised, legitimised and, as a result of all this, having the **concrete possibility to express itself and to operate** for the good of society, in cooperation or in **partnership** with other actors, both public and private.

The question of the public presence of CSOs, as may be grasped from reading the previous chapters, emerges transversely also from the treatment of the other clusters of obstacles, but the research results point to isolating and analysing this question in its **specificity**. All this by also bearing in mind that 6 juridical obstacles ranking among the most important ones presented in chapter five (see above) and a series of important non-juridical obstacles stressed by the respondents refer to this very question. In particular, **obstacle no. 45** (see below) turned out to be at the top of the list.

The fifth cluster consists of the following obstacles.

CLUSTER OF OBSTACLES No. 5 PUBLIC PRESENCE	
<b>Juridical obstacles</b>	
AREA VI "Political activities"	
4	Lack of legal mechanisms allowing CSOs to actively take part in defining public policies in their field
25	Lack of effective mechanisms for appointing exponents for properly representing civil society in sectoral public bodies
AREA X "Partnerships and service provision"	
45	Lack of legal mechanisms for co-operation practices between the public and private sector

- 46 Lack of criteria for selecting CSOs entering government advisory bodies
- 47 Lack of clear laws governing the new legal entity of “partnership” (or co-operation contract) between non-profit organisations, the government sector and for-profit private sector
- 48 Lack of standard national legislation governing the management of partnership projects
- 49 Lack of mixed methods for directing, managing and controlling partnerships that reflect the importance of the participation of different actors
- 50 Rigid delimitation of the sphere of action of the parties, in partnership constitutive documents or deeds
- 51 Impossibility of creating partnerships if the CSO does not have legal personality
- 53 Lack of explicit and clear laws or rules enabling CSOs to take part in calls for tenders for providing various kinds of services

#### **Non-juridical obstacles**

- nj1 Media hostility
- nj2 The media’s lack of proper knowledge on the sector
- nj3 Impossibility or excessive difficulty of accessing the media
- nj5 Public opinion’s negative views of the non-profit sector
- nj6 The population’s poor knowledge of the sector
- nj7 Negative views on lobbying in the non-profit sector
- nj8 Negative views on advocacy activities conducted by CSOs
- nj9 Political party diffidence of CSOs
- nj10 Lack of a voluntary work culture
- nj13 Political instability
- nj15 The state’s non-recognition of civil society’s role
- nj16 A xenophobic political-cultural climate hostile to CSOs dealing with human rights
- nj17 Lack of any political will to involve CSOs in policy-making
- nj18 Contrasts and uncertainties regarding which organisations are representative of civil society
- nj22 Lack of a governance culture
- nj23 Prejudice on CSO competencies
- nj24 Lack of partnership creation despite there being laws encouraging this
- nj40 Poor willingness of the private sector to implement cooperation strategies and partnerships with CSOs
- nj42 Private enterprises’ lack of confidence in CSOs
- nj43 Private enterprises’ unwillingness to finance advocacy organisations



## 2. The current situation and open issues

If we consider this cluster as a whole, what firstly emerges is a great problem of **public image of CSOs**. As already mentioned above, these organisations are often viewed with some suspicion by the media, public opinion and by some sections of the political sphere, according to forms of **deligitimisation** that in some cases resemble an actual **stigmatisation**. In effect, depending on the circumstances, CSOs are often considered to be anti-government, anti-national, dependent on foreign powers, and so on.

"The public still considers NGOs as enemies of this country; attempts made by some media to correct this image are not enough." (O51)

"Despite the efforts made by local NGOs, they are still viewed as something opposing the local and central government and not as a potential partner." (O34)

"In the words of ordinary citizens they are seen as: foreign mercenaries, traitors, of little worth, anti-governmental, anarchistic, financed by Catholics, ..." (O21)

"Political parties consider NGOs to be in the pay of foreigners, and citizens do not know the substance of NGO activities and funding very well." (O52)

"Two moments are important in the people's minds: 1) There is prejudice caused by poor information on CSOs, on the basis of which, by joining any NGO, the individual becomes tainted and this will close all doors to finding a job. The reason for this is that in some NGOs there are often political parties that treat them as instruments for furthering their own interests. 2) NGOs are viewed as means for money laundering." (O20)

"There are two sides to the current cultural and social dynamics: a) one is a continuing anti-reformist political campaign that targets NGOs as agents of social change and preventively discredits them in the public eye because they are a potential, if not an actual, threat to the status quo; and b) a generally accurate public perception that NGOs are overly responsive to rather than proactively guiding international donor strategies and that there is no systematic effort to ensure intra-sectoral accountability or broader stakeholder accountability because there are no real leveraging points for the "ordinary citizen". (E6)

"Non-governmental organizations are frequently associated with the term "anti-governmental organizations". For this reason, certain stakeholders are turning to the term "civil society organizations" in order to avoid this stereotype association." (E2)

Most of the informants interviewed do not evidently share these views. However, some of them highlighted the **critical aspects** of this public image that refer to such things as the CSOs' capacity to open up to **relations** with other actors and to **communicate effectively** with public opinion, or even the presence of CSOs strictly **connected to political parties** and thus hardly representative of the third sector.

"Personally, I believe that NGOs themselves also play a part in the negative cultural and social dynamics. There are still few cases of effective NGO communication and public outreach. This may be closely linked to Serbian NGOs' primary accountability to donors as opposed to constituencies." (E6)

"What is needed is a de-politicising of some CSOs. In Serbia there are politicians who have their own CSOs, against which they had been fighting until very recently, but they are now active in CSOs". (O01)

"The civil sector must affirm itself as a professional partner, which is made difficult by nepotism in the very CSO sector. It is necessary to affirm a new CSO sector that is more popular, more acceptable in public, and to introduce criteria and controls during competitions of the CSO sector itself." (O22)

The overall negative view of CSOs tends to firstly create **cognitive effects**, for example, as regards the self-esteem of workers of these organisations.

Moreover, this negative image can produce substantial **operational effects** that can be summarised in the **poor public role** that CSOs have, not so much as regards the activities carried out (often considerable), as that of **policymaking** and **connection with other political and economic actors** of society.

"Prejudice towards NGOs is very strong and creates a strong sense of humiliation of their work and of their role". (O52)

"Legal obstacles are primary manifested in a fact that mixed counselling bodies in Serbian legal system really rear. When these bodies exists and when they consider participation of CSOs representatives, these representatives are chosen through arbitrary decision of the state, and it very often means participation of only this kind of representatives which are "loyal" to the authorities." (E1)

"According to some studies, the main obstacle to partnerships between CSOs and private firms is the latter's lack of confidence in the former's expertise and experience – something that leads them to think they cannot be trusted." (O14)

For CSOs it seems difficult to enter into **partnerships** with public administrations and private sector actors. In this regard, as clearly comes to light in the following passages, there are many difficulties ranging from **legislative deficiencies** to incompatibility and **resistance on the cultural, ethical and ideological level**.

"Legislation that is not very clear on cooperation between the public, non-governmental and private sector leads to confusion on the setting up of partnerships, and makes their cooperation on common projects more difficult." (O41)

"Legislation that is not up-to-date makes cooperation difficult. It prevents creating a lasting partnership between NGOs and representatives of the public and private sector in which both parties would have the same rights with regard to capacities and potential." (O41)

"NGOs are forced to take part as partners during fund distribution, and not as project leaders (a role often carried out by state institutions), or are actually hindered in their attempts to apply for funding by the conditions laid down in the calls." (O41)

"Public opinion does not look favourably on those few state employees who are willing to cooperate with the NGO sector." (O51)

"Mentioned partnerships are rare in Serbia. One of the reasons is lack of regulations which has to give legal framework for this kind of partnerships. It is noticeable that neither private enterprises or CSOs in Serbia do not show great interest for this partnership (with exception of partnership on projects in the field of culture)." (E1)

"In practice, CSOs also try to avoid this kind of partnerships. The reason is that the owners of most profitable enterprises today in Serbia are persons who gained their fortune under Milosevic regime during nineties of XX century. Co-operation with these persons is often in conflict with determined goals of the majority of CSOs." (E1)

Moreover, there seems to be a widespread **"tactical" and short-sighted view** of partnerships, rather than a strategic one, and this makes any effective and lasting cooperation on an equal footing often difficult.

"Cooperation is arbitrary and depends on personal contacts and political benevolence, and not on the community's interests." (O21)

"In desiring relevant regulations, "partnerships" between state and CSOs primarily means state financial support for these organizations which are closely related with authorities and this co-operation is based on personal contacts and friendships with representatives of authorities." (E1)

"NGOs are forced to set up ad hoc cooperations, especially when they need financial support, so that, in practice, cooperation is based on donations and leads to NGOs being in a condition of inferiority." (O41)

There are, however, those who **warn** of a prospect of **excessive regulation** of this sphere.

"Although this obstacle exists objectively-speaking, it is not essential when setting up partnerships in projects because the lack of a defined system offers more possibility to partners to agree and eliminates any obstacles that a legal regulation could impose." (O33)

"One does what one can by following the law; that which is not regulated by law is dealt with by each CSO on the basis of common sense." (O39)

A further problem aspect is **participation in public calls for tenders**, which appears to be little proposed to CSOs and, in any case, rather difficult for them.

