

INCLUSION OF CIVIL SOCIETY ORGANIZATIONS IN CONTRACTING OF GOVERNMENT TASKS

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I. Introduction

The following paper has been prepared in response to Government of Mongolia intentions to reform the system of contracting government tasks and include civil society organization (CSOs), in the delivery of such tasks. The objective of the paper, as specified in the terms of reference, is to consult the government on the law on contracting out government services to CSOs bringing the existing international and foreign good practices and assisting in the development of government concept and the provisions of the new legislation. Prior delivering the paper, experts of the European Center for Not-for-Profit Law (ECNL) met with government and CSO representatives in Mongolia. The discussions helped further specify the needs and issues that required consideration from comparative perspective, and are discussed in this paper.

This paper will review the various types of partnership between the state and private providers and the possibility for the state to involve CSOs in delivery of government tasks. It starts with a (1) theoretical discussion of what constitutes a government tasks in order to set the framework of areas and issue where CSOs can be contracted. Further, the paper outlines the funding issues and mechanisms through which CSOs are involved. (3) A stand-alone section of this paper is devoted to the topic of contracting government tasks to CSOs, issues and mechanisms that could or need to be considered. (4) Next the paper provides an overview of monitoring and evaluation methods and practices. Finally the paper describes the factors to be consider in contracting and how to ensuring harmonized approach in implementation of various financial mechanisms. Finally the paper recommends steps that the Mongolian stakeholders can undertake in developing the concept and possible legislation on this issue.

For the purposes of the paper, the authors have adopted a definition of civil society organization to include all types of nongovernmental organizations and organizations established for non-profit purposes which in different countries may take the legal form of membership organizations (associations) and non-membership organizations (foundations), and not-for-profit companies. The authors recognize that the definition of civil society organization is wider than this and includes wide range of non-state, non-profit actors (political parties, trade unions, religious organizations).

II. Government tasks that may be delivered by non-state actors

The discussion on which government tasks should or could be delegated to non-state actors (e.g., CSOs, for-profit companies, professional organizations, religious organizations) is defined by several components that should be examined when developing the policy framework for contracting. This section focuses on the following components and issues:

- (1) Who is responsible for the task (government or not, and if yes, at which level)?
- (2) Who executes the tasks (government, its institutions/agencies, a semi-independent actor such as, a professional organization established by law, or a private entity whether for profit or non profit)?
- (3) Who finances the tasks (central budget, local budget, private sources or a combination)?
- (4) What funding modalities are appropriate for the financing the task?

However, it is important to emphasize here that how the state will view the tasks and how they are legislated may be different from one country to another. The approach is often influenced by the local circumstances, traditions, and overall principles on which the state and its interactions with private parties is built. Furthermore, as it will be discussed below, it is important to recognize that the government tasks may change over time because they are influenced by the social and economic developments. Therefore this section will provide a general overview of these issues, from comparative perspective, with the aim to guide local partners in their discussions and to highlight areas which may need to be further explored from domestic perspective.

What constitutes a government task?

Governments are usually confronted with a wide range of issues that need to be addressed and an ongoing list of needs that may be required from the state to cater for. The discussion on what constitutes a government task is important because it will determine whether the state should have ultimate responsibility to provide for it, find resources to support it, and which funding mechanism to use in case it delegates it to private parties. Hence, the first step is to determine the tasks which the government must undertake and provide for.

A most common approach in defining which tasks are mandatory is to look at the current needs which the state should cater for. In determining which tasks are mandatory – one should look at the tasks that are prescribed in the government policies or laws.

From those that will be defined in the legal system the state will have a **legal obligation to provide for**. The mandatory government tasks at the different levels may be regulated in the constitution, or the laws. In addition, ministries and local governments can create mandatory tasks in areas of their competences. For example, in almost every European country the state has the primary international and legal obligation to guarantee the right to education, and hence has to provide for free schooling up to a certain age, e.g., elementary education. The international treaties may also determine government tasks which become part of the national regulation either directly or through the adoption of a relative law/government decree. For example, the General Comment to Article 12 of the International Covenant on Economic, Social and Cultural Rights further details the legal obligations of states to ensure the right to the highest attainable standard of health. As part of it, for example, the General Comment highlights the state duty to ensure the provision of a sufficient number of hospitals, clinics and other health-related facilities, and the promotion and support of the establishment of institutions providing counseling and mental health services.¹

According to the Bulgarian Constitution the state has certain obligations for ensuring environment for its citizens in which they can exercise and enjoy their rights. In compliance with that, the state has obligations/tasks (defined in the Bulgarian context more as powers i.e. right

¹ *The right to the highest attainable standard of health: 08/11/2000. E/C.12/2000/4.*: General Comment No.14 (2000) of the Committee on Economic, Social and Cultural Rights of the Economic and Social Council to article 12 of the International Covenant on Economic, Social and Cultural Rights at: <http://www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En>

to but also obligation to do) to ensure the conditions for establishing this environment. The tasks which are responding to these powers/obligations are in the category “essential” and may include: basic education, residential care for abandoned children, social payments for vulnerable groups, access to basic healthcare. In Bulgaria, these tasks are also called “universal” tasks – as everyone should be entitled to enjoy them. Further, these tasks are clearly prescribed in secondary legislation, with clear scope of the state obligations and the access to it (Education Law, Child Protection Act, Healthcare Act, etc.).

