

# Reporting Requirements for CSOs

## *Overview of country regulation<sup>1</sup>*

*Prepared by the European Center for Not-for-Profit Law (ECNL)*

### 1. Introduction

The present overview maps out the reporting requirements for CSOs in countries with similar background to Armenia. It aims to support the discussions on the proposed CSO reporting requirements in the country. It was developed based on desktop research and information collected by experts from Bulgaria, Croatia, Czechia, Estonia, Georgia, Moldova and Ukraine<sup>2</sup> in April 2019. Our focus has been the reporting that targets all CSOs (and is specifically tailored to them) and/or the reporting for CSOs that have a special status (e.g. public benefit/public utility/charity status).

The material does not cover several specialized types of oversight/monitoring which depend on the areas of activity of the CSO or are linked to general obligations for all legal entities. Examples of these other types of reporting include:

- *Monitoring/Reporting for organizations working in specific areas (or engaging in specific activities)* e.g. reporting for volunteer host organizations or social service providers. Such reporting would not apply to organizations that do not engage in this specific area/activity.
- *Obligations that may be applicable to all organizations for the purpose of a narrowly defined specific topic* - an example for additional reporting obligations is the legislation related to anti-money laundering (e.g. in some countries CSOs are obliged to report suspicious transactions).
- *Obligations that are not specifically tailored to CSOs but CSOs may be subjected to them on an equal footing with all other legal entities* e.g. reporting obligations to or oversight of specialized state agencies such as the agency responsible for overseeing employment

---

<sup>1</sup> The material is prepared by Luben Panov, Program Consultant of European Center for Not-for-Profit Law (ECNL), with the assistance of Eszter Hartay, Legal Advisor of ECNL. All rights reserved.

<sup>2</sup> ECNL is grateful to the following experts for their contributions: Mariam Latsabidze (Civil Society Institute, Georgia); Florin Gisca (Promo-Lex Association, Moldova); Daria Sydorenko (Ukrainian Center for Independent Political Research); Alari Rammo (Network of Estonian Nonprofit Organizations) and the ECNL legal experts Ivana Rosenzweigova (Czechia) and Vanja Skoric (Croatia).

---

*This document was developed under a project managed by ECNL and made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative, and within the framework of the Action "Monitoring Progress, Empowering Action", implemented with the financial assistance of the European Union.*

*This publication is partially financed by the Government of Sweden and the EU. The Government of Sweden does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content. The contents of this document are the sole responsibility of ECNL and can under no circumstances be regarded as reflecting the position of the European Union.*

relations. This is based on the fact that employers (regardless of their legal form) have the obligation to report specific data e.g. overall expenses for employees or number of employees. In addition, CSOs have to follow the general labour legislation which may also include some reporting or oversight obligations e.g. in terms of healthy working environment, paying social security, etc. CSOs are also usually required to submit tax declarations, especially if they engage in economic activity which is not tax-exempt.

Finally, reporting is typically seen as an obligation that stems from the fact that CSOs receive some sort of state support (either direct funding or indirect tax benefits). CSOs are usually subject to **additional/separate reporting when they receive state funding in the form of grants or subsidies**. The requirements for such reporting are typically based on the contract for funding and the requirements of the respective donor institution. As an example, in Moldova, the recipients of 2 % designations have to submit special reports on how they have spent the received amounts.

## 2. International standards for reporting

CSO reporting requirements may affect the activities of CSOs and may have impact on three fundamental human rights that are related to CSOs:

- Freedom of association;
- Right to privacy (of the CSO and its donors, employees and other associated individuals);
- Protection from discrimination (or equal treatment).

### **Freedom of association**

If reporting becomes a reason for individuals to refrain from engaging with CSOs or existing CSOs start to limit their activities because of various bureaucratic obstacles, reporting may amount to a limitation of freedom of association. Any potential limitation of freedom of association (or in other words - any burden on the operation of CSOs) must be:

- based in law;
- serve a legitimate aim; and
- be necessary and proportionate.

*Legality.* With regard to the legal basis of any limitation, it is not sufficient that the reporting requirements are listed in the law but they also need to be clear and foreseeable (to give sufficient clarity what constitutes a violation and what are the possible sanctions for that).

*Legitimate aim.* The international documents clearly list the only possible aims for which this right could be limited. These include “the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”<sup>3</sup>.

