

**LEGAL AND INSTITUTIONAL FRAMEWORK FOR PUBLIC
GRANTS DISTRIBUTION TO NGOs IN KOSOVO: A PROPOSAL
FOR REFORMS**

February 2016

1. INTRODUCTION: BACKGROUND TO THE PROPOSAL

An enabling legal and institutional environment for non-governmental organizations (NGOs)—including rules governing public funding of NGOs— has gradually become an *integral* part of the *political criteria* (democracy and human rights) set out for a membership in the European Union (EU);¹ it now features regularly in the European Commission’s progress reports on the candidate and potential candidate countries. In order to facilitate the monitoring of progress achieved in developing an enabling environment for NGOs—as well as feeding pertinent information in this area into progress reports—the European Commission (DG Enlargement) developed the *Guidelines for EU support to civil society in enlargement countries, 2014-2020*.² Objective 2 in the Guidelines specifically refers to: ‘an enabling financial environment which supports sustainability of CSOs’, and Result 2.4., under Objective 2, reads as follows: ‘government support to CSOs is available and provided in a transparent, accountable, fair and non-discriminatory manner’.

The 2015 European Commission Progress Report on Kosovo states *inter alia*: ‘an empowered civil society is a crucial component of any democratic system, and should be recognised and treated as such by institutions in Kosovo’. It also notes that: ‘the manner in which public funding is provided to civil society is non-transparent and unregulated. The government should set standards and criteria governing public funding of civil society organisations (i.e. NGOs, our remark) so as to instil transparency, accountability and credibility in the process’.³

The Government Strategy for Cooperation with Civil Society 2013-2017 (Strategy) does take into due consideration the need to improve the legal and institutional framework of public funding for NGOs. In this respect Objective 3 of the Strategy aims at: ‘building a system and defined criteria to support NGOs financially’. In 2015, the Council on implementation of the Strategy and its Action Plan for 2103-2015⁴— and more specifically, *members of the third working group* dealing with public funding for NGOs, took on developing a proposal for a ‘National Grant Scheme’, pursuant to Objective 3 of the Strategy. The third working group is co-chaired by the Director of the Office on the Good Governance/Prime Minister Office

¹ This document is developed by Dr Dragan Golubovic, permanent member of the Expert Council of NGOs of the Conference of International Non-Governmental Organizations, which operates under the auspices of the Council of Europe.

²http://eeas.europa.eu/delegations/kosovo/documents/press_corner/elarg_guidelines_cs_support_after_online_consultation_03072013.pdf

³ European Commission, KOSOVO 2015 REPORT, Brussels, 10.11.2015 SWD(2015) 215 final, p. 9.

⁴ Decision of the Government of the Republic of Kosovo No. 04/181, dated 02/04/2014., item 10.

and the representative of CiviKos. TACSO Kosovo Office provided necessary technical assistance to the working group throughout the process.

The working group's task was specifically concerned with improving a *framework for public grants distribution to NGOs at state level* (also referred to in this document as: *grants*). Grants are generally understood to be a form of direct support to NGOs from the state or local budgets, which are received on competitive bases, in order to carry specific programmes or projects as defined by a grant provider, under the conditions specified in pertinent legislation and a public call.

Therefore, budgetary support to NGOs in the form of *fees for services* (which is otherwise governed by the procurement and public financial management and accountability law), as well as support in the form of *subsidies*, whereas support is provided to designated NGOs without competition, pursuant to their legal rights, fall out of the scope of this proposal.⁵

On May 23-24, 2015, in Dures, Albania, members of the working group convened for a two-day workshop on the enabling environment for public funding of NGOs, which was facilitated by an expert hired by the TACSO Office. The workshop exposed working group members to regional and EU best practices, as well as challenges in designing an appropriate mechanism for public grants distribution to NGOs, against the background of the current regime and practices in Kosovo.

Following the meeting, and based on the feedback received from participants, the expert prepared a draft policy paper: *Institutional Framework for Public Funding of NGOs: An Overview of Viable Options for Kosovo*. This paper was presented and discussed at length at the second meeting of the working group, which was held in Prizren on December 10-11, 2015. Following the discussion, the working group agreed on the model for *public grants distribution* which would suit Kosovo best and the expert subsequently finalized the policy paper (*infra*, 4.)

With this background, this proposal proceeds with presenting an overview of regional and international best practices with respect to public grants distribution to NGOs. Grants are generally understood to be a form of direct support to NGOs from the state or local budgets, which are received on competitive bases, in order to carry specific programmes or projects as defined by a grant provider, under the conditions specified in pertinent legislation and a public call.

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⁸ See B. Sator, *International Practices of Funding Civil Society Organizations*, OSCE, December 2010, Kyiv, pp. 23-24.

necessary in order to create an enabling environment for grants distribution to NGOs in the Republic of Kosovo. Grants are generally understood to be a form of direct support to NGOs from the state or local budgets, which are received on competitive bases, in other to carry specific programmes or projects as defined by a grant provider, under the conditions specified in pertinent legislation and a public call.