Important example, here, is the case of Mental Disability Advocacy Center (MDAC) v. Bulgaria, in which the European Committee of Social Rights finds violations of the right to education (Article 17(2)) and the right to non discrimination (Article E) of the Revised European Social Charter. The decision in the case of Mental Disability Advocacy Center v. Bulgaria criticizes the Bulgarian government for actively depriving children with intellectual disabilities of education. The decision highlights the inadequacy of Bulgarian standards for inclusive education and failure to implement the law which provides that children in ‘homes for mentally disabled children’ could be integrated into schools. As a result of the failure to implement the law, only 6.2% of children in ‘homes for mentally disabled children’ receive an education. The Committee stated that the access to education is an obligation of the state to provide to every child.²

However, the determination of what is a government task evolves over time. Specifically, at some point there may be a situation, when, the state will recognize that there is a need which is *desirable* for the state to address (e.g., ensuring that there is adult education scheme, or to open a home for elderly) and which is not legislated. The state may **choose to address emerging needs** as its own obligation, and therefore those will become “mandatory tasks” prescribed in a policy or law.³

The state may also decide that it is not going to undertake a certain desirable tasks as its own, but in recognition of their importance it would ensure that there is an enabling environment for those needs to be addressed. As an illustration, consider the case of elderly care. In some countries, the elderly care is considered as an essential service of the social welfare system, and therefore is legislated by law. But in others where the traditional family roles are still strong and the relatives take care of the elderly family members elderly care may not be seen as an essential task that the government should undertake.

The Law on the Hungarian Local Governments⁴ determines the local government tasks and competences and differentiates between “*compulsory tasks and competences determined by law*” and “*tasks and competences voluntarily undertaken*”. Each local administrative unit has different compulsory tasks. When determining the compulsory them the laws make differentiation based on the local circumstances the economic

² <http://www.mdac.info/en/news/bulgaria-right-education>

³ In theory the tasks can be further categorized based on whether they are considered as vital, essential, desirable, and undesirable. For further discussion on this see: International Good Practices in State-NGO Relations: A Benchmark for West Bank and Gaza, World Bank (awaiting publication, on file with ECNL)

⁴ Article 10, 11, 13 of the Law CLXXXIX of 2011. Available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100189.TV

capability the number of inhabitants and the territory. Local governments may voluntarily undertake any other local public affairs which are not delegated by a legal regulation to the exclusive competence of another body. Undertaking such voluntary tasks should not jeopardize the provision of the compulsory tasks and competences. Voluntary tasks have to be financed from own income sources or other separate sources provided for these purposes (sport clubs for students e.g.). Also the local governments may overtake and implement central government tasks based on a separate agreement signed with the state.

After the tasks of the government are defined, a next question may be which of the tasks for which the state has obligation to provide for, must be **delivered directly by the state**. Here, the tasks could be viewed: (1) those fully provided by the state which cannot be delegated (e.g., setting policies and laws), or (2), can be provided by the state either directly or through contracting out to non-state actors (e.g., basic health and education, environment protection).

In the Netherlands, all services in the social area are always contracted - it is considered that if the state provides directly the services that that would results in a conflict of interest, because the authority cannot ensure in the same time policy development, obligation to provide services, providing them and monitoring the quality.

As an example, of an evolving government task and task which is delivered in collaboration with non-state actors take the example of homeless shelters in Hungary. At the change of the system (1989), thousands of people suddenly became homeless, as companies closed their state-run workers' hostels. As the state was not prepared to deal with so many homeless, hundreds froze to death during the first winter of the new democracy and several CSOs were set up to shelter and help people on the streets. Because the problem was so visible and received media attention, the state realized that it is desirable to take this as among its tasks. The Parliament reacted by making it mandatory for the local governments to provide shelters for the homeless and find resources for it. Since many CSOs, already ran such shelters, the local governments allocated funding to the CSOs. Even today, practically all the homeless shelters in Hungary are run by CSOs and financed by the local governments.⁵

Authority vs. service functions

Government tasks can also been analyzed from the perspective of their **functions**. In general, the governments undertake two main functions in all countries: they determine the government policy, and thus have a political-decision making function (i.e., "authority function" or "governance") and provide various types of services (i.e., "service function").

In the course of their "authority function" the governments adopt laws and other legal instruments; decide how much money is dedicated for different areas of public administration; make longer term government strategies; determine the scope of people eligible for specific

⁵ Nilda Bullain and Radost Toftisova: A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation. ECNL, 2004.

state benefits and services; regulate the quality criteria of such services; give licenses to practice a profession, monitor performance of services and much more.

In the course of their “service function” the governments are responsible to carry out and organize services that are necessary for the everyday life of the people- provide public utilities, build roads, operate schools, hospitals, elderly homes, etc.

Oftentimes these two different government roles get conflated because the same state department or agency is handling both. There is a moment when a government/state authority decision needs to be made (e.g. deciding who is eligible for home-visit support or for receiving unemployment benefit for attending the job training) which is then followed by the service part (e.g. organizing home visits of social workers or a job training center). The relevance of the distinction is that government often delegates its “authority function”, while it contracts out the “