

3. POLICY RECOMMENDATIONS

During the last two decades, various concepts and visions for the role of the civil society have been elaborated and put into practice. According to some, civil society organizations are to be the **watchdogs of the democratic process**, while others see them as **levers of the government of the day**.³⁷

Bulgarian NGOs have grown in numbers, turnover, fields of competence, international outreach and influence; so have, correspondingly, the public expectations towards them. This paper outlined a number of consequences of this growth, and in particular its risks. Enhanced opportunities for the sector created new and spotlighted some old weaknesses and risks.

To minimize these, heightened standards for good governance, a supportive but also demanding legal framework and improved cooperation with central and local government are needed. As a result of the analysis, as well as numerous interviews and discussions with NGO representatives, several groups of recommendations to various stakeholders should be considered.

Above all, a **national policy for the development of civil society** is required making **partnership between the institutions of the state and NGOs a priority**. It should establish a new balance of their rights and responsibilities and ensure a sustainable funding environment.

3.1. REFORM OF THE INCORPORATION AND REGISTRATION PROCESS

For 15 years now, the Center for the Study of Democracy has been supporting a **comprehensive reform of the registration of legal entities** in Bulgaria³⁸ which still needs to be completed. Among the unfinished items on the agenda is the update of the *Strategy for the Establishment of Central Registry of Legal Persons and Electronic Registries Center in Bulgaria*, taking into account the administrative reforms under the *Electronic Government Act* and the *E-Government Strategy for 2010-2015*. Effective electronic government in the country has two prerequisites. In the short term, the **operational compatibility and integration of existing registries**, of which there are estimated to be around 70 in the central and over 500 in the

³⁷ As believed by some party leaders of the 2005-2009 government.

³⁸ CSD's work on this issue started with the development of *the Law for the Registered Pledges* in 1995-96. Later, in two publications titled *Reforming Judiciary in Bulgaria: Towards the Introduction of Modern Registration System*, CSD 2002, and *Opportunities for Establishment of Central Registry of Legal Persons and Electronic Registries Center in Bulgaria*, CSD 2003, and a number of public events. The Center has facilitated the overall dialogue in this area and helped the drafting of the *Strategy for the Establishment of Central Registry of Legal Persons and Electronic Registries Centre in Bulgaria*.

local authorities, needs to be ensured. Longer term, a **consolidated electronic registry center** should be operational.

Currently, NGOs are incorporated as legal entities by way of decisions of the local court. The contrast with businesses, which are simply registered, implies that associations of citizens are somehow inherently riskier undertakings in need of judicial permission and also burdens the courts with non-judicial work. Difficulties also arise from the differing practices of the various local courts (even within the same court).

NGO incorporation should be **transformed from a judicial to an administrative procedure** provided by the **Registry Agency** which currently manages the registration of commercial companies. The Registry Agency would thus need to assume the functions of the current NGO Registry which registers public benefit NGOs (the merge should be straightforward as both are overseen by the Ministry of Justice). By making initial incorporation/registration, as well as subsequent governance amendments (to statutes, managing boards, etc), easier such a change would also facilitate **electronic registration and re-registration**, which is currently not possible. Registration **fees would be reduced** which would be of great importance to many small non-profit legal entities. The transition should not be overwhelming for the Registry Agency, as there are no more than 8,000 active NGOs (according to reports by the National Statistical Institute).

If the proposal for migrating NGO registrations to the Registry Agency is accepted, then all non-profit legal entities would submit their reports to the Agency. This would necessitate an amendment to the *Accountancy Act* which currently instructs public benefit non-profits to report to the NGO Registry.

Should the merge of the NGO Registry into the commercial Registry Agency be further delayed, it would be **necessary to reorganize the NGO Registry allowing for electronic registration and requiring private benefit NGOs to register as well**. This would ensure operational compatibility with the Commercial Registry and effective oversight over concentrations, compliance with bans on the participation by officials in private entities, etc. For years, the website of the NGO Registry has failed to provide access to documents submitted by non-profit legal entities. It remains unclear whether certain discrepancies (e. g., changes in the managing board of an organization which have not been recorded in the registry) of the information are caused by the NGOs or by those responsible for updating the files. Furthermore, hard copies of the documents are difficult to access for people outside the capital where the Registry is located.

Such an overall registry reform would:

- enhance **transparency**;
- **reduce transaction costs** for businesses and NGOs;
- enable a new type of **civic control and self-regulation** through the so called **crowdsourcing**.³⁹

³⁹ The outsourcing of tasks, traditionally performed by an employee or contractor, to a large group of people or community (a crowd), through an open call.