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2. REGIONAL AND EU PRACTICES: AN OVERVIEW

There is no single model of public grants distribution to NGOs in Europe.¹⁰ Rather, the practice varies to great extent and depends on a number of factors, including culture, religion, history, tradition, the role, visibility and strength of NGOs, etc. For the purpose of the Dures workshop (*infra*, 1.), various practices of grants distribution are broken down into several major models. This approach allowed the

⁹ See B. Sator, *International Practices of Funding Civil Society Organizations*, OSCE, December 2010, Kyiv, pp. 23-24.

¹⁰ See K. Hadzi-Miceva Evans, D. Golubovic, *Public Funding for Civil Society Organizations: Good Practices in the European Union and Western Balkans*, TACSO Montenegro, Podgorica, 2011.

working group to focus on policy considerations featuring each and every model, rather than being distracted with unnecessary technical details featuring various national models. The pros and cons of those models are presented below:

1) Centralized model. In the centralized model there is one government body designated for grants distribution to NGOs, or at least majority of grants available are channelled through the central government institution. This model is not very common and is usually embraced in the early stage of civil society development and program budget planning (e.g. Agency for Support to Civil Society in Albania, Commission for Distribution of Lottery Proceeds to NGOs in Montenegro, before 2011).

Prons: Uniform application of procedures – greater predictability. In addition, the necessary expertise is concentrated in one body. There is lesser job for the line ministries and a clearer line of responsibility in grants distribution. Furthermore, it is easier to ensure transparency of the process. Finally, centralized model is better suited for donor coordination.

Cons: It is not necessarily consistent with the programming budget cycle ('bottom to up' approach in identifying priorities) – there is the perceived risk of discontent between budget programming priority and priorities set out for NGO funding by a centralized body, with the end result of distributed grants being pure expenditure, rather than social investment. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board

(government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo? There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed

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2) Decentralized model. The main feature of the decentralized model is that grants to NGOs are primarily distributed by the line ministries (e.g. Hungary, Bulgaria).

Prons: Grants are distributed by a body (line ministry) which is responsible for the overall design and implementation of the budgetary priorities within its ambit of responsibility. This is consistent with 'bottom to up' budgetary planning and fiscal decentralization. It also provides a secured link between approved budgetary priorities and grants available to NGOs. It is also conducive to building capacity for providing grants to NGOs where they are needed most (at the line ministry level). This model allows the line ministries to develop a working relationship with NGOs operating within their ambit of responsibility with all the ensuing benefits (building trust, NGOs serving the role of 'information feeder', and providing quality input in terms of articulation and implementation of the current and future policies, etc.). There is no transactional and operating costs associated with setting up a new budgetary institution. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board

(government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. And there is less risk of being overburden with applications and their review, due to smaller number of potential applicants than in the case of the central model.

Cons: The perceived uneven capacity of the line ministries to provide grants to NGOs could make it more difficult to ensure fair, consistent and transparent application of the model in all its phases (from priority programming to evaluation of the implemented NGO projects). There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. Providing grants to NGOs by the line ministries in the environment of a coalition government could give junior partner(s) disproportionate political leverage which might be conducive to the ‘client practices’ and corruption in grants distribution to NGOs.

3) Mixed model I: While the ultimate responsibility for setting out and execution of funding priorities lies with the line ministries, pursuant to relevant strategic documents, other bodies play an important contributing role in setting out funding priorities, too (e.g. government’s advisory body for civil society development). Such model is in operation in Croatia.

Prons: Additional channel of consultations – better quality of the funding priorities.

Cons: There is the perceived risk that the contributing body might take over from the line ministries the ultimate responsibility for setting out funding priorities (*de facto* ‘centralized planning and decentralized execution’). There is also the risks that that staff of line ministries do not feel the ownership over the process (disfranchised, less committed staff), which may adversely impact on the realization of goals set out by the funding scheme. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. This model is also not necessarily conducive to encouraging a dialogue within the line ministries on the funding priorities.

Mixed model II: In addition to grants provided by the line ministries, there is a distinct public body (e.g. public foundation/funds) which receives part of lottery proceeds to support programs and projects in specific and narrowly defined public interest areas (e.g. NGOs capacity building, such as the case in Croatia, or humanitarian and sport activities, such as the case in Slovenia). This model is also being implemented in some form and fashion in Montenegro, Slovakia, Romania, and the United Kingdom, among others.

Prons: This model fills in the perceived gap in the decentralized model, as it provides an opportunity to invest in general capacity building of NGOs, if that is indeed the purpose and mandate of the designated public body.