"The government tenders are still rare. The process for accessing government tenders as too complicated for all but a few organizations. Lack of national laws and standards about tender procedure, gives the power to government and local self-governments to deny organisations they do not like." (E1, rif. G142)

The **reasons** for the poor public presence of CSOs can be of various kinds. Among the ones emerging in the study, apart from those mentioned above, there are the following:

- A lower propensity of the media to spread "**positive news**"

"Seeking sensationalism, the media are often uninterested in small positive actions (which may be very important for certain groups) that are made by NGOs, although they often talk of some politicised NGOs, which creates a negative image for most citizens." (O11)

- The poor dissemination of a culture of **quality**
- A traditional **lack of communication** between the various political and social actors

"There is no good communication between NGOs and citizens in Serbia, and neither with the direct beneficiaries of the NGO programmes." (O14)

- The negative effects of the recent **conflicts** and of the economic crisis on national and individual identity

"Seeing that we are talking of the third sector, we can talk in terms of a cultural and social staticity. Serbia today, even if it has the potential to overcome many social and cultural obstacles, is a frustrated, decadent and narrow-minded society. The NGO sector is generally labelled negatively. One of the most important problems is the irrational fear of the unknown which, although we can explain it with the socio-economic situation of some past decades, cannot be ignored. The mutilation in the wars did not only refer to the actual deaths, but also to the mutilation of national identity and of the individual's integrity. The state of the economy has only increased this problem." (O47)

- The fear of the political sector of **losing power and control** (especially on funding)

"The institutions of the system are not yet ready to use the capacities of the NGO sector, owing to diffidence, vanity, fear of novelty, fear of losing direct control of financial flows, etc." (O07)

"The political elite, on the other hand, tries to limit the sphere of action of NGOs because it considers them to be political adversaries. The big problem is that the state refuses to recognise the legitimate right of citizens to organise themselves in order to solve social problems. The Serbian political elite believes itself to be the only subject that is legitimised to organise every aspect of the citizen's life and so does not consider NGOs as partners but as political adversaries." (O14)

- The difficulty of civil society actors to propose a new **approach to democracy** and get it accepted
- The **political instability**
- The poor sense of general **responsibility** of certain sectors of the CSO world

"A great problem is also the lack of responsibility in the NGO sector, which must change. Little importance is given to social responsibility and it represents a façade for projects carried out only in part and for ad hoc actions, while the strategic plan is a secondary issue." (O47)

"The NGOs in Serbia deal with many structural and operational problems that are a consequence of working in an underdeveloped environment that needs democratic values and practices. The NGOs themselves are partly to blame for the lack of favourable circumstances, and this negatively affects their activities – often without the necessary experience, social responsibility or adequate techniques and skills." (O14)

"Since commissioned work paid for from the public budget focuses on outputs rather than results, organisations with more outputs tend to get easier access to further funding regardless of the actual quality of their work. An increased visibility of reports produced would help deal with the suspicion in this regard." (E6)

- Lengthy **bureaucratic procedures** (e.g., in partnership creation)

"The unstable political image of our country makes it impossible to emanate laws of quality and amendments that can properly facilitate the birth of partnerships between CSOs and state (local) bodies. The lawmaking procedure, even when a change in a law is proposed, is very long – even when it gets to the actual Assembly." (O30)

It must be stressed, in any case, that **this situation is developing**

On the **operational** side, it must be recalled that, amongst other things:

- The creation of a commission of interface between the President of the Republic's Office and civil society in January 2007.
- The already mentioned participation of CSOs in drafting and implementing a national strategy on poverty.
- The fact that the recent drafting of a proposal of a new law bill on associations was carried out by a team coordinated by the Ministry of Public Administration and composed of experts and CSO leaders.
- The creation of a Ministry for Youth Policies and Sport, which has a strong positive orientation towards CSOs.
- A growing opening up of local administrations to partnerships with CSOs.
- The presence of a positive tradition of partnerships in particular contexts, such as in Vojvodina.

As regards **representations**, some precise and significant changes are pointed out, such as:

- The participation of political institutions at the highest levels, on the occasion of a recent presentation of the aforesaid proposed law bill (in July 2007).
- The opening up of new information spaces on CSOs in the national and local media.
- The support of important testimonials (politicians, showbusiness celebrities, sports champions, etc.) to the initiatives of certain CSOs.

- The spreading of internet and of tools like blogs, enabling the dissemination of first-hand information on the reality of CSOs.
- The intense information activity carried out by some umbrella organisations and by organisations specialising in information, consulting and advocacy, such as the CRNPS.
- The recent initiative of broadcasting a TV reality show featuring the life of NGOs.

Some interesting aspects of the public role of CSOs also came to light as regards the start-up of **co-learning** processes involving **CSOs and local administration** within a context of partnerships, and the promotion and/or support of **women's** participation.

"In my experience, local governments are not generally opposed to partnering with CSOs on practical issues and for tangible results, especially when they have a clear incentive, such as access to funding that would otherwise not be available to the municipality. The issue of attitudes, skills and capacities for authentic partnership development exists on both sides and many are learning by doing." (E6)

"The difference between the NGOs registered in the past and today is that the current NGOs call for a greater participation of women – which is a positive thing." (O39)





Chapter Eleven

**Social regims and operative  
indications**



## 1. The interweaving of the juridical sphere and social sphere

The research results concerning the **map of obstacles** and their analysis by **cluster** showed a strong **interweaving** of the **juridical sphere** and the **social** one in Serbian civil society.

Firstly, the study highlighted **persistent deficiencies and paradoxes**, both as regards existing **legislation** and in its **implementation** procedures. These problems deeply affect the possibilities for CSOs to start-up, operate and develop properly, as is the case and is required in the European sphere.

Secondly, the study showed, in outline, also several **open issues** that link the problem of obstacles faced by CSOs (both juridical and non-juridical ones) to a more **specifically social dimension**.

As the study highlights, CSOs:

- Still face difficulties in obtaining **real recognition of certain fundamental human and juridical rights** (cluster 1).
- Face serious problems of **sustainability** driving many of them to limits of subsistence (cluster 2).
- Still do not have full **self-governance** (cluster 3).
- Have several problems in **professional identity**, as regards knowledge and operative capacities (cluster 4).
- Have an **inadequate image** and poorly recognised **public role** (cluster 5).

In essence, what appears to emerge from all this is that CSOs still do not have a **socially and publicly recognised “place”**, so to speak, in the Serbian context. Hence, there is no full interpretation and adequate legitimisation of their existence, and of their work, that can lay the foundations for drafting legislation, strategies and policies.

All this constitutes a real problem, not only for CSOs, but for Serbian society as a whole, which thus lacks a fundamental resource for **governance**, that is, to face the **challenges** of social growth and of economic development in Serbia, fielding all the existing and available political and social forces .

## 2. From “risks” to social “regimes” of risks

The aforesaid obstacles, or rather sets or **clusters of obstacles**, can thus be considered as signs, or rather **indicators**, of the **problem of the full and effective social place** of CSOs in the Serbian context.

If this is true, the presence or lack of fundamental rights, sustainability, practising of autonomy, capacities and public presence are all elements that can increase – or decrease – the **likelihood** for Serbian CSOs to have an adequate social space.

By using the **theory of risks and of social regimes**<sup>15</sup>, one can say that the 5 clusters of obstacles can constitute 5 **areas of social risks**, as will be clarified below.

To this end, it is worth clarifying the concepts of **danger, social regime and risk**.

- **Dangers** are events or processes that are potentially dangerous and out of control that threaten individuals.
- **Social regimes** can be defined as the set of laws, institutions and policies that as a whole increase the capacity to handle the various dangers.
- Through the social regimes, the dangers can be turned into **risks**, that is, dangers which – because they are identified, known and made the object of systematic actions – in some way become **socially managed** and controlled.

Getting back to the **5 clusters of obstacles**, it has already been said that they can be considered as **areas of social risk**. This means that within these areas it is possible to identify various “**dangers**”, that is, the facts underlying the obstacles or clusters of obstacles mentioned several times in the previous chapters. By means of specific **social “regimes”**, these dangers are turned into “**risks**”, that is, dangers made known, predictable and manageable in some way.

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<sup>15</sup> Cf. d’Andrea L., Quaranta G., *Civil society and risk. Contribution for a general theory*, Paper presented at Workshop CERFE-Amsterdam School of Social Research, Amsterdam, February 26 1996; Beck U., *La società del rischio. Verso una seconda modernità*, Carocci, Roma, 2000.



From what has emerged so far, it is quite evident that – in view of the nature and scope of the problems found – **operating by means of precise actions** and in a single sphere **is not enough** (e.g., *only* legislative type actions, *only* educational type actions, *only* informative type actions, etc.). Instead, it appears essential to **act on several levels at the same time**, to create **favourable conditions** for solving the problems found and for identifying opportunities.

In particular, on the basis of the **research results** reported above, at least **5 types of “social regimes”**, of a **transverse** kind with respect to the 5 clusters, can be identified. The first regime deals with the **cognitive** context, while the other four deal with the **operational** side.

These social regimes, which will be illustrated below, are called as follows:

- I. **Knowledge**
- II. **Capacity building**
- III. **Legislative reform**
- IV. **Public communication**
- V. **Awareness-raising of political society.**

**Each one of these 5 social regimes can be referred and applied to all 5 clusters**, even though, in some case, a social regime may turn out to be more directly linked to a certain cluster rather to than another.

On the basis of some of the information reported in the previous chapters (as regards policies, projects and experiences already achieved or underway in Serbia), we can say that social regimes of this kind are partly already **underway** and that it would be important, if anything, to **optimise, strengthen** and **harmonise** them.

This could enable the creation of a “**favourable environment**” for the constructive presence of CSOs in Serbian social life, in the sense of a social process of cultural growth, collective learning, and strategic and political

commitment on the part of a broad range of actors, so that it may take root and produce **impacts** as deep and long-lasting as possible.

The following pages will report a series of considerations on the 5 **social regimes** and on some of the **intervention strategies and methods** in which each one of these regimes could hypothetically come about. In particular, some **operative indications** can, for example, be put forward for each of these 5 social regimes.

## REGIME I

### KNOWLEDGE

A **first** type of social regime concerns the increase in knowledge on the set of obstacles (and also on the opportunities) existing for civil society in Serbia, as found in the **5 clusters** presented in the previous chapters.

The study highlighted the fact that there is no, at least until now, systematic knowledge of the factors that make the establishment and growth of CSOs problematic, or that can favour the solution of the problems faced by CSOs.

Firstly, this lack is found, albeit partly, in the **actors directly involved** (CSOs). It may be that CSOs are **partly aware** of the impediments to their existence and to their activities, in the sense of knowing well some particularly evident or critical aspects (such as those regarding taxation or political relations), while having less knowledge of some other elements, which may be as critical but less visible (such as those concerning specific aspects of the juridical sphere or of the cultural and communication context in which they operate).

A lack of knowledge is also found in **other types of actors** that interact with CSOs, that is, some sectors of institutional and political interlocutors, communication and public opinion operators as a whole. In the absence of precise in-depth knowledge, as we saw, it is easier for distorted representations of civil society to spread, with serious **consequences** also at an operative level.

This social regime, which focuses on the knowledge theme, may envisage various parallel **strategies**. These strategies could favour a first form of control of the obstacles to civil society at a cognitive level.