- aid more **effective risk assessment** and administrative oversight;
- create incentives and **facilitate the work of municipalities** which are required to register their participation and representation in the managing boards of non-profit legal entities, but fail to do so;
- allow easy **verification of compliance** of public officials with regulations about participation in private legal entities, etc.

3.2. RECONSIDERING PUBLIC VS PRIVATE BENEFIT STATUS

More transparency for private benefit NGOs

Although they are few (only 3% of all NGOs), **there are practically no regulations for the operation of private benefit NGOs**. They are not required to keep their activities transparent, are not bound to make their financial reports public, or to publish an annual report of their activities, even though they are eligible to receive (and do receive) public funding. Given their current nontransparency this should be disallowed, unless **requirements for them are made at least equal to those for limited liability companies**.

There is also the issue with the associations for joint management of rights which are a specific type of private benefit NGO. The Ministry of Culture is responsible for keeping a registry of these organizations, yet all it contains is a list of names, dates, registration numbers, office address, and representatives. Given that there is a legitimate public interest in their output, they should be **subject to the requirements for transparency and accountability as applied to public benefit NGOs**.

Monitor public benefit NGOs

Making registration easier should be accompanied by stricter and more detailed oversight mechanism over public benefit NGOs. Such a mechanism would **guarantee both effective control and non-interference in the activities of civil society organizations**, especially organizations critical of the government. Ideally, the Ministry of Justice would be required to **develop and implement a risk assessment procedure** as the basis for exercising control.

The status of non-profit legal entities once incorporated by the court as acting in the public interest but later for various reasons de-listed from the NGO Registry remains unclear. This would be solved by making incorporation an administrative procedure of a single registration.

There are inconsistencies in the regulation of *chitalishte*, the work of which is of considerable public interest, that should be overcome. **The transparency requirements for them should be made to correspond to their status as recipients of subsidies from central and local government**.

3.3. OVERSIGHT OF NGO PROFIT MAKING

There is currently no way to monitor whether NGOs are not used by public officials to bypass proscriptions to conduct business, whether and how the separate profit and non-profit accounting is maintained and whether profits are used by NGOs for their non-profits aims. There are numerous cases of non-profit legal entities that are largely or exclusively involved in commercial activities and bypass proscriptions for officials such as mayors or judges on holding interests in commercial companies.

One of the most transparent ways for a non-profit institution to conduct commercial activities is to **separate for-profit work in a wholly owned commercial company**, but this entails substantial costs which cannot be afforded by many of the smaller NGOs. However many NGOs which have the capacity to bid in tenders for consultancy in Bulgaria and abroad have incorporated subsidiary companies for consultancy services. The European Commission often funds typical NGO work through service contracts, rather than grants. Non-profit institutions could, therefore, be **required to separate profit operations into a wholly owned business when commercial turnover exceeds a certain amount (e.g. 500,000 levs)**. Such a measure would not affect most of the organizations, as only 836 non-profit legal entities were registered under VAT as of June 2010 (VAT registration is compulsory for a turnover of commercial activities exceeding 50,000 levs).

3.4. REVIEWING LOCAL GOVERNMENT INTERESTS IN NGOS

The participation of municipalities in non-profit institutions should be reconsidered. Although the applicable law (*Municipal Property Act*) **stipulates that there should be a uniform approach in the local regulations** of the terms and conditions of exercising the property rights of municipalities in commercial enterprises and their participation in NGOs (only associations are mentioned in the law), local legislative acts either do not regulate these matters at all or just repeat the provisions of the law.

The first necessary step is, therefore, to **adopt a common regulation for municipal participation in non-profits and in commercial companies**. The regulations should allow the prevention and disclosure of conflicts of interests concerning other founding members of the non-profit legal entities.

As a follow up, it is necessary to establish and maintain a **public registry of municipal participation in non-profit legal entities**, as stipulated by the *Municipal Property Act*. The number of municipalities that have such a registry is negligibly small.

Third, **every municipality should audit and disclose to the public its interests in NGOs**. Sometimes NGOs with municipal involvement set up, alone or jointly with other legal entities, commercial enterprises. It is difficult to control the activities of the latter and there are preconditions for the abuse of municipal interests, as there is no control over municipal representation in general assemblies and managing boards. In addition, poor management of the archives in the mid 1990s

when some associations with municipal participation were established, eases the process of capture of such organizations.

Fourth, **each municipality should adopt clear criteria and transparent procedures for entering into partnerships with non-profit legal entities**, such as for proposal drafting and project implementation. All the relevant information about these should be publicly available on the websites of the municipalities.