Cons: Experience suggests that development of such a mechanism can be politicized and can create frictions in civil society, given the financial interest at stake. In particular, NGOs representing interests of disabled and other disadvantaged groups (which are the most common beneficiaries of such a scheme) may be fearful and reluctant that this form of support extends to other NGOs at their expense. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for these specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model

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3. THE CURRENT REGIME FOR PUBLIC GRANTS DISTRIBUTION TO NGOS IN THE REPUBLIC OF KOSOVO

TACSO 2014 needs assessment report notes that public funding for NGOs is one of the least regulated areas impacting on NGOs. According to the report, public funds distribution to NGOs increased from 8 % in 2011 to 20.50 % in 2013. However, funds were distributed without any defined criteria in place and without transparency – the two conditions that are required by the Law on Freedom of Association. There is no central data system of the grants distributed. Office on Good Governance has distributed grants to CSOs and so have the line ministries and municipalities. There were no predefined and specific criteria. Rather, the funds were distributed based on a general evaluation as to whether the projects were in line with the policies of the Office and the Government.¹¹ Out of 20.50% of public funds, 9.10% are provided by central institutions and 11.40% by local institutions.

Kosovo has largely embraced a decentralized model of grants distribution, and as a result there are several regulations governing grants distribution by the line ministries. This include: *Regulation No. 01/2014 on Distribution of Subsidies for Non-Governmental Organizations* of the Ministry of Public Administration; *Regulation No. 03/2013 on the Allocation of Financial Means from the Category of Subsidies and Transfers* of the Ministry of Local Government; *Regulation No. 01/2015 for*

¹¹ TACSO Needs Assessment Report: Kosovo, 2014, p. 21.

Subsidizing NGOs' Projects that Promote European Integration Process in Kosovo of the Ministry of European Integration; *Regulation No. 02/12 for NGO Project Financing for Community Development and Stabilization* of the Ministry for Community and Return; *Regulation No. 09/2015 on Subsidies in the Field of Culture, Cultural Heritage, Youth and Sport* of the Ministry of Culture, Youth and Sport; and *Administrative Instruction No. 02/2012 for the Financial Support to Domestic NGOs in 2012* of the Ministry of Labour and Social Affairs, as amended.

The analyses of the foregoing regulations reveals several critical issues:

1) QUESTION ON TERMINOLOGY. Most of the pertinent legislation analysed refers to public grants to NGOs as 'subsidies', or 'project financing'. As already noted, the term 'subsidies' is commonly used as synonym for a *state aid*, which is delivered without public calls (*supra*, 1.). Thus it is not reflective of the major goal underpinning public funding for NGOs: *investment in social capital on competitive basis, to help Government in realization of its policy priorities*. As a result, the use of term 'subsidy' instead of 'grant' may contribute to a wider misperception of public funding for NGOs being an *expense*, rather than *investment*.

2) POSSIBILITY OF CO-FUNDING. Most of the regulations concerned do not provide a clear-cut answer as to whether an NGO may apply for co-funding of a project already approved by another donor. One notable exception in this regard is the Ministry of Local Government Administration (Article 13, Regulation No. 03/2013). The possibility of co-funding allows better allocation of resources available to support NGOs programmes and projects.

3) LACK OF DEFINITION OF PROGRAMMES versus PROJECTS. There is a lack of definition as to what is deemed an NGO programme (which requires multi-year funding) and what is deemed an NGO project eligible for funding. The regulation concerned mostly refers to NGOs projects,¹² which seems to indicate, absent definition of programmes, that there is no possibility for a multi-year funding of NGOs activities. Given that a one year cycle (which is typical for a project funding) is often times not sufficient to realize a more ambitious and complex goals, this also gives rise to the issue of optimal allocation of the resources available, and the

¹² See e.g. Article 3. Par.3., Regulation No. 01/2014 of the Ministry of Public Administration, Article 1., Regulation No. 03/2013 of the Ministry of Local Government Administration, Article 16., Regulation No. 09/2015 of the Ministry of Culture, Youth and Sport.

needs for the funding scheme to be better streamlined in mid-term public policies priority goals.

4) LACK OF HARMONIZED CRITERIA FOR FUNDS DISTRIBUTION. While some of the regulations concerned do provide general criteria for application, they fall short of providing specific criteria as to how the application is being evaluated (i.e. what are specific criteria and how they are being scored).¹³ Rather, that criteria is either set out in individual calls for application,¹⁴ or the law is not clear on that point. This may give rise to unwarranted discretionary power of the line ministries, whereas similar calls may entail different specific criteria and scoring system, and overall is not conducive to the transparency and predictability of the funding regime.

In addition, the general criteria prescribed also vary to some extent. For example, the Regulation No. 01/2015 for Subsidizing NGOs' Projects that Promote European Integration Process in Kosovo requires among others that the applicant submit a prove by the Court that it is not under investigation or engaged in any legal dispute (Art. 7, par. 1, point 1.4.). Such a condition is not envisaged by other regulations concerned.