Firstly, one strategy concerns the **production of knowledge** on problems that CSOs have to deal with, and also on existing possibilities for solving them.

A second strategy concerns **knowledge management**, which may be carried out by accumulating, storing and processing available knowledge on civil society that is produced by public, private or non-profit organisations and institutions or those linked to international cooperation.

Finally, a third strategy may be geared to **spreading – to a broader audience** – the knowledge on civil society that is accumulated both through studies and research and through projects and experiences.

To implement these strategies, it is possible to formulate – as an example - some **operative indications**. The first three of these indications refer to the knowledge production strategy, while the next three concern the knowledge management strategy, and the remaining four concern the knowledge dissemination strategy.



## **Operative indications**

### **Creating transnational partnerships for research into CSOs in Serbia**

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There are, by now, consolidated international networks of researchers interested in the civil society theme, and they are linked to specific scientific communities (such as the International Sociology Association, the Centre for Civil Society of the London School of Economics, etc.) or to European Union institutions and to international cooperation organisations. To give continuity to the study of CSOs in Serbia and to favour a transnational debate, partnerships can be intensified with research institutes of other countries (especially European ones), for studies, seminars, teacher exchanges and publications.

(see: [www.isa-sociology.org](http://www.isa-sociology.org); [www.lse.ac.uk/collections/CCS/](http://www.lse.ac.uk/collections/CCS/))

### **Identifying those aspects of CSOs that are still little investigated**

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Many studies carried out recently in Serbia have focused on the general analysis of the CSO context in the country (such as the one conducted by Civic Initiatives on the non-governmental sector in Serbia and the one promoted by ARGUMENT on the history and current situation of civil society). On the basis of what came to light in the research carried out within the PRAVOK project, some aspects of this reality are still worth studying in more depth. These include such things as: the potential of CSO involvement in public life; the key actors of civil society involved in designing and implementing national and local public policies; the classification of different types of organisation belonging to civil society; the knowledge that CSOs need in order to operate; the role of religion-based CSOs.

(see: *Civic Initiatives*, 2005; *ARGUMENT*, 2006 ; [www.pravok.org](http://www.pravok.org))

### **Promoting studies on CSOs at a local level**

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The best known studies on CSOs are the ones presenting summaries at national level on the CSO situation within a given country. It is, instead, harder

to find scientific studies promoted and conducted on CSOs of specific territories, such as municipalities or groups of municipalities. The policies of the European Commission, such as the ones on enlargement, are in any case moving in this direction, and various significant experiences in this sense have been made both in Europe and elsewhere. These studies can be useful, both to CSOs themselves and to their potential interlocutors, and may concern aspects such as: culture and orientations; the activities carried out and their impacts; the willingness to enter into partnership with public and private actors.

(see: [http://ec.europa.eu/enlargement/civil-society-development/index\\_en.htm](http://ec.europa.eu/enlargement/civil-society-development/index_en.htm); [www.urban.org/international/institutions.cfm?page=2](http://www.urban.org/international/institutions.cfm?page=2))

## **Creating and supporting research observatories on civil society**

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The management of knowledge on civil society is a task requiring qualified and continuative work. In this regard, an observatory is a particularly useful tool: i.e. a structure geared to monitoring a set of social phenomena by systematically gathering and managing information. For example, the European Commission has funded the project “Guide Star Europe”, which has enabled the gathering and management of information on the features, mission and activities of CSOs in Germany, Hungary, the Netherlands and Ireland. In Serbia, in particular, an important monitoring service for the non-profit sector is guaranteed by the Centre for the Development of the Non-profit Sector (CRNPS).

(see: [www.guidestareurope.org](http://www.guidestareurope.org); [www.crnps.org.yu](http://www.crnps.org.yu))

## **Promoting courses on knowledge management**

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The knowledge management approach has been the object of many studies and experiences, particularly since the 1990s. For example, the Open Society Institute has started up the “Information Program”, which aims to increase the capacity to produce and exchange information and knowledge on the part of civil society actors, at national, regional and global level. The knowledge management approach could be promoted in Serbia through specially designed courses targeted to CSOs and envisaging both theoretical and methodological lectures as well as experimental activities of knowledge management in various spheres.

(see: [www.soros.org/initiatives/information](http://www.soros.org/initiatives/information))

## **Mapping the information sources on CSOs**

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A fundamental operation for effective civil society knowledge management, in Serbia and elsewhere, is that of identifying the sources of information on existing CSOs. In this regard, actual maps can be produced of the various sources (such as archives, repertoires, reviews, bulletins, websites, etc.) present in the various territories, and concerning various areas or sectors of intervention. Maps of this kind are reported in various sites and portals dedicated to civil society (such as the one of Civil Society International).

(see: <http://www.civilsoc.org/>)

## **Creating a database on CSOs accessible online**

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The results of studies on civil society are often limited to within a small circle of researchers and operators. To favour the dissemination of these results with a broader audience, a useful way is through online databases. For example, in Serbia, the Pro-Concept association is classifying NGOs active in the country by means of a database organised around five aspects: expected impact; activities carried out; the focus of activities; the aims of the operations; the type of organisation.

(see: [www.proconcept.org.yu](http://www.proconcept.org.yu))

## **Promoting public meetings and seminars to present studies and research**

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An effective way of disseminating the results of studies and research on civil society is also that of itinerant public presentations. For example, during 2008 the Argument association has promoted a series of public meetings and debates, in various parts of Serbia, on the contents of a research report concerning the “state of health” of civil society (CIVICUS/ARGUMENT Civil Society Index for Serbia), carried out in cooperation with the CRNPS.

(see: [www.argument.co.yu](http://www.argument.co.yu))

## **Creating portals and websites on CSOs**

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Portals and websites are a good way of getting a better idea of the activities of CSOs. For instance, in 2004, in Bulgaria the NGOs operating in support and the safeguarding of the rights of the disabled created the Information Portal for People with Disabilities, which provides information on existing services and promotes discussions and in-depth analysis.

*(see: [www.123.ngo-bg.org/en](http://www.123.ngo-bg.org/en))*

## **Creating networks for promoting information exchange on civil society**

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A particularly effective tool for creating and disseminating a shared knowledge of civil society is represented by networked communication in which the various subjects interact on an equal footing through meetings, publications or communiqués online. The networks can be sector-based (i.e. between actors operating within the same action sphere) or territorial (i.e. between actors operating within a given area, such as a state or municipality). In Serbia, some important networks are those, for example, promoted by the NGO federation called FENS and by the Standing Conference of Towns and Municipalities (SKGO).

*(see: [www.fens.org.yu/index.htm](http://www.fens.org.yu/index.htm); [www.skgo.org](http://www.skgo.org))*

## REGIME II

### CAPACITY BUILDING

A **second** type of regime deals with the set of problems concerning the actors' expertise, with particular attention to **capacity building**, both in the specific sense highlighted in **cluster 4** ("capacity and professionalism") and with respect to other aspects and problems emerging in other clusters.

As already stressed above, knowledge and skills are an important asset for any organisation, and this also holds true for Serbian CSOs in the last few years. CSOs find themselves today involved in dynamics of **change** that require their staff to progress in their knowledge and skills as regards the analysis of the context and the management of actions. Indeed, as we saw, these organisations find themselves also involved in a serious "**brain-drain**," not so much in the sense of migration abroad of skilled people, rather, above all, in that they opt for other professional areas such as the private sector. There is thus a **risk** of increasing responsibility for CSOs that is not accompanied by suitable support on the capacity level.

Along with a strengthening of CSO capacity there emerges the need for an increase in skills on the part of **public administration officials** who interact and, not infrequently, cooperate with CSOs.

Bearing this in mind, this second social regime mainly focuses on a **strategy for training** of CSO staff and public administration actors with whom CSOs themselves can interact at a national and, especially, local level.

In this regard, it is firstly important to promote and support specific policies supporting the training of these actors, in the wake of what is already happening in many countries of the European Union, including many of the new member states.

A further strategy in this field may be linked to the promotion of **quality of training** for CSOs and for actors of public administration that these organisations have to deal with (for a more in-depth analysis, see also chapters 12 and 13 of these Guidelines).

**Another type of strategy** that may form an integral part of this regime concerns the invention and creation, at a central and local level, of a system of **services** (of counselling, information, networking, etc.) which can accompany and support CSOs in their capacity and overall empowerment growth process.

Here follow some **operative indications** regarding these three strategies. In particular, the first five indications refer to the training strategy, another six to the quality of training, while the last two to the aforesaid services strategy.

## **Operative indications**

### **Promoting courses on CSO management and development**

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Several studies carried out in Serbia have highlighted the need for strengthening CSO management skills and development capacity. On the basis of these and other studies and experiences at international level, the possible themes for training courses in this field can include: organisational management, human resource management, decision-making, work groups, administration, project-designing, fundraising, the ability to analyse the situation, evaluation, the creation and management of social capital, partnerships, conflict prevention and management, and more besides.

(see: [www.pravok.org](http://www.pravok.org); Irish, Simon 1999; ARGUMENT 2006)

### **Organising courses on Euro-project designing**

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The prospect of joining the European Union is a great opportunity both for CSOs and for public administrations, also as regards access to huge financial resources. However, these opportunities call for a great project-designing ability. Serbia and other neighbouring countries have already seen important training initiatives for Euro-project designing geared to public and civil society actors (see, for example, the Proposal Preparation Fund in Hungary). It is important to intensify and support programmes of this kind, targeting them as much as possible to the reality and needs of the various beneficiaries.

(see: Bormioli, Taurelli 2007; [www.icnl.org/KNOWLEDGE/IJNL/vol7iss4/art\\_1.htm](http://www.icnl.org/KNOWLEDGE/IJNL/vol7iss4/art_1.htm))

### **Training CSO executives to communicate better**

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The research carried out within PRAVOK and in other initiatives carried out in Serbia have shown that CSOs usually have a poor capacity to communicate effectively to the public at large. It is thus useful to have training courses and

seminars geared to CSO directors and to CSO staff dealing with public communication.

(see: *ARGUMENT* 2006)

### **Intensifying courses on local development for CSOs and public administration actors**

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Local development is a core theme of many reflections, programmes and experiences at European level that have involved public administrations, in cooperation with many actors present in the territory, including CSOs. It is a crucial theme which deserves specific training actions. One of the most active transnational organisations in this regard is the Association of Local Development Agencies (ALDA), also present in Serbia, that promotes training courses on local development and governance. Strengthening intervention capacity in the territory was also one of the key elements of the SIRP programme, carried out in Serbia by the UN-HABITAT with funding by the Italian cooperation agency.