3.5. ENFORCING NGO GOVERNANCE STANDARDS

To improve the legal framework for governance of non-profit legal entities, it is necessary **to ensure better transparency of the membership in general assemblies of associations**. This will, in turn, lead to the disclosure of controlling interests in the sector, where often serial non-profit entrepreneurs set up a number of seemingly different organizations thus effectively producing sectoral concentrations.

It is the composition of general assemblies that can allow an insight into the nature of a given NGO. Although non-profits are expected to be also non-governmental, many are controlled by public bodies (e.g., ministries, municipalities, state and municipal companies) either directly or through members of political cabinets. Currently, as local courts maintain the files on NGOs, it is virtually impossible to register information for every single general assembly meeting. What is needed is a registration of founding members and submission of attendance lists of general assembly meetings. Such a requirement should not necessarily apply to all but only to public benefit, or some other kind of “enhanced transparency” NGOs which are allowed to receive public funding.

Second, **an overall legal framework is needed for the creation, governance and dissolution of non-profit legal entities where public bodies, including those established through a special law, have an interest**. This issue is only partially addressed at the local level by the *Municipal Property Act*; the *State Property Act* does not include a corresponding regulation for the participation of ministries, agencies, and state enterprises. Currently, there is no information about state representatives’ participation in non-profit legal entities. As a result, there are numerous examples of bad governance of non-profit legal entities initiated by state bodies and enterprises. **Amendments should be made to the *State Property Act* to introduce provisions at least as strict as those for municipalities**. An analysis and change of similar regulations applying to the interests of other public organizations (such as the Bulgarian Academy of Sciences, universities, etc.) in non-profit legal entities is needed.

Although, senior public officials are barred from holding management positions in NGOs, mayors and their deputies are still allowed to do so. Besides, the requirement for disclosing conflict of interests concerns only participation in managing and controlling bodies of NGOs but not participation in general assemblies. There are several possible ways for improvement of the current regulations:

- Conflict of interests legislation could be changed so that mayors of the various types of local government structures are treated in the same way as other

bodies of the executive. This could be achieved either by **banning mayors from being members of general assemblies** of non-profit legal entities, or by **removing the ban for everyone**.

- Another approach is to modify the **proscription for membership in the managing boards of non-profit legal entities having for-profit operations** (as it is done for judges). To make that ban effective strict control must be exercised over the activities of non-profit legal entities where officials of this category sit on the management bodies. Conflict of interests commissions or inspectorates could request the Ministry of Justice to carry out inspections in accordance with the ongoing control stipulated by the law.

The introduction of **compulsory disclosure of interest in non-profit legal entities** in the declarations required by the *Prevention and Disclosure of Conflicts of Interests Act*. Membership in NGOs could be regarded as similar to owning shares in businesses. This should be introduced especially if restrictions on the participation in managing and controlling bodies of non-profit legal entities are abolished.

Currently, there are no consequences envisaged for NGOs for not complying with the NGO law. The law should be amended to provide for various types of **penalty payments in cases where NGOs or their members violate the law**.

Many attempts have been made at establishing a mechanism of **self-regulation in the third sector**. A recent example are the Good Governance Standards developed by the Workshop for Civic Initiatives (see more in Appendix I). Non-profit legal entities need to be more active in the process of self-regulation and implementation of good governance principles. This could be done by joining existing platforms with mechanisms for verification and by adhering to good governance principles.

3.6. BULGARIAN NGOs IN INTERNATIONAL DEVELOPMENT ASSISTANCE

By acceding to the EU, Bulgaria undertook commitments for participating in the **international development assistance provided by the Union**. Under these commitments the contribution of the country should reach 0.33% of the gross national income (GNI) by 2015 (EU average goal being 0.7 percent by that year). The necessary laws and regulations for this to take place have been drafted in the framework of projects by the Center for Comparative Studies and the BG Chance Foundation but have not been adopted yet. These should urgently be endorsed to allow the technical capacity for assistance to be put in place.

Bulgarian NGOs have a considerable experience in working with international development partners, in countries where assistance would be provided with priority and in the crucial thematic fields of development. Thus, Bulgaria's international development assistance would be provided effectively through a **partnership between the government and civil society organization with development experience**. Some of the new EU member states, such as Poland and the Czech Republic, have already started to use NGOs for the achievement of their national contribution to international development assistance.

Public-private partnerships in development assistance should be established through a transparent procedure in order to **avoid the negative experience with the Operational Program Administrative Capacity (OPAC)** where projects were largely assigned to organizations lacking experience. Moreover, the managing boards of these organizations were dominated by representatives of various local and central authorities and local party leaders.

As the experience of other countries providing international assistance shows, Bulgarian development aid could very well come across **NGO capture in the recipient countries**. This is why it is of great importance to provide **good governance mechanisms** for the management of assistance programs.