5) IN-PERSON DELIVERY OF THE APPLICATION. In some instances the law requires that the application be delivered in person (Article 3. Par. 3-5., Regulation No. 01/2014 of the Ministry of Public Administration, Article 6 Regulation No. 01/2015 for Subsidizing NGOs' Projects that Promote European Integration Process in Kosovo of the Ministry of European Integration.). This does not bode well with the e-government concept and incurs unnecessary costs for NGOs, in particular those not having a place of business in Prishtina.

6) MANDATORY CONTENT OF THE AGREEMENT. Some of the regulations do not provide the mandatory content of the agreement on 'subsidies'(e.g. Regulation No. 03/2013 of the Ministry of Local Government Administration).This may give rise to the issue of legal certainty: similar projects, but different content of the agreement, including different safeguards for its implementation.

¹³ See e.g. Article 11 of the Regulation No. 02/12 for NGO Project Financing for Community Development and Stabilization which makes reference to the scoring list, however, it remains unclear how the scoring list is being made.

¹⁴ See e.g. Article 3, Par. 2. Regulation No. 01/2014 of the Ministry of Public Administration.

7) LACK OF PUBLIC CALLS. The language of the Regulation No. 01/2015 of the Ministry for European Integration suggests that subsidies are not distributed based on public calls, but rather based on NGOs individual request for funding. If this reading is correct, it indicates a lack of systematic approach as to how to best utilize NGOs assistance in the European Integration, and underscores the need for terminology clarification. Similarly, the Regulation No. 02/12 for NGO Project Financing for Community Development and Stabilization permits direct funding of NGOs project not exceeding 10,000 Euro (Article 3). While there might be very rare instances to justify such a practice, it does not bode well with the notion of transparency and accountability, nonetheless.

8) MEMORANDUM OF UNDERSTANDING. While most of the regulation concerned envisage an agreement as a controlling instrument to regulate relationship between the ministry and an NGO-recipient of ‘subsidies’, some envisage signing a ‘memorandum of understanding’ instead.¹⁵ This approach may weaken the position of both parties in case of any legal dispute, as it runs the risks of a memorandum not being recognized by the court as legally binding.

9) EVALUATION OF THE FUNDED PROJECTS. While most regulations set out rules governing monitoring of the project, the rules governing evaluation are scarce and very to certain extent. At least, there is a need to ensure mandatory evaluation of projects whose value exceeds certain threshold, pursuant to the principle of proportionality.

10) LACK OF HOLISTIC APPROACH. None of the regulation concerned provides a comprehensive framework to govern the whole cycle of public funding (planning, distribution, monitoring, reporting and evaluation). As a result, the same issues are addressed in different fashion and in various levels of detail, depending on the regulation in question. This practice does not ensure the optimal utilization of public funds available to NGOs. In order to ensure the necessary harmonization, some countries (e.g. Bosnia) have developed a uniformed methodology in this respect. The methodology envisages that planning of public funds distribution to NGOs is governed by the general methodology of the state budget planning. However, it also sets out detailed rules and procedures to be applied to each phase of the public funding management cycle (projections, budgeting, execution, controlling) as it impact on NGOs.

¹⁵ Article 9. Par. 6, Regulation No. 01/2015. Article 7. Administrative Instruction No. 02/2012 for the Financial Support to Domestic NGOs in 2012.

4. PROPOSAL OF A MODEL FOR KOSOVO

In analysing the suitable model of grants distribution for Kosovo, the working group took into consideration the following principles:

CLEAR GOALS – Grants distribution to NGOs must be perceived as one of the tools available to the Government in realizing its policy priorities, rather than NGOs ‘right’ (which, save for specific circumstances envisaged by law, it is not). Otherwise, it will ultimately end up being a budgetary *expense*, rather than *investment* in social capital.

HOLISTIC APPROACH –Regardless of model of grants distribution, horizontal and vertical *policy coordination* in setting out funding priorities needs to be ensured. Without this all-inclusive and participatory approach no model can be fully utilized. The methodology of planning of programme budgeting facilitates that coordination.

PROPORTIONALITY –A model of grants distribution needs to be proportional to the costs and benefits it is projected to incur/deliver. With that, the available data suggests that there is approximately 8,000 NGOs registered in Kosovo out of which approximately 10% are active NGOs (and hence potential beneficiaries of public grants).

COST-EFFECTIVENESS – Given the overall budgetary constraints and the government’s competing priorities, as well as the current stage of the overall development of civil society in Kosovo, it is feasible that the model of grants distribution will have to be fine-tuned in mid-term, to adjust to ever-evolving circumstances.