(see: [http://alda-europe.eu/alda/front\\_content.php?idart=1](http://alda-europe.eu/alda/front_content.php?idart=1); [www.unhabitat.org.yu/programmes/sirp/sirp.htm](http://www.unhabitat.org.yu/programmes/sirp/sirp.htm))

### **Guaranteeing equal opportunities for access to training services**

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Some studies carried out in Serbia on the CSO situation have highlighted the widespread need to identify criteria of transparency for accessing training opportunities. In this regard, it may be worth producing guidelines and indications for the actors involved (public administrations, cooperation agencies, etc.), especially as regards the adequate dissemination and clarity of information on the envisaged training courses and seminars, and the transparency of beneficiary selection mechanisms.

(see: [www.pravok.org](http://www.pravok.org))



## **Organising meetings and seminars to spread adult education in CSO and public administration training**

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A crucial element for quality project-designing and training is the adoption of an adult education approach. This approach is increasingly used, even in Serbia, and promoted by many research institutes and training organisations (such as the Adult Education Society). Adult education includes the following features: a problem-based approach, the active participation of learners, the triggering of motivation, a personalised involvement (see chapters 12 and 13 of these Guidelines). Adult education can be used to assure a suitable impact of training programmes geared to public officials and CSO personnel. To spread the principles of adult education in this field, some specific seminar programmes for trainers can be envisaged.

(see: Birzea, 2000; Irish, Simon 1999; Knowles 1996; [www.eaea.org](http://www.eaea.org); [www.bg.ac.yu/en\\_filozofski.php](http://www.bg.ac.yu/en_filozofski.php); [www.inebis.org/index.php](http://www.inebis.org/index.php); [www.gradjanske.org](http://www.gradjanske.org); [www.bos.org.yu](http://www.bos.org.yu))

## **Implementing studies and research on training needs**

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Course design does not often take sufficient account of the beneficiaries' characteristics, needs and problems, and thus of their actual training demand. A positive case is instead that of the REC of Budapest that, on the basis of a complex analysis of the needs of environmentalist organisations, promotes training actions concerning environmentalist issues in the strictest sense, and also the organisational, participative and relational aspects with other actors. Moreover, in order to better link training project designing to concrete training practices, the last few years have seen the devising of various approaches, theories and methods of analysing training needs, such as the MOAFF (see also chapter 12 of these Guidelines). In Serbia it is thus important to promote studies and research into the beneficiaries training needs, within capacity-building projects geared to civil society.

(see: Mezzana D., Montefalcone M., Quaranta G., 2004; [www.rec.org](http://www.rec.org))

## **Conducting seminars for trainers on the analysis of training needs**

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Despite the fact that many European experiences have shown the importance of a careful prior analysis of course beneficiaries' training needs, the skills necessary for this type of study or research are not always available in training organisations. It is thus important to provide for trainer-training on the approaches, theories and methods for analysing training needs.

*(see: Mezzana D., Montefalcone M., Quaranta G., 2004)*

## **Creating exchange networks on the quality of training**

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Serbia also has various bodies and initiatives promoting a reflection on the quality of training and on adult education (see the previous operative indications). To valorise the experiences of quality already gained and the knowledge accumulated in this regard, it is worth creating or enhancing specific networks and partnerships for exchanging information of best practices and approaches or methods for action, through appropriate websites and online forums, and by valorising already existing publications and scientific exchange networks.

*(see: [www.bg.ac.yu/en\\_filozofski.php](http://www.bg.ac.yu/en_filozofski.php); [www.inebis.org/index.php](http://www.inebis.org/index.php))*

## **Involving representatives of CSOs and of public administration in joint courses and seminars**

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Various experiences at international level and in Serbia as regards training for partnerships show the importance of involving both CSO and public administration personnel in the same training activities. An example of this are the ILO training programmes on Local Economic Development. The exchange of experiences and knowledge, dealing with common issues, the shared search for solutions, when suitably handled at a didactic level, can be a fundamental element in professional growth and in creating a favourable environment for closer cooperation between these two kinds of actors.

*(see: <http://learning.itcilo.org/entdev/led/pub/home.aspx?l=Eng&IdSezione=0>)*

## **Favouring contacts and international visits for CSO and public administration actors**

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The cultural and professional isolation of CSOs is one of the main problems found in various studies in Serbia on these organisations (including the one carried out within PRAVOK). Various cooperation actions have also found that Serbian public administration has a great need to open up, particularly to experiences gained in other countries. In the wake of many “decentralised cooperation” initiatives conducted in Europe, it is particularly worth setting up international exchange programmes of knowledge and experience, through distance contacts and especially visits of delegations.

(see: [www.balcanicooperazione.it/](http://www.balcanicooperazione.it/))

## **Facilitating CSO and public administration access to counselling**

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In European Union countries, and in some Balkan states, in order to strengthen CSOs – besides through capacity-building activities – some specially designed structures have been set up which offer counselling services. For example, in Romania, the CENTRAS association offers advice on lobbying, public communication and partnership strengthening. In Serbia, various kinds of counselling (legal, formative, informative, etc.) are assured by organisations like the CRNPS, Civic Initiatives, Proconcept and SKGO (the latter especially for local public administration). Since CSOs and public administrations are not always fully aware of these opportunities, it is worth conducting informative and awareness-raising actions favouring their access to these services.

(see: [www.centras.ro](http://www.centras.ro); [www.crnps.org.yu](http://www.crnps.org.yu); [www.gradjanske.org](http://www.gradjanske.org); [www.proconcept.org.yu](http://www.proconcept.org.yu))

## **Informing CSOs and public administrations of networking services**

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A specific but important kind of service supporting CSOs and public administrations concerns networking. Some European examples are: the Civil Society Network, which has been running since 1994 in 27 European countries, offering services and networking organisations of citizens and foundations; the

NALAS, which links together local authorities of central and eastern Europe; and ALDA, which coordinates local democracy projects in many European countries. In Serbia, an important networking function is carried out, for CSOs, by the federation of Serbian NGOs (FENS) and, for public administration, by the association of municipalities (SKGO). For civil society and public administration growth, especially at a local level, it appears important to facilitate these actors' access to these networking opportunities through a specific information and awareness-raising activity.

(see: [www.orpheuscsn.org](http://www.orpheuscsn.org); [www.nalas-see.org](http://www.nalas-see.org); <http://alda-europe.eu>; [/www.fens.org.yu](http://www.fens.org.yu); [www.skgo.org](http://www.skgo.org))

### REGIME III

## LEGISLATIVE REFORM

A **third** type of social regime specifically deals with the set of **strictly juridical problems** found in the study, which were illustrated analytically in the previous chapters dealing with the map of obstacles and then later interpreted in the light of the identification of 5 clusters of obstacles. These “regimes” focus, above all, on a strategy per **creating an overall legal framework** within which CSOs must operate.

As already stressed, some **measures** taken by the Serbian government (summarised in the new law bill on associations) can remedy the various obstacles present in the map of legal obstacles. Other measures are also being prepared on the fiscal aspects or governance of specific types of organisation<sup>16</sup>.

However, as found in the research, these measures do not manage to cover the whole range of problems found. Some call for **further specific attention** since they concern crucial aspects of CSO life and the quality of CSO presence in Serbian society. For a more detailed analysis of the existing problems, the reader is referred to the first part of these Guidelines and to the previous chapters of this second section.

Along with the identification and implementation, where possible, of **reforms at the legislative and fiscal level**, it is obviously particularly important to deal with the theme of **application** of these measures once they are approved. The application of laws is thus a second strategy of this social regime.

As an example, here are some **operative indications** concerning this social regime of “legislative reform”. The first eight refer to the strategy for devising a legal framework for CSOs, while the other three refer to the strategy for applying the relative laws.

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<sup>16</sup> The information has been updated to October 2008.

## **Operative indications**

### **Promoting a legal framework favourable to associations**

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An essential condition for CSO life and growth is the existence of a favourable legal context. It must be recalled, in particular, that there already is a law on associations (currently a law bill in the Serbian parliament), which was drafted bearing in mind similar laws in other European countries. The law will govern aspects of CSO life concerning such things as the registration of organisations, the minimum number of people required to set up an association, the presence of foreigners and of foreign organisations, and more besides. The approval of this law, which is expected quite soon, is an important element of change for these organisations.

(see: [www.ecnl.org](http://www.ecnl.org); [www.coe.org.rs/eng/sub\\_tdoc\\_sr/?conid=52](http://www.coe.org.rs/eng/sub_tdoc_sr/?conid=52); Lindblom 2005)

### **Promoting a favourable legal framework for endowments and foundations**

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To face the various problems and limitations found in Serbia by organisations such as foundations and endowments, a specific law bill was recently drafted. This bill, drafted by the Ministry of Culture thanks to a work group also seeing ECNL participation, governs the setting up, legal status, internal governance and other aspects of endowments and foundations, as well as the legal and operative status of Serbian offices of foreign funds and foundations. Also in this case, the devising and approval of the law bill could greatly improve the conditions for the setting up and growth of these kinds of organisations.

(see: [www.ecnl.org/index.php?part=14news&nwid=195](http://www.ecnl.org/index.php?part=14news&nwid=195))

### **Promoting a favourable legal framework for voluntary organisations**

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In Serbia, the lack of recognition of voluntary work and, in general, the lack of governance of voluntary work are among the main problems found by the main study centres as regards non-profit legislation, and have also been confirmed as

serious obstacles by the study carried out within the PRAVOK project. In this regard, a group of experts, including ECNL ones, have recently drafted a law bill, supported by the provincial parliament of Vojvodina, which was sent for the attention of the Serbian parliament.

(see: [www.ecnl.org/index.php?nwid=29&part=14news](http://www.ecnl.org/index.php?nwid=29&part=14news))

### **Strengthening the NGOs' role at the legal level in providing social services**

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Many countries, including some with particular links with Serbia, such as Germany, Austria and Croatia, effectively use private and non-profit institutions to provide services that were previously guaranteed by the government. In Serbia, too, it would be important to create a legal framework governing the way these organisations can provide services. This could also facilitate the supervision of their activities and favour greater recognition of CSOs on the part of public opinion (see also regime IV).