Governments have used various arguments to propose stricter reporting. One of the most common arguments has been the need **to increase transparency** around the receipt and use of resources by CSOs (an argument used to introduce amendments to several draft laws to increase reporting requirements for CSOs in Ukraine). Transparency has been also been used as an argument in connection with the transparency of funds flowing from both international and domestic donors in order **to avoid “undesirable influences”** on CSOs (this has been used as an argument in the Netherlands when introducing a draft Act on Transparency of Civil Society Organisations).

---

<sup>3</sup> Art. 11, European Convention on Human Rights.

**Transparency or avoiding undesirable influences clearly do not fall under the legitimate aims for imposing restrictions according to international standards.**

Another argument used is that reporting ensures authorities will be able to monitor the **compliance of CSOs with the legal requirements or prevention of fraud or crime**. Recently governments have also used the argument to **countering terrorism, terrorism financing and money laundering**. Both prevention of crime and countering terrorism and money laundering could be said to support national security or public safety or target the prevention of disorder or crime. Therefore these may be legitimate reasons for introducing reporting requirements for CSOs. But even if the objective of introducing CSO reporting pursues a legitimate aim, **the final and most important test for any limitation would be to prove that it is necessary for the achievement of the objective and a less stringent measure is not more appropriate**.

*Necessity.* Introducing heavy reporting requirements could be justified **as long as there is clear evidence that there is a concrete threat** (e.g. possibility for money laundering) **and this is not theoretical or hypothetical but based on specific evidence and risk assessment**. It should be visible that the proposed measures (i.e. reporting) are designed to solve the identified problems. If the reason for introducing stricter reporting is fighting money laundering or terrorism financing, then it may be difficult to provide arguments why certain portion of the information should be public (as it is the authorities' responsibility to fight this type of crime and not the general public).

*Proportionality.* There are several elements of reporting that should be taken into consideration. The first one relates to the level of effort that CSOs should be obliged to put in reporting or **the principle of proportionality**. The principle of proportionality is related to the fact that some requirements that may seem reasonable for a large, professional organization, may seem an extreme burden for a small, voluntary association. According to the Joint Guidelines on Freedom of Association of the Venice Commission and the OSCE/ODIHR **reporting requirements shall not be unnecessarily burdensome, but proportionate to the size of the organization and the scope of its activities, taking into consideration the value of its assets and income**.<sup>4</sup>

### **Right to privacy**

The requirements for reporting names of members of an association may amount to a violation of the right of privacy as it may breach the right to not disclose certain information (e.g. the members of a gay/lesbian organization or association of mental health patients). Similarly, a requirement to publish the names of your donors may also lead to a violation. Para. 64 of Recommendation CM/Rec(2007)14 on the legal status of non-governmental organizations in Europe emphasizes that **all reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality**.

Similarly, the Explanatory Memorandum to the Fundamental Principles on the Status of Non-Governmental Organisations in Europe of the Council of Europe<sup>5</sup> states that the obligation for reporting is not absolute – it should respect confidentiality and privacy of donors and observe the principles of necessity and proportionality:

*67. However, reporting requirements must be tempered by other obligations relating to the respect for privacy and confidentiality. In particular, a donor's desire to remain anonymous must be observed. The respect for privacy and confidentiality is, however, not unlimited. In exceptional cases, the general*

---

<sup>4</sup> OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, para. 104.

<sup>5</sup> <https://www.osce.org/odihr/37858>

*interest may justify that authorities have access to private or confidential information, for instance in order to combat black market money transfers. Any exception to business confidentiality or to the privacy and confidentiality of donors, beneficiaries and staff shall observe the principle of necessity and proportionality.*

The standards listed above also apply with regard to the right of privacy, including the requirements for necessity and proportionality.

### **Reporting versus public disclosure**

One very important aspect when evaluating the necessity and proportionality of reporting requirements is whether the required information should be public or only collected by the authorities and kept private. As noted above, it should be clear:

- what is the purpose of requiring CSOs to make certain information public;
- does this affect the right of privacy of the CSO/individuals/donors; and
- whether the need to have the information public outweighs the right to privacy, for example.

The Venice Commission in its Report on Funding of Associations<sup>6</sup> has made a clear distinction between “**reporting obligations**” (reporting information to the authorities) and “**public disclosure obligations**” (making information public or available to the general public). In its report the Venice Commission states that while certain reporting obligations might be considered pursuing the legitimate aim of ensuring national security and prevention of disorder and crime, *“the obligation to make public the information about the source of the funding (public disclosure obligation) does not appear to be capable of pursuing the same objective”* (point 95). Therefore, there needs to be a distinction between the requirement for CSOs to report certain information and the requirement to make such information public.