With background of the foregoing principles, and based on the presentation of the various models (*supra*, 2.) and the issuing discussion at the second meeting, the working group agreed on the **Mixed Model I**, in which the ultimate responsibility for setting out and execution of funding priorities will continue to rest with the *line ministries*. However, the central body otherwise responsible for issues pertinent to civil society development, the **Office on Good Governance** (OGG) will play an important *advisory strategic role* in setting out funding priorities - and more broadly in defining public funding policy for NGOs. The proposed model features a number of strengths. First, it recognizes the already established framework and practices for

public grants/subsidies distribution to NGOs in which the *line ministries* play key role. Second, broadly defined responsibilities of OGG towards civil society (Article 40, Regulation No.16/2013) permits OGG to play this advisory strategic role: indeed, this role of OGG is reflective of its overall legal responsibilities in the area of civil society development. In addition, position of OGG in the Government structure ensures effective execution of its ‘information feeder’ and ‘policy instigator’ role on issues pertinent to public funding for NGOs (*OGG being anexecutive, rather than advisory body*).

The proposed model is also complementary to the programming budget cycle (‘bottom to up’ approach in identifying priorities). Furthermore, the EU project (EuropeAid /136757/DH/SER/XK), which is soon to be up and running, envisages as one of its results (LOT 2, result 2.) setting up a data base of public funds provided to NGOs. This would facilitate OGG role in monitoring the implementation of policies in this area – and proposing recommendations for their improvement. Equally important, the proposed model *does not* envisage any additional *transactional costs* other than those associated with revisions in the job description of the OGG staff (so as to specifically include providing strategic advice on NGO public funding issues) and developing its own web site. Finally, the proposed model builds capacity of OGG to take on a role of providing institutional grants to NGOs, should a need for such funding emerge in the mid or long term. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purpose. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburdened with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In

case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo.

The swot analyses presented below also details weakness and risks associated with this model. However, a careful execution of this model can mitigate those risks. The swot analyses of the other models discussed by the working group is presented in the annexes of the proposal.

MIXED MODEL I

SWOT ANALYSES¹⁶

STRENGTH:	WEAKNESS:
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¹⁶ Developed by Dragan Golubović.

<ul style="list-style-type: none"> ➤ Recognizes already established framework for public grants/subsidies distribution to NGOs (<i>by line ministries.</i>). ➤ Broadly defined responsibilities of OGG towards civil society (Article 40, Regulation No.16/2013) permits OGG to play the advisory and strategic role. ➤ Position of OGG in the Government structure ensures effective execution of its ‘information feeder’ and ‘policy instigator’ role on issues pertinent to public funding to NGOs (<i>executive, rather than advisory body</i>). ➤ This role of OGG reflective of its overall legal responsibilities in the area of civil society development. ➤ Complementary to the programming budget cycle (‘bottom to up’ approach in identifying priorities). ➤ The EU project (EuropeAid /136757/DH/SER/XK) envisages as one of its results (LOT 2, result 2.) setting up a data base of public funds provided to NGOs, which would facilitate OGG role in monitoring the implementation of policies in this area – and proposing recommendations for their improvement. ➤ No additional transactional costs involved, other than changing the job description with OGG staff and developing its own web site. ➤ Builds capacity of OGG to take on a role of providing institutional grants to NGOs, should such a decision is made in medium or long term. 	<ul style="list-style-type: none"> ➤ OGG currently does not necessarily have capacity to take on this specific responsibility: <ul style="list-style-type: none"> ▪ Otherwise strained human resources (limited staff); ▪ Regulation No. 16/2013 does not envisage a civil society specialist in OGG job description; ▪ Low visibility of OGG (does not have its own web site). ➤ Not necessarily a clear-cut line of responsibility between OGG and other offices within the Office of PM with respect to this role of OGG (noting that there is currently not a legal basis for the PM offices to designate funds to NGOs).¹⁷ ➤ This role of OGG not recognized among the line ministries. ➤ Might incur additional costs, nevertheless (associated with the <i>ex post</i> need for new employment).
POSSIBILITIES:	RISKS:

¹⁷ See Article 38 of the Regulation No. 16/2013 which among others envisages the key role of the Legal Office in ensuring horizontal coordination in the drafting of laws as well as secondary regulations.

<ul style="list-style-type: none"> ➤ Provides additional channel of public consultations as well as horizontal coordination on NGOs public funding issues – including drafting the minimum standards and procedures for public funds distribution to NGOs by the Ministry of Finance. ➤ Incorporation of issues pertinent to civil society (including those on NGOs public funding) into the training curricula of the Institute for Public Administration would strengthen capacities of the current staff of the Office to perform this task.¹⁸ 	<ul style="list-style-type: none"> ➤ Changes ill-conceived. ➤ OGG effectively takes over from the line ministries responsibility for setting out funding priorities (<i>de facto</i> ‘centralized planning and ‘decentralized execution’ of NGOs funds). ➤ Training curricula on civil society issues purely designed and implemented.
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5. NEXT STEPS: RECOMMENDATIONS