(see: Lindblom 2005; Heere 2004; Rutzen, Durham, Moore 2004)

### **Broadening the definition of public benefit activities**

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In most European countries, the notion of “public benefit” assured by CSOs includes a vast set of aims and activities. For example, in Hungary, 24 objectives and activities are considered to be of public benefit, and more or less the same is found in the United Kingdom, Germany and Poland. In Serbia, instead, only a few activities of CSOs are considered to be of public benefit, while many forms of selling of goods and services, which are an intrinsic part of public benefit activities, are considered business activities and are taxed as such.

(see: [www.ecnl.org](http://www.ecnl.org))

### **Creating incentives for firms that support CSOs**

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Various studies carried out in Serbia, including the one conducted within the PRAVOK project, have found a lack of incentives for firms which support the work of CSOs or that are geared to activities in the sphere of Corporate Social Responsibility (CSR) together with these organisations. In the wake of

international initiatives carried out in this regard, it may be very useful to create incentives of various kinds, starting from tax ones.

(see: Parodi Luna 1999)

## **Abolishing taxes on donations**

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At a European level, CSOs are usually exempt from paying tax on donations, but in Serbia the Property Tax Law establishes a 5% tax on donations received by associations. Moreover, foundations are exempted from this tax and thus there is discrimination between different kinds of associations, even if they carry on the same kind of activity.

(see: <http://siteresources.worldbank.org/INTPCENG/Resources/SURVEYOFTAXLAWSAFFECTINGNGOSINCENTRAL.pdf>)

## **Drafting “codes of consultation” of CSOs**

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The identification of open issues regarding legislation for CSO life and the inclusion of CSOs in the political agenda is an integral part of the advocacy activity that CSOs can carry on: in Serbia, for example, the activity of networks like the FENS is important. A useful tool in this regard could be a “code of consultation” or, in any case, a regulated form – established by the various ministries concerned – of CSO consultation and participation in the initial stages of drafting law bills and policies.

(see: [www.ecnl.org.hu/eidhrproject/index.php?part=07news&nwid=168&PHPSESSID=cb868bf9243df3b9804f63ff25bbec23](http://www.ecnl.org.hu/eidhrproject/index.php?part=07news&nwid=168&PHPSESSID=cb868bf9243df3b9804f63ff25bbec23))

## **Consulting the heads of the offices involved in implementing the laws**

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It is often the case that laws concerning spheres and aspects crucial to social life can to varying degrees be ignored or by-passed, or even distorted at the time of their actual implementation, especially owing to informal type dynamics and practices. These phenomena are also found in the study on CSOs within the PRAVOK project. Therefore, it is important to identify “critical points” present



in laws and administrative procedures; this can take place through forms of consultation of the heads of the offices involved, every time problems of interpretation or application of laws and regulations arise, in order to pinpoint and, if possible, eliminate the critical factors found.

(see: [www.pravok.org](http://www.pravok.org))

### **Awareness-raising of the public actors involved in the application of new laws**

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There are various experiences at international level of accompaniment and support of the work of various public actors involved in the application of new laws, through awareness-raising and updating activities. Several of these experiences, for example, are presented in a recent manual of the UNEP as regards the environmental sector (UNEP 2007). In this regard, procedures can be devised for meetings and interactions, of both a formal and informal kind, on the themes of law implementation, among public and CSO actors, especially at a territorial level.

(see: [www.unep.org/delc/docs/MEAs%20Final.pdf](http://www.unep.org/delc/docs/MEAs%20Final.pdf))

### **Monitoring the application of new laws**

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As many experiences at the international level show, an integral part of the implementation of new laws concerning CSOs is the devising and implementation of forms of monitoring of this implementation. To this end, it may be worthwhile creating ad hoc responsibilities (special tasks or new figures, dedicated offices, etc.) within government departments concerned or creating work groups between those CSOs mostly concerned in implementing the law in question. For example, the Bulgarian Gender Research Foundation has carried out monitoring activity of the laws on equal opportunities in 9 countries of central and eastern Europe.

(see: [www.bgrf.org/en/media/releases/rep\\_ge/](http://www.bgrf.org/en/media/releases/rep_ge/); [www.unep.org/delc/docs/MEAs%20Final.pdf](http://www.unep.org/delc/docs/MEAs%20Final.pdf))



## REGIME IV

### PUBLIC COMMUNICATION

A **fourth** kind of social regime deals with the set of problems, or rather risks, directly or indirectly concerning the **public representation** of CSOs in Serbia. This regime concerns cuts across all the five identified clusters, even if it more directly regards the fifth, that is, the “public presence” of CSOs.

As we saw before, for a series of historical, cultural and political reasons, in Serbian public opinion there is widespread **suspicion and lack of confidence** – if not downright opposition and condemnation – towards CSOs.

As already stressed, this attitude is sustained by a widespread distorted, biased and incomplete representation of civil society and thus by stereotypes and undue generalisations which, where present and shared, contribute to creating an **unfavourable climate** for CSOs.

However, as we saw before, there has been some significant **progress** over the last few years in this regard, and some interesting projects and experimentations have been carried out.

Given the spreading and depth of these problems, it would – in any case – be worth supporting a social regime concerning the promotion of a specific forms of **public communication** favouring CSOs and partnerships between CSOs and other kinds of actors, both public and private.

This social regime, in particular, would focus firstly on a **strategy** geared to contributing to the **construction of a widespread consensus** of various **actors of Serbian society** around the theme of a new role of CSOs in this country.

This consensus could be sought in Serbian **public opinion** as a whole and in some important **types of actors** of Serbian society such as the media people, researchers, credit institutions, business people, the unions, professionals, educators, and more besides (see the box below for some examples).

An integral part of this social regime linked to public communication could be a strategy for **identifying new public spaces for CSOs** that could also enable them to **increase their visibility**. This may occur, for example, through partnerships with government institutions and local public administrations (on this see the next social regime) or by enhancing relations with actors such as private sector ones.

The first seven **operative indications** reported below refer to a strategy of building widespread consensus on CSOs, while the last two refer to the strategy of identifying new public spaces, with particular regard to private sector and credit actors.

## **Operative indications**

### **Promoting public initiatives in the territory in order to enhance citizens' knowledge of CSOs**

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To promote a better image of CSOs, a useful way is through public initiatives in the territory, such as meetings and fairs. For example, the Agency for Cooperation with Non-governmental Organisations and European Harmonisation of the City of Belgrade, in cooperation with some Serbian CSOs, promoted the first Fair of Civil Society Organisations in May 2008.

*(see: [www.beograd.rs/cms/view.php?id=1293337](http://www.beograd.rs/cms/view.php?id=1293337))*

### **Producing radio and TV programmes on the CSO sector**

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Citizens' knowledge of CSOs can be facilitated by producing radio and television programmes on national and local networks (presenting best practices, services and news coverage on certain themes), or even fiction and serials. One example in Serbia is that of the recent TV serial "Will it succeed?", organised by the Pro-Concept association, which showed the solutions that CSOs offer to specific problems of a social nature.

*(see: [www.proconcept.org.yu](http://www.proconcept.org.yu))*

### **Promoting communication campaigns on CSOs**

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A better knowledge of CSOs on the part of the general public can be promoted not only through targeted initiatives and by using specific channels, but also through real media campaigns. The association Smart Kolektiv, for instance, has recently promoted and carried out a national communication campaign in Serbia, geared to "repositioning civil society in the perception of Serbian public opinion" and to steering citizens to taking part in initiatives promoted by CSOs.

*(see: [www.smartkolektiv.org](http://www.smartkolektiv.org))*

## **Implementing meeting and exchange programmes between CSOs and media people**

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It is also worth supplementing communication activities with awareness-raising seminars, meetings and exchanges (face-to-face and online) with media operators. Examples of this orientation are the Centras association in Romania and the non-profit organisation “Transitions on line”, which offers training and awareness-raising services for journalists on civil society themes. Experiences of this kind have also been made in Serbia by the Balkan Community Initiatives Fund, by Smart Kolektiv and by other non-profit organisations, with the support of international donors such as the PNUD and USAID.

*(see: [www.centras.ro](http://www.centras.ro); [www.tol.cz](http://www.tol.cz); [www.bcif.org](http://www.bcif.org); [www.smartkolektiv.org](http://www.smartkolektiv.org))*

## **Organising programmes in the education field on the CSO context**

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In those countries which have started their path towards European integration, civil society is often the target of initiatives for education workers and in schools. In Serbia, for example, the organisation Civic Initiatives has carried out the Specialized Program for Civic Education, geared to upper secondary school Civic Education teachers. The programme envisaged modules on: citizens in complex societies; citizens and the state; human rights; the media; economic policies; social policies; morals and citizens’ cultural representations; European integration. Other ad hoc programmes can be targeted to students of various school grades.

*(see: [www.gradjanske.org](http://www.gradjanske.org))*

## **Publicising CSO success stories**

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A proven effective way of communicating information on civil society to the general public is that of publicising CSO success stories. For instance, a recent seminar on “Building partnerships and participation in decision-making at a municipal level” saw the presentation of some positive experiences of citizen participation in local governance in the Czech Republic and in Serbia. To this end, websites and other already mentioned communication channels can be particularly effective.

*(see: [www.skgo.org/code/navigate.php?Id=239](http://www.skgo.org/code/navigate.php?Id=239))*

## **Promoting competitions and prizes for CSOs**

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A widespread method at international level to publicly valorise the work of CSOs is that of periodically organising competitions and prizes, so that experiences of particular importance or significance at national and local level can be made known. It is a practice that is beginning to spread in Serbia, too, and could be usefully enhanced, particularly within the partnership initiatives between public, private and non-profit actors and with the support of international cooperation agencies.

(see: [www.smartkolektiv.org](http://www.smartkolektiv.org))

## **Disseminating information on relations between CSOs and the private sector**

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In Serbia, there are various forms of relations between CSOs and the private sector, but they are little known and thus deserve greater publicity. To this end, the organisation Smart Kolektiv carried out a study, in 2007, called “NGO, business and governing sectors in Serbia: partnership for success” and various other activities. Moreover, some initiatives promoted by the Regional Agency for Development of Eastern Serbia (like the Business Incubator Centre) show the importance of inter-sector partnerships with the participation of local authorities, private enterprises and CSOs. Various multinational firms have also carried out CSR activities in Serbia in cooperation with CSOs (these firms include Coca-Cola, DIN Philip Morris and Microsoft Software). Finally, informative activity promoting CSR is conducted by the Balkan Community Initiatives Fund.