### **Equal treatment**

Equal treatment has several elements that need to be evaluated. Firstly, there should be no discrimination between the requirements for CSOs based on the origin of their funding – foreign, international or domestic. Secondly, CSOs should not be treated less favorably than businesses or other legal entities. The OSCE/ODIHR and Venice Commission Joint Guidelines on Freedom of Association state:

*“225. ....Associations should not be required to submit more reports and information than other legal entities, such as businesses, and equality between different sectors should be exercised. Special reporting is permissible, however, if it is required in exchange for certain benefits, provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable.”*

If there is a different treatment between different civil society organisations or between CSOs and the business sector, it “should be justified on the basis of objective and reasonable grounds”<sup>7</sup>.

## **4. Comparative country information**

This section has been developed on the basis of information from Bulgaria, Croatia, Czechia, Estonia, Georgia, Moldova and Ukraine. In this part we will review several elements related to the reporting of CSOs. We focus on:

---

<sup>6</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)002-e), CDL-AD(2019)002

<sup>7</sup> Ibid.

- Which CSOs have to provide a narrative report?
- Which CSOs have to provide financial report?
- What the type of information needs to be provided?
- Does reporting depend on the size of the organization?
- Is there a requirement for the report to be public?

### *Narrative report*

In almost all of the countries covered in the paper there is no obligation for all CSOs to provide narrative report describing the organization's activities to authorities. Only Estonia has a requirement that all CSOs should provide such a report (there public benefit organization have to also file a separate report to the Tax and Customs Board). In Estonia, however, there is a discussion whether all CSOs should continue to be subject to mandatory reporting. Several judges from the Estonian Constitutional Court have argued that it may be too burdensome for all CSOs to report and, for example, "if all the activities of a non-profit organization are limited to the joint interests of its members, ....., the requirement to prepare annual reports is unreasonable"<sup>8</sup>. In addition, there is a concept paper for revising the company law that also questions the need for mandatory reporting for all CSOs.

In Croatia there is no requirement for activity report for any type of organization, while in Czechia the activity report is mandatory only for 2 nonprofit legal forms (foundation and institute) and not for associations. In Georgia, Moldova and Bulgaria only public benefit organizations (in Georgia they are called organizations with charity status and in Moldova organizations with public utility status) are obliged to provide an activity report. It has to be taken into consideration that in Bulgaria about 1/3 of all registered organizations<sup>9</sup> are public benefit, in Georgia only 161 organizations out of approximately 24 000 organizations have charity status while in Moldova there are 133 organizations with public utility status.

### *Financial report*

All researched countries have introduced the obligation to some segment or to all CSOs to provide a financial report. The financial report is mandatory for all CSOs in Bulgaria, Czechia, Estonia, Moldova and Ukraine. In Croatia the report is mandatory for all CSOs that have dual accounting system (which is mandatory if the turnover is above 30 660 EUR). In Georgia the financial report is mandatory only for organizations with charity status.

In addition, any organization that receives funding from the state is typically obliged to provide a report on the use of the funds (usually to the state institution that has provided the funding).

### *Reporting on donors, recipients and salaries of personnel*

There is no requirement in any of the researched countries for all organizations to provide detailed information on their donors. The only countries that regulate the provision of information on donors are:

- Estonia – only public benefit organizations have the option to report on their donors for tax purposes (so this report is not compulsory but can be submitted if donors want to use tax benefits).
- Czechia – only foundations are required to report on their donors if they donate above 400 EUR. In addition, donor privacy is guaranteed as the donor has a right to request from the foundation not to disclose his/her name in the report.

---

<sup>8</sup> <https://www.riigikohus.ee/et/lahendid?asjaNr=2-17-10423/25>

<sup>9</sup> There are approximately 50 000 registered CSOs in Bulgaria.

- Bulgaria – only public benefit organizations are obliged to include in their report “*the type, amount, value and purposes of the received and given donations, as well as data about the donors*”. This provision has been applied quite liberally and there have been no known cases when an organization has been required to individualize each donor. Usually, organizations list their major donors. In addition, a special amendment was introduced in 2014 to the Local Taxes and Fees Law to guarantee that public benefit organizations (which are exempt from the local tax on donations) will not be obliged to declare the received donations.