- There needs to be **public discussion** of the model proposed, to allow civil society and other stakeholders to provide the necessary inputs on the models discussed, before final deliberation is being made.
- Regardless of the model eventually chosen, or in the case of *status quo*, there is a case for drafting a **regulation** setting out **minimum standards** and procedures for public grants distribution to NGOs by the line ministries. Such a regulation is necessarily in order to address the perceived shortcomings in the current framework of public funding (*supra*, 3.), provide uniformed rules on public funding and thus ensure that the transparency of public grants distribution does not necessarily depend on good will of a particular line ministry. The Ministry of Finance is best suited for this undertaking. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not

¹⁸ TACSO, *Assistance to implementing Kosovo Civil Society Strategy for Cooperation with Civil Society*, pp. 8-9.

facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo.

- Given that significant amount of public grants is distributed by **local municipalities**, effort needs to be made to ensure that they also **embrace** the minimum standards and procedures for public grants distribution. Otherwise, efforts for greater transparency and forward-looking framework of public funding for NGOs are bound to have limited impact.
- In mid term, there may be the need for a **more comprehensive** framework to govern the **whole cycle** of public funding (planning, distribution, monitoring, reporting and evaluation), given that line ministries' practice in this respect vary a great deal. **A uniformed methodology** would ensure the necessary harmonization of public funding cycle. Such a methodology would envisage that planning of public funds distribution to NGOs is governed by the general methodology of the state budget planning. However, it would also set out detailed rules and procedures to be applied to each phase of the public funding management cycle (projections, budgeting, execution, controlling) as it impact on NGOs. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There

is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body: NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo. This would further ensure the link between public funds allocated and government priority policy areas.

- Last, but not least, there needs to be investment in ongoing **capacity building** of government officials on issues pertinent to public funding for NGOs. In this respect incorporation of civil society issues (including those related to public funding for NGOs) into the training curricula of the **Institute for Public Administration** would strengthen capacities of the government officials. There is also the perceived risk of additional transactional and operating costs associated with setting up a new budgetary institution for this specific purposes. This model does not necessarily contribute to building capacity of the line ministries to articulate and implement public policies within their ambit as they impact on NGOs. In addition, it does not facilitate the line ministry developing a working relationship with NGOs operating within their ambit of responsibility. There is also the risk of the central body being overburden with applications and their review, as well as monitoring and evaluation of NGOs programmes and projects, which could render the model ineffective. There is a number of questions that need to be resolved in this respect. First, who will provide additional staff for the central institution if need be and from what resources? Second, who will sit on the governing board of the central body – what line ministries will be included: all line ministries or only those which in practice will provide most grants to NGOs, how will that be determined? Furthermore, who else should be sitting on the board of the central body:

NGO representatives, independent experts, somebody else? In case of mixed composition of the board (government officials and NGOs) how to resolve the perceived conflict of interest? How would centralized grants distribution be budgeted in the context of program budgetary regime (which is now the norm) in Kosovo.

Annex I CENTRALIZED MODEL OF PUBLIC FUNDING

The funding system is centralized and the Office for Good Governance (OGG) is the body solely responsible for public funds distribution to NGOs.

SWOT ANALYSES¹⁹

STRENGTH:	WEAKNESS:
<ul style="list-style-type: none"> ➤ Less costly to build expertise for the entire funding cycle (<i>programming, execution, monitoring, evaluation, lessons learnt</i>) in one body. ➤ Greater transparency and predictability: <i>clear line of responsibility in funds distribution; uniform rules and procedures.</i> ➤ Easier to ensure institutional memory. ➤ Better suited for donor coordination. ➤ Lesser job for the line ministries. 	<ul style="list-style-type: none"> ➤ Does not recognize the current framework of public funds distribution to NGOs by the line ministries. ➤ The current regulation (Regulation No.16/2013) does not specifically envisage this role for OGG.²⁰ ➤ The OGG lacks capacity to take on additional responsibilities: <ul style="list-style-type: none"> ▪ Strained human resources (limited staff); ▪ The Regulation No.16/2013 does not envisage civil society specialists in the job descriptions of the OGG staff.²¹ ▪ The OGG responsibilities re. the Council for Implementation of Government Strategy for cooperation with Civil Society 2013 2017 – as well as for the implementation of the Strategy – puts additional pressure on its capacity.²² ➤ Not necessarily consistent with the programming budget cycle ('bottom to up' approach in identifying priorities) – <i>the perceived risk of discontent between budget programming priority of the line ministries and priorities set out for NGOs funding by a centralized body;</i> ➤ A number of ministers already have their own regulations on public funds (subsidies) distribution to NGOs (<i>infra</i>, 9) ➤ Not necessarily contributing to building capacity of the line

¹⁹ Developed by Dragan Golubović.