(see: [www.smartkolektiv.org](http://www.smartkolektiv.org); [www.bcif.org](http://www.bcif.org))

## **Promoting information channels and awareness-raising on CSOs for credit sector actors**

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A problem element for civil society in Serbia is the difficulty of obtaining credit from financial institutions. In this regard, there are interesting foreign experiences such as those of “Banca prossima” (Banca Intesa), which provides specific credit services for NGOs. Specific information and awareness-raising programmes on the reality of CSOs geared to bank managers and staff may thus be very useful.

(see: [www.csreurope.org/solutions.php?action=show\\_solution&solution\\_id=445](http://www.csreurope.org/solutions.php?action=show_solution&solution_id=445))





## REGIME V

### **AWARENESS-RAISING OF POLITICAL SOCIETY**

A fifth kind of social regime specifically concerns **raising the awareness of political society actors** on the problems and opportunities connected with the presence of civil society and its relations with public authorities. Here, too, this regime concerns all 5 clusters, although it more directly deals with the “public presence” of CSOs.

As stressed before, there is widespread **suspicion** or lack of confidence towards civil society, not only in public opinion, but also in various sectors of the political sphere and in political parties. The study highlighted many elements of contrast and conflict (even latent) between the political and non-profit sectors at various levels. This requires specific targeted actions of awareness building

However, **the last few years** have seen a **more open orientation** that is explicitly favourable to creating broader spaces for CSOs in Serbia and greater forms of cooperation between CSOs, the central government and local public administrations.

In this regard, there has recently been a great **commitment** on the part of the Serbian **President of the Republic’s Office and government** in this field by promoting legislative reforms (see above), by publicly recognising the role of CSOs on many occasions, by creating interface bodies with regard to CSOs, and by starting up partnership projects in various spheres.

This fifth regime thus firstly focuses on the strategy of valorising and **optimising** the efforts made by Serbian authorities in their relationships with the OSCs.. This strategy includes instilling a more widespread **new sensibility within the political sphere** of the emerging CSO reality, which it is ever more pressing to come to terms with, within a view of participated **governance** of the problems of Serbian society.

A second strategy in this regard could also be that of promoting some **common working methods** between Serbian institutions and CSOs.

Also for this fifth “social regime” there are some **operative indications** given below. Three of them refer to the strategy of promoting a new sensibility towards CSOs in decision-makers and public administrators, while the others concern the strategy of devising some common work practices.

## **Operative indications**

### **Organising seminars and meetings on civil society geared to political actors at national level**

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In order to create a climate of greater trust around CSOs as well as greater receptiveness, some initiatives can be promoted in Serbia, like the Civic Initiatives association is already doing, in the wake of the many experiences made in Europe – initiatives geared to meetings, information transmission and awareness-raising of political actors at national level (members of parliament, government officials, political party representatives at national level, etc.). These initiatives can focus, in various ways, on the themes of the current situation and potential of CSOs.

*(see: [www.gradjanske.org](http://www.gradjanske.org))*

### **Promoting seminars and meetings on civil society for local public administration officials**

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Meetings as well as information transmission and awareness raising initiatives, like the ones carried out with politicians at national level, can be promoted also at a local level by involving the actors of public administration in a common reflection process. An important work in this regard is carried out, amongst others, by the conference of Serbian municipalities.

*(see: [www.skgo.org](http://www.skgo.org))*

### **Organising televised debates with politicians**

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A very effective way of informing political actors and of raising their awareness is to promote television debates in which the politicians can discuss issues with CSO exponents. For example, in Serbia the NGO called Civic Initiatives, along with the FENS and the European Movement, conducted a TV programme in 2008 called “Civil society demands”, with the participation of representatives of the main CSOs and of political parties, in order to discuss their views on

electoral programmes, citizens' everyday life problems, European integration, and on the implementation of the main public policies.

(see: [www.gradjanske.org](http://www.gradjanske.org))

## **Creating government interfaces with CSOs**

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As the many experiences at European level show, the promotion of government bodies charged with interfacing and creating partnerships with CSOs are very useful instruments. In 1998, the government of Hungary set up a specific Department for Civil Relations, in the Prime Minister's Office. This Department is responsible for the development and coordination of policies regarding the non-profit sector as a whole. In 1998, the Croatian government set up an "Office for cooperation with NGOs", and a similar office was also recently set up by the government of Montenegro. As regards Serbia, in January 2007 the government set up a commission of interface between the Serbian President of the Republic and CSOs.

(see: Bullain, Toftisova 2004)

## **Setting up local interfaces between local public administrations and CSOs**

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Local interfaces can also be very useful in creating a favourable environment for better relations between politicians and CSOs. For example, an Agency for Cooperation with CSOs and for European Harmonisation was set up in 2005 in the City of Belgrade. Moreover, in the various municipalities of the City of Belgrade there is an official specially entrusted with carrying on relations with CSOs and the civil society present in their own territory.

(see: [www.beograd.rs/cms/view.php?id=1293337](http://www.beograd.rs/cms/view.php?id=1293337))

## **Promoting joint committees and work groups for designing and implementing policies**

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Interacting with CSOs and their involvement in the programming and implementation of public policies is recognised, at European level, as an essential element for good governance. In particular, in Serbia the National Strategy of the Fight against Poverty was devised and implemented by a team set

up at the offices of the Prime Minister, also including CSO representatives. Moreover, the Ministry of Youth and Sport based its drafting of the National Strategy for Youth on cooperation with the main CSOs.

(see: [www.gradjanske.org/eng/index.php](http://www.gradjanske.org/eng/index.php))

## **Favouring the implementation of local partnerships**

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To devise and implement local development policies it is essential to start up and support partnerships with CSOs, in view of the resources – cognitive, material or operative ones – that they have. Some new member states of the European Union (Czech Republic, Poland and Lithuania) have experimented a cooperation method between CSOs and local authorities that refers to a “Citizens Advice Bureau” – a non-profit organisation set up in the United Kingdom and which provides advice and citizen support services. Some successful experiments were also made in this regard in some Serbian municipalities, such as within the implementation of the government’s Strategy for the Reduction of Poverty. Still in Serbia, considerable attention is paid to local partnerships by the Standing Conference of Towns and Municipalities (SKGO), which has carried out a specific study called “Citizens’ participation at the local level”.

(see: [www.citizensadvice.org.uk/](http://www.citizensadvice.org.uk/); <http://www.prsp.sr.gov.yu/engleski/primeri/index.jsp>; SKGO 2006)

## **Drafting and disseminating codes of intervention and guidelines on civic participation**

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Very often, in order to create a favourable environment for introducing an innovation, it is worth devising tools for steering and governing the actors involved, such as codes of intervention or guidelines. Tools of this kind can help actors to understand the importance of certain issues, to outline forms of shared and legitimised action, and to promote a greater quality of interventions. An example is the Code of Good Practice for Civil Participation, drafted in a recent Council of Europe Forum for the Future of Democracy, held in Sweden. This and other documents of the kind contain indications on mechanisms for CSO participation in decision-making.

(see: [www.coe.int/T/E/NGO/Public/](http://www.coe.int/T/E/NGO/Public/))

## **Overview**

The figure on the following page summarises the process leading to the identification of the 5 social regimes discussed in this chapter.

This process, we recall here, started by building a map of obstacles for civil society, to then identify some “clusters of obstacles” corresponding to as many risk areas on which to take action, and concluded by identifying the 5 social regimes illustrated in the previous pages.

## **Map of the obstacles for civil society**

### **The clusters of obstacles: Areas of risk on which to act**

1. Fundamental rights
2. Sustainability
3. Autonomy
4. Capacity and professionalism
5. Public presence

### **Five “social regimes” of risks**

I	II	III	IV	V
Knowledge	Capacity building	Legislative reform	Public commun.	Awareness-raising political society

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PART THREE  
**GUIDELINES FOR TRAINING**



Part three of these guidelines focuses on a **proposal** of a “**social regime**” of **capacity-building** (see part two, above) on matters concerning legislative frameworks and actions geared to strengthening CSO participation in public life and the relationship between civil society and public administration.

This proposal particularly concerns the **theoretical, methodological and technical framework** of reference for **designing training actions** in this field.

In view of what was said in the previous sections of this document, capacity-building in training should build on **consolidated knowledge** on legislative frameworks for civil society and promote a critical reflection of participants on the dynamics and obstacles (juridical and non-juridical ones) found in this regard.

What will be illustrated in this part of the document is the **outcome of a detailed complex process** geared to recognising the demands for training of CSO representatives and of civil servants in Serbia, and to identifying the best ways to meet these needs. To this end, use was made of the information and indications obtained in the **study** of the obstacles to civil society carried out within the PRAVOK project. Further important directions will come from the aforesaid **training course for CSO leaders and public officials** entitled “**Legislative frameworks and actions for the advancement of civil society**”, which will be held in Belgrade in the period May-October 2008, as well as from the various meetings, in-depth analyses and networking activities envisaged in the project.

To establish the framework of the training activities in this field, ample reference will also be made to the **multi-annual of experience** of research into training, adult education, project-designing and implementation of training actions that CERFE has gained at an Italian, EU and international level. In the specific case of Serbia, there will also be the cooperation of the Belgrade Open School.

In particular, **chapter twelve** will provide directions on the general framework that should characterise the training actions on legal frameworks and support to civil society, while **chapter thirteen** will deal with the more strictly **methodological and technical** aspects of implementation.





Chapter Twelve

**Planning training activities  
on the obstacles for civil society**



## 1. Training design: five basic options

Within the present guidelines, the general approach of a training course on legislative frameworks and actions for the advancement of civil society should refer to a series of basic options, and namely:

- Adopting an **integrated approach** to the problems (juridical and non-juridical ones) of civil society by continuously assessing the set of risk factors and the possibilities of coping with them, in the various stages of the activities.
- Identifying the **training needs** for capacity-building in order to come to terms with the problems of civil society and of its relations with public administration.
- Starting up **training processes** within **training cycles** based on the various **social regimes** of risk.
- Using an **experimental approach** in training activities in order to reduce the level of simulation and to increase the contact with reality.
- Adopting an **adult education** perspective in view of the participants' characteristics in a training action on the theme of civil society, as dealt with in the PRAVOK project.