There is no requirement in any of the countries for all organizations to provide detailed information on recipients of donations from CSOs. There are only a few exceptions for specific types of organizations:

- Estonia – only public benefit organizations have to report scholarships to private individuals which have not been taxed.
- Czechia – only foundations are required to report on the donations they make if they are above 400 EUR. In addition, the recipient of the donation has the right to request from the foundation not to disclose his/her name in the report, provided the donation was made for humanitarian, including health purposes.
- Bulgaria – as noted above, only public benefit organizations are obliged to include in their report “*the type, amount, value and purposes of the received and given donations, as well as data about the donors*”. Organizations interpret this provision freely.

With regard to salaries, this is usually part of the financial report and the information is provided typically as an aggregate/total sum. In some countries there may be a requirement to provide information on the amounts paid to “related” persons (e.g. in Estonia) or Board members (e.g. institutes in Czechia). In Bulgaria each legal entity (including CSOs) is obliged to submit information on all consultancy payments made (the purpose being to ensure that taxes and social security is paid on these). Information on salaries is part of the financial report but it is provided in aggregate form.

#### **Reporting based on the size**

Only in three of the countries surveyed smaller organizations need to report less. This is the case in Czechia, Croatia and Bulgaria.

In Estonia, Moldova and Ukraine reporting requirements are the same for all CSOs, regardless of their size. As noted above, in Georgia there is no obligation for reporting unless the organization has charity status (and this is not related to the size of the organization).

#### **State authority responsible for CSO reports**

In most surveyed countries the registration authority is the one that receives some of the CSO reports (and may have the obligation to publish some of them). In addition, tax authorities are also in charge of overseeing CSO reporting as they are the institutions responsible for tax benefits. In some countries, CSOs have to provide reports to the statistics office (e.g. Bulgaria, Moldova and Ukraine).

In addition, every state institution that provides funding to CSOs is responsible for overseeing it.

#### **Requirements for publication of the report**

The fact that CSOs have to report to the state authorities does not necessarily mean that the information that they have provided should be publicly available. The general rule is that in the case when CSOs are obliged to prepare a narrative report, this report is also public – it is either published on the website of the institution that collects it or the CSO has the obligation to make it available on its website (or both).

The general financial report is usually also public. In Moldova, for example, the report is considered public information, but only some of the business entities have the express obligation to make it public. There is no such obligation for NGOs, but some organizations make it public on their web sites with the narrative reports. In Ukraine, there is no obligation to publish the report although organizations are encouraged to do it. In Czechia, if an association is a "small accounting unit" it submits a simpler report and this document does not have to be published on the website of the Register (the other types of CSOs are obliged to make their reports public, though).

However, the requirement for publicity usually does not include detailed financial information – the information on donors, etc. is just reported without the obligation to be published. As can be seen in the case of Czechia, there is also consideration of the right of the donors/recipients to privacy and their data is not reported if they specifically request that.

## 5. Conclusions

Based on the findings from the surveyed countries, we can make several important conclusions:

- Most countries require that CSOs provide some type of report to the authorities. This report is usually financial and its purpose is to ensure that CSOs comply with accounting and tax legislation.
- In most countries CSOs are required to publish their financial reports (either in a centralized database that is usually with the registration authority) or by the CSOs itself (e.g. on its website).
- Depending on the type of special benefits that CSOs receive, authorities may require them to also prepare a narrative report. In case there is a requirement for a narrative report, there may also be a requirement that it is made public.
- The information that is published is generalized and does not identify donors or recipients of donations individually. Even when there is such a requirement, the donor/recipient has the right to request that his/her name is not individually disclosed.
- The authorities which usually receive reports of CSOs are the registration authorities, the tax authorities and the statistics offices.
- While there is no clear trend to show that small-size organizations have less strict reporting requirements, there are a number of good examples for such a practice in the countries studied. Importantly, international standards require that reporting is proportionate and not burdensome. This would mean that both big, professional organizations and small, voluntary associations can prepare and submit a report without much hindrance to their activities.
- CSOs should not be subject to heavier reporting requirements because of the origin of their funding or compared to commercial entities, unless there are objective grounds for that.
- Finally, international standards show there is a clear distinction between “reporting obligations” and “public disclosure obligations” and it is difficult to justify the imposition of public disclosure requirements on the ground of ensuring national security and prevention of disorder and crime.