²⁰ The Needs Assessment Report refers to the OGG experience in providing public grants to NGOs. However, we could not identify the legal basis for such a practice. See *TACSO Needs Assessment Report: Kosovo, 2014*, p. 21.

²¹ Regulation No.16/2013, Article 40; TACSO, *Assistance to implementing Kosovo Civil Society Strategy for Cooperation with Civil Society*, mission report prepared by Igor Vidačak, p. 7.

²² The OGG carries the main responsibility for the implementation of 17 activities in the Action Plan for the Implementation of the Strategy and is also envisaged to play a role of supporting institution with respect to a number of other activities.

	<p>ministries to articulate and implement public policies within their preview as they impact on and involve NGOs.</p> <ul style="list-style-type: none"> ➤ Does not necessarily facilitate the line ministry developing a working relationship with NGOs operating within their preview of responsibility.
POSSIBILITIES:	RISKS:
<ul style="list-style-type: none"> ➤ Better suited for the EU IPA II CSF decentralization – the same body responsible for both EU and domestic funds for NGOs. ➤ Horizontal policy coordination institutionally ensured through the responsibility of the OPM General Secretary (coordinates with general secretaries of the respective line ministries the implementation of legislation and policies approved by the Government). ➤ Horizontal policy coordination also ensured through the Strategic Planning Office of OPM. ➤ Relatively modest legislative changes required for the Office OGG (which pursuant to the pertinent legislation is the focal body on civil society issues) to take on this additional responsibility. 	<ul style="list-style-type: none"> ➤ Additional budgetary resources needed: experience from other countries (e.g. Croatia) suggest significant increase in the staff, in order to meet stringent EU financial aid rules and requirements. ➤ Line ministries opposing centralization of public funding regime for NGOs ➤ The risk of legislative changes not being as clear as needed in defining the mandate of the OGG in this area.

Annex II DECENTRALIZED MODEL OF PUBLIC FUNDING

Public funds for NGOs are only distributed by the respective line ministries.

SWOT ANALYSES²³

STRENGTH:	WEAKNESS:
<ul style="list-style-type: none"> ➤ Consistent with the current framework for public funds distribution. ➤ Consistent with the programming budget cycle ('bottom to up' approach in identifying priorities): <i>secured link between approved budgetary priorities and grants available for NGOs.</i> ➤ Recognizes already established framework for public grants/subsidies distribution to NGOs (<i>infra, 9.</i>). ➤ Conducive to building capacity of the line ministries to articulate and implement public policies within their preview as they impact on and involve NGOs. ➤ Facilitate the line ministry developing a working relationship with NGOs operating within their preview of responsibility: critical for articulation, implementation and evaluation of funded priorities. ➤ No additional transactional costs involved (versus centralized system). 	<ul style="list-style-type: none"> ➤ Lack of common approach in regulating public funds for NGOs: disparate regulation and practices (<i>infra, 9.</i>). ➤ More difficult to ensure institutional memory in case of the staff frequent turnarond. ➤ Does not resolve the issue of supporting NGOs active in the fields/issues wich are not specifically covered by the line ministries – or are engaged in civil society support and development. ➤ Does not resolve the issue of IPA II CSF decentralization.
POSSIBILITIES:	RISKS:

²³ Developed by Dragan Golubović.

<ul style="list-style-type: none"> ➤ A uniform regulation on public funds distribution would facilitate harmonization of rules and practices in public funds for NGOs among the line ministries (<i>infra</i>, 9.). ➤ Incorporation of issues pertinent to civil society (including those on NGO public funding) into the training curricula of the Institute for Public Administration would strengthen capacities of the line ministries on those issues.²⁴ 	<ul style="list-style-type: none"> ➤ A new regulation ill-conceived: lacks clear objective and proportional procedures, eventually produces more harms than benefits. ➤ Line ministries oppose to a new regulation for opportunistic reasons. ➤ Training curricula on civil society issues purely designed and implemented.
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Annex III MIXED MODEL OF PUBLIC FUNDING II – OPTION 1

In addition to funds provided to NGOs by the line ministries, there is an *already operational* body – the OGG, which receives part of lottery proceeds to fund specific and narrowly defined public interest area - *civil society development*.

SWOT ANALYSES²⁵

STRENGTH:	WEAKNESS:
<ul style="list-style-type: none"> ➤ Additional opportunity of funding for NGOs through the government body (OGG) which is otherwise responsible for civil society issues. ➤ Complementary with the programming budget cycle ('bottom to up' approach in identifying priorities). ➤ Complementary to the already established framework for public grants/subsidies distribution to NGOs (<i>infra</i>, 9.). ➤ Does not require new budgetary 	<ul style="list-style-type: none"> ➤ The current regulation (Regulation No.16/2013) does not specifically envisage this role for OGG.²⁶ ➤ OGG does not have capacity to take on additional responsibility: <ul style="list-style-type: none"> ▪ Otherwise strained human resources (limited staff); ▪ Regulation No. 16/2013 does not envisage civil society specialists in OGG job description. ➤ New staff likely required.