## 2. Adopting an integrated approach to the problems of civil society

The results of the study carried out within the PRAVOK project seem to indicate the need to base training activities concerning the problems of civil society on a model geared to promoting **integrated and complex strategies and policies, avoiding “linear” approaches**, that is, specific, isolated and/or sporadic actions in this field.

This framework springs, above all, from the considerable articulation of the juridical and non-juridical obstacles to civil society that were found and formalised in the map (see part one of this document), and from the interpretations and indications resulting from a transverse in-depth assessment of these obstacles (see part two of this document). All this points to suggesting the **coordination of actions** in the strictly legislative sphere with those of the training, information and cultural sphere, while at the same time observing and monitoring their outcomes.

In this perspective, the training actions, in particular, should not only enable the transmission of traditional technical and specialist skills (such as specific notions on legislation, advocacy and public communication), but also help deal with the **process aspects** (obstacles, risks, opportunities, policies and their impacts, law enforcement, points of view, and purposes of the various actors, etc.) that are part **of the reality** in which CSOs and public administrations interacting with them work.

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## **3. Identifying training needs**

Another crucial requirements for a training course is to base training activities on the **analysis of the beneficiaries' training needs**, to be carried out when planning training activities (in terms of general training needs) and after their start-up, also in several stages (in terms of specific training needs).

A specific model for analysing training needs – called the *Modello Operativo di Analisi dei Fabbisogni Formativi* – *MOAFF* (“Operative Model of Analysis of Training Needs”)<sup>17</sup> can be particularly useful to this purpose.

According to the MOAFF, training needs are not a mere “gap” in knowledge. They can instead be represented as risk areas for civil society actors that the training activity is called upon to handle. These risk areas are viewed and represented by the actors in the form of expectations, fears, intentions and needs

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<sup>17</sup> Mezzana D., Montefalcone M., Quaranta G., *Modello Operativo di Analisi dei Fabbisogni Formativi (MOAFF)*, Laboratorio di Scienze della Cittadinanza, Roma, 2004

which, once formalised through dialogue with other subjects (colleagues, trainers, etc.), give rise to a training demand.

In this overall picture, training can be meant as action which, by meeting this demand, enables identifying the “dangers” the actors are exposed to (that is, the obstacles to civil society) and turning them into “risks”, that is, into something known and manageable.

As regards the shift from risks concerning individuals to the determination of training needs, the MOAFF proposes two different approaches:

- A **probabilistic approach**, according to which the training needs are identifiable within recurrent spheres, that is, they show an empirical constancy.
- An **interactionist approach**, according to which the areas of risk can be considered contexts of meaning with reference to which individuals, by interacting and thus communicating with other actors, produce representations linked to specific stakes. Hence, by making risk-awareness inter-subjective, it is possible to identify recognisable and shared training needs, and thus to formalise actual demands for training.

The application of a model of this type enables an analysis of training needs corresponding to the need to build capacities that tackle the complexity of the environment in which they are deployed.

A training course should be designed by starting from an analysis of the knowledge gathered on the beneficiaries’ general training needs. During the performance of training activities, it is also essential to carry out repeatedly – and not just at the start – an analysis of the participants’ training needs. This should not only grasp deficiencies in knowledge and skills, but also – and above all – the training demands stemming from an adequate perception of existing risks for CSOs, in order to identify suitable ways of handling them.

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#### **4. Identifying learning paths and arranging them into training cycles**

To meet the training needs, both general and specific ones, the training activities should be organised around a number of learning paths which, as a whole, favour the participants' growth and learning process. As regards the PRAVOK course (see box below), these learning paths are linked to the themes of "social regimes" of the risks for civil society (see part two).

The learning paths represent the ways through which skills that meet the various areas of need are built within a training action. In practice, this plurality of paths must be linked to a single itinerary of activities that can connect them into a coherent set.

The itinerary could be arranged into a series of training cycles which should enable to simultaneously follow learning paths in a coordinated and modulated manner so that the participants' specific training needs may be suitably met.

Every cycle could focus on a key theme and thus be organised to enable the building of particular skills. Within each training cycle, some learning paths could have greater relevance compared to the others, also in consideration of the key theme dealt with.

In the case of the course promoted by the PRAVOK project, 3 training cycles are envisaged:

The first cycle, “**Knowledge**”, will be geared to meeting the participants’ training needs mainly linked to the **obstacles of an “endogenous” nature** to the activation of civil society in Serbia. They are, in particular, obstacles concerning the skills, behaviours, orientations, representations, expectations and knowledge of the actors involved.

The second cycle, “**Legislative reforms**”, aims at meeting the training needs linked to **obstacles of an “exogenous” nature**, that is, those which are external to CSOs. The cycle will focus on proposals for legislative reform, policies and actions geared to creating a **favourable environment** for CSOs, even in the legislative field (advocacy).

The third cycle, “**Raising the awareness of political society and public communication strategy**”, will be dedicated to actions and tools of public communication strategy that can be used in order to build and disseminate a more complete and suitable **public image** of CSOs, especially for raising the awareness of Serbian political society. Particular attention will thus also be paid to relations with **the media**, in order to start-up or further cooperation processes.

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## 5. Basing training activities around an experimental approach

A fourth element which should characterise the organisation of a training course on themes linked to civil society, and the obstacles this deals with, is represented by an **experimental approach**.

In general, this expression refers to the need to put participants in touch with **actual experience**, thereby making sure the course is not just a process of knowledge transmission between trainers and learners, which is obviously essential, or that “lets in” reality in a merely virtual manner (such as through role-plays or simulations).

It is possible to identify **two main ways** in which to give concreteness to the experimental approach, at least within the PRAVOK project.

The **first way**, and probably the most important as regards impacts on the participants' learning processes and awareness, is **action-research**, which allows making the results of a systematic activity of information gathering and analysis immediately usable by the course participants, in their own local area and sphere of activity. In this way, the issues dealt with in a more abstract manner in the classroom (such as specific obstacles or facilitation factors) can be grasped in their concreteness, thereby becoming more easily comprehensible.

In the training course envisaged in the PRAVOK project, the participants will be involved in **action-research** on the opportunities and obstacles for CSO development in Serbia, starting from the results of the research carried out within the project, geared to drafting the “**guidelines**” for those actors interested in removing these obstacles. The participants will take part in devising the guidelines, thereby acquiring further knowledge that would otherwise not be obtained by just studying the documentation or by means of abstract presentations in the classroom.



Involving the participants will enable them to grasp information in its **concreteness**, making it more easily comprehensible and usable for practical purposes, in order to create a more favourable environment for civil society.

The **second way** to strengthen the experimental approach of the course is represented by **meeting key persons and informants**. Unlike the previous way, the participants do not have the possibility of “going and seeing for themselves” an initiative conducted, grasping it in its context, but still have the opportunity to “have it reported” to them by someone who has experienced it. Although this is a lesser involving way compared to the first one, it still offers important tools to connect what is learnt in the course with the outside world.

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## 6. Adopting an adult education perspective

The last element of the general framework of the training actions consists of adopting an **adult education** approach, which is all the more important in view of the characteristics of the potential participants of this type of course.

This view emerges in four main elements:

- Building a **peer-relationship** between trainers and learners making it possible to have continuous **negotiation** on the contents and results of the training action (achievable, amongst other things, thanks to periodic checks of the individual training needs).
- Supporting the **active role of participants**, considered to be bearers of knowledge, experiences and skills that can be used and shared in the context of the training experience, especially thanks to the “mixed” composition of the group (participants are representatives of realities which are often very distant from one another, have different features and

very often do not seem particularly geared to communication and cooperation).

- Promoting a **personalised involvement** of participants, geared to recognising and exalting the different professional and personal identities and sensibilities, which are particularly precious in order to enrich all the training activities and to build transverse networks – of partnership or of interest – between the participants themselves.
- Developing the idea of critical and concrete **learning through problems**, based not just on theoretical knowledge, but also on experiential one and on the direct contact with reality (such as through experimental activities, meetings with experts and key informants, organising study visits).

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Chapter Thirteen

**Methodological and technical aspects  
of training courses on legal frameworks  
and actions for civil society**





With reference to what was proposed in the previous chapter, it is possible to provide some suggestions on the **methodological and technical aspects** of training courses on legal frameworks and on actions to support civil society.

These aspects particularly concern:

- The use of different training methods
- The use of a plurality of training tools
- The use of certain techniques

## **1. Using three different training methods**

It is worth organising the training courses by using three different training methods:

- Integrated training
- Residential training
- Distance training

### ***1.1. Integrated training***

The main feature of the training actions on the legislative frameworks and the support to civil society should be the extensive use of **integrated training** within which to conduct real – and non-simulated – experimental activities, both in group or individually, at distance. This kind of training combines both instruction and action, and enables participants to put into practice what they learn in the context (organisational, material, communication, etc.) in which they are called upon to operate, that is, in the organisations they work in (both CSOs and offices of public administration).

### *1.2. Residential training*

The training actions cannot be conducted without recourse to **residential training**, which envisages the presence, in the classroom, of the participants, experts, consultants and training staff. The participants' meetings are not only with trainers and visiting professors, but especially with the bearers of experience and best practices on the part of CSOs, or of partnerships between CSOs and public administration bodies.

The sharing of classroom activities makes it particularly possible to: create relations of cooperation between experts, trainers, training team and participants; share the experience, knowledge and skills that can be productively made available or discussed; build more suitable representations of the context in which the participants' activities are performed; identify the action strategies to deal with the difficulties existing in conducting these activities.

### *1.3. Distance training*

**Distance training** is based on in-depth analysis and individual study. It is conducted through forms of two-way online communication between individual participants and the training staff (or trainers, consultants and experts that it is possible to involve each time). It is geared to favour the **appropriation of knowledge** on the part of individual participants. The individual work carried out at a distance – since it is a form of “detachment” with respect to the group – makes the learners more autonomous in their learning and more willing to take on an orientation and personal responsibility regarding the issues dealt with.

This training can be linked to different **activities** such as the study of teaching aids prepared ad hoc by the training team, the practical activities agreed with the trainers and with the training team or the drafting of documents by the participants.

### *1.4. Alternating the three training methods*

These three training methods are proposed also to encourage participation of those who need to carry on their normal working activities alongside their training. **Alternating** the methods allows the participants to limit their actual

physical attendance (and any journeys they would have to make from their area of residence to the course location) to the moments of residential training and to **autonomously** and **flexibly** handle the periods devoted to integrated and distance training.

To facilitate the participants' learning process, the training activities could be organised in cycles, according to a **sequence** that may be resumed at different stages. This sequence should ideally envisage: an initial stage of knowledge and skill transmission and critical discussion on the part of participants, within **residential training**; a subsequent stage of individual in-depth study and the appropriation of knowledge, within **distance training**; a third stage devoted to experimenting what is learnt, within **integrated training**; finally, a "return" phase, of shorter duration than the previous ones, in which to conduct activities such as in-progress evaluation, again via **residential training**.

This arrangement into three different kinds of training within the cycles could be modified, from time to time, to meet the course participants' **specific training needs** (on the basis of periodic checks) and to handle changes to be made to the overall training programme.

## 2. Using a plurality of training tools

There is a broad range of **training tools** (i.e., the means to carry out the training action) that can be used. In these guidelines, only the ones that can be particularly effective in training on themes of the PRAVOK project will be mentioned.

The use of these tools in learning paths and training cycles largely depends on the specific objectives to be achieved each time. It will be the training course designers' task to establish the ways these tools can be used, on the basis of the participants' learning process, also starting from the outcomes of the periodical analysis of individual training needs.

Here follows a proposal on the possible training tools and instruments.

- **Visiting professors**, that is, experts and consultants with experience in their respective fields and coming from other European countries, who can deal with the key themes of the various training cycles.

- **Meetings with key informants and experts**, who can formalise and share their experiences in the various spheres considered in the course, and who may belong to various working contexts (public administration, the private sector, civil society). These meetings are envisaged in residential training and also in specific activities of integrated training.
- **Case studies, best practices and success stories**, to be presented, analysed and discussed within residential and distance training.
- **Face-to-face lessons** conducted by teachers, experts and consultants in order to convey knowledge on the reality of civil society (in Serbia and elsewhere), on the obstacles it meets and on the possible solutions to overcome these obstacles.
- **Reflection groups on training needs**, that is, seminars guided by members of the training staff or by teachers, which aim to bring out and formalise the participants' training needs, starting from a common discussion around the "risks" existing for civil society and the handling of these risks.
- **Study visits** to be organised during the integrated training stage, in the premises of non-profit or public actors that have successfully experienced activities promoting CSO presence in Serbia.
- **Training evaluation and implementation workshops**, to be conducted within meetings coordinated by the training manager, to get the participants to reflect on the themes dealt with in the course and on the training activity in general. These meetings allow the participants: to focus on the problems that may arise during the training; to collectively deal with specific issues; to have feedback on the main phases of the course and on the tools used; to exchange opinions, knowledge, information, proposals and evaluations among participants, who are the bearers of experience, knowledge and networks of relations very different from one another.
- **Practical activities** to be conducted in the classroom, either collectively or individually, assisted by consultants and experts taking part as teachers, in order to convey the techniques and know-how presented during the face-to-face lessons.
- **Individual work**, mainly performed within integrated and distance training, enabling the participants to study and further analyse the materials and

learning aids given or proposed by the teachers and experts, and to autonomously put into practice what is learnt.

- **Tutorials**, consisting of meetings between training staff members and course participants, on specific topics and issues arising during the training activities.
- **Individual interviews**, conducted by training staff members to get feedback on the training activities by gathering opinions, proposals, evaluations, criticism and suggestions.
- **Learning aids** to be distributed to the participants and prepared by the trainers and training staff on the basis of the training tools (face-to-face lessons, visiting professors, case studies, best practices and success stories), geared to favouring the acquiring of knowledge and developing a critical spirit necessary to deal with the course themes.

### 3. Using specific techniques

A further element to be considered when designing the training activities is the use of a series of **techniques** accompanying or supporting the participants' learning during the course activities.

More specifically, here is a list of possible useful techniques for building the capacity to promote the presence of civil society in Serbia:

- |   |
|---|
| <ul style="list-style-type: none"><li>– Tutoring</li><li>– Benchmarking</li><li>– Networking.</li></ul> |
|---|

#### 3.1. Tutoring

**Tutoring** is the individual support activity provided to participants within their training in order to facilitate their learning. In this sense, tutors are called upon to:

- Favour the appropriation of the knowledge conveyed by the teachers.
- Help the participants fit in with the training programme.

- Assess the participants' expectations.
- Check the congruence of the training activities with the learning objectives.
- Support the development of the participants' autonomy, self-esteem and sense of responsibility.

The tutors generally also have the task of handling specific training activities and, more generally, of handling human resources, the logistics and organisational aspects, with a view to the proper implementation of the training activities.

As regards **human resource management**, for instance, the tutors should:

- Favour a good group climate among participants.
- Facilitate the full use of the participants' knowledge, experience and skills.
- Favour the solution of any conflicts.
- Create a favourable environment in relations among participants, trainers, informants, consultants and experts concerned.
- Stimulate informal meetings among participants.
- Promote the circulation of information and communication.
- Assist trainers in conducting their activities.

**Logistics and organisational management** generally envisages the tutors' involvement in activities like:

- training;
- distributing the courseware;
- assessing the training tools necessary for course activities;
- gathering, handling and filing the documentation;
- complying with certain administrative formalities.

Within the training activities regarding legislative frameworks and the actions for civil society, particularly important is the support provided by the tutors in conducting the experimental activities, mainly carried out through distance training. The tutors should guarantee on-going assistance to the participants by providing information, suggestions and advice as well as by evaluating the activities carried out and any written documentation produced (documents, project notes, case studies, in-depth analyses, etc.). Finally, a very important

function is that of involving experts and consultants so that their contribution can meet the specific needs that may arise during the performance of the experimental activities.

The tutors should follow up groups of participants over time, to enable the continuity of the assistance and personalised accompaniment activity during training. Ideally, every tutor could cater to 5-8 people.

### 3.2. Benchmarking

Benchmarking is a particularly appropriate technique since it allows the participants to **come to terms with other realities** and to identify the factors which led to success or failure.

A benchmark is:

- A reference parameter adopted as a model; a reference or measurement criterion adopted to compare elements.
- A level of performance recognised as a standard of excellence for a specific practice.

Benchmarking provides conceptual tools useful for the isolation and controlled transfer of positive elements found in measures adopted by other actors, also in spheres, sectors or geographic areas other than the ones concerned. This allows an enrichment of the “action menu” which can be implemented, with the guarantee of the fact that the elements concerned have already been experimented, albeit in other fields.

#### **Benchmarking**

Benchmarking may be taken to mean:

- The continuous search for significantly better practices that determine greater competitive performance (*Proceedings of Benchmarking Week '92*, Apqc, Houston, TX, 1992).
- The process of identification, comprehension and adaptation of the best practices of one's own or other organisations in order to improve performance (Cook S., *Guida pratica al benchmarking*, Angeli, 1996).
- A process of systematic and continuous measurement: a firm's processes are measured and then compared with those of other leading firms in the world in order to have useful information to improve one's own performance (Apqc, *Organizing and Managing Benchmarking: A User's Guide*, Houston, TX, 1992).

Benchmarking is used in order to seek two kinds of information:

- The measures indicating and evaluating the excellence of a process or practice (*benchmarks*).
- The key elements leading to the result (*enablers*).

### 3.3. Networking

Networking is an activity based on **recognising** and **optimising** the **relations** among individuals and organisations and, in particular, on the fact that these relations can be represented as **networks**.

Networking enables:

- Acquiring and transmitting **knowledge and information**.
- Building, strengthening or broadening the **social capital** of an actor (that is, the relations of trust he/she has with other actors and which can be mobilised to facilitate the implementation of actions or the exchange of tangible and intangible resources).
- **Lobbying** (that is, inserting an actor within a communication context so that it can be recognised by other actors present in this context, so that it can participate in communication exchanges taking place and can influence decision-making processes).
- Acquiring and providing **services**.
- Acquiring **resources**.
- Producing forms of **attraction** and **new bonds** between nodes/actors belonging to different networks.
- Building a **favourable environment** with respect to certain actions.
- Exercising **authority** or **power** on the context itself or on the specific actors present.

Networking consists of the following actions:

- **Identifying and mapping** the networks connected to the established action contexts and objectives.
- **Inserting** knowledge and messages within information networks, both through inter-individual communication activities (direct communication)



and through collective or public communication activities (newsletters, websites, publications, etc.).

- Creating **communication** opportunities and **circuits** between different individuals (such as by using a common directory of recipients, convening meetings, etc.).
- **Creating bonds** with other actors by requesting and offering services and information by inserting within existing information circuits or by creating direct communication with these subjects.
- Entering **new networks**, by creating communication bonds or optimising existing relations with actors who are already part of them.

In this picture, networking enables achieving what is illustrated in the following box.

Networking for CSOs
<ul style="list-style-type: none"><li>• Creating a <b>favourable environment</b> for conducting one's activities.</li><li>• <b>Gathering and exchanging</b> information and knowledge (concerning opportunities, best practices, success stories, networks of key actors, etc.).</li><li>• Accessing the <b>communication flows</b> of key actors of interest for the participants' organisations.</li><li>• Building and consolidating the organisations' <b>social capital</b>, or the set of actors with whom they have relations of trust.</li><li>• <b>Lobbying.</b></li><li>• Identifying and managing relations with <b>partners</b>.</li><li>• Favouring links with the <b>community</b> and the <b>key actors</b> one aims to interact with.</li><li>• Enabling the <b>dissemination</b> of operational indications, knowledge and information.</li></ul>

Within the training activities regarding the themes linked to civil society and to the partnerships between CSOs and other public and private actors, networking may come about by such things as:

- Conducting **practical activities** geared to identifying the networks of relations of their respective organisations.
- **Mapping the key actors** operating in the sectors of action or in the geographical areas of reference for the achievement of their respective projects.

- Identifying and promoting meetings with the actors making up the **network nodes** and which enable the activation of **new relations** (horizontal, bottom up and top down).
- Identifying and **participating in networks**, at a national and international level, which operate in their respective areas of action, in order to disseminate information on project contents.

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