²⁴ TACSO, *Assistance to implementing Kosovo Civil Society Strategy for Cooperation with Civil Society*, pp. 8-9.

²⁵ Developed by Dragan Golubović.

²⁶ The Needs Assessment Report refers to the OGG experience in providing public grants to NGOs. However, we could not identify the legal basis for such a practice. See *TACSO Needs Assessment Report: Kosovo, 2014*, p. 21.

<p>resources, but rather redistribution of designated lottery proceeds as set out in Article 57 of the Law on Games of Chance.</p>	<ul style="list-style-type: none"> ➤ This model does not resolve the issue of IPA II CSF. decentralization.
<p>POSSIBILITIES:</p>	<p>RISKS:</p>
<ul style="list-style-type: none"> ➤ Modest legislative changes required to ensure this role for OGG. ➤ Consistent with the concept of public benefit in the Law on Freedom of Association.²⁷ ➤ Could be an important mechanism for co-funding of NGOs projects funded by EU CSF – as well as other donors and line ministries. ➤ Incorporation of issues pertinent to civil society (including those on NGO public funding) into the training curricula of the Institute for Public Administration would strengthen capacities of the Office to perform this task. 	<ul style="list-style-type: none"> ➤ Changes in the Regulation No. 16/20 do not define clearly OGG mandate in this respect; ➤ Changes in Article 57 of the Law on Games of Chance (Law No.2004/35) ill-conceived and do not clearly defined the distribution of proceeds for civil society development. ➤ The current end-beneficiaries (organizations/individuals) of Article 57 of the Law No. 2004/35 may oppose any changes in the lottery proceeds distribution. ➤ Line ministries benefiting from the current lottery proceeds distribution may also oppose any changes in this respect. ➤ The curricula on civil society issues solely designed and implemented.

²⁷ Article 17(1) of the Law envisage the promotion of democratic practices and civil society as one of activities deemed for public benefit.

Annex IV MIXED MODEL OF PUBLIC FUNDING II – OPTION 2

In addition to funds provided to NGOs by the line ministries, there is a new body – a public foundation, which receives part of lottery proceeds to fund specific and narrowly defined public interest area - *civil society development*.

SWOT ANALYSES²⁸

STRENGTH:	WEAKNESS:
<ul style="list-style-type: none"> ➤ Consistent with the concept of public benefit in the Law on Freedom of Association.²⁹ ➤ Expertise for distribution of public funds for civil society easier to build in a new institution with specific mandate. ➤ Complementary to the programming budget cycle ('bottom to up' approach in identifying priorities). ➤ Complementary to the already established framework for public grants/subsidies distribution to NGOs (<i>infra</i>, 9.). ➤ Does not require new budgetary resources, but rather redistribution of designated lottery proceeds as set out in Article 57 of the Law on Games of Chance. 	<ul style="list-style-type: none"> ➤ High transactional costs associated with setting up a new institution and new hiring. ➤ The current state of development of civil society in Kosovo makes it difficult to justify setting up a new institution for this purpose. ➤ More challenging to ensure horizontal coordination in setting out policy priorities, than in the case of executive body distributing those funds.
POSSIBILITIES:	RISKS:

²⁸ Developed by Dragan Golubović.

²⁹ Article 17(1) of the Law envisage the *promotion* of democratic practices and *civil society* as one of activities deemed for public benefit.

<ul style="list-style-type: none"> ➤ Relatively modest legislative changes required. ➤ Could also be an important mechanism for co-funding of NGOs projects approved by the EU CSF – as well as other donors and line ministries. ➤ Incorporation of issues pertinent to civil society (including those on NGO public funding) into the training curricula of the Institute for Public Administration would strengthen capacities of the foundation to perform its mandate. ➤ The EU and other donors might be interested in providing 'seed funds' for such an institution. 	<ul style="list-style-type: none"> ➤ A new regulation on the establishment of a foundation ill-conceived: does not clearly define its mandate, governing structure or any other issue necessary to get it up and running – and does not provide a clear-cut line of responsibilities between the foundation and OGG in civil society development. ➤ Changes in Article 57 of the Law on Games of Chance (Law No.2004/35) ill-conceived and do not clearly defined the distribution of proceeds for civil society development. ➤ The current end-beneficiaries of Article 57 of the Law No. 2004/35 (organizations and individuals) may oppose any changes in the lottery proceeds distribution. ➤ Line ministries benefiting from the current lottery proceeds distribution may also oppose any changes in this respect. ➤ Responsibility for EU CSF decentralization will require additional staffing and hence additional costs. ➤ Training curricula on civil society issues poorly designed and implemented. ➤ Donors not interested in supporting the establishment and operations of the foundation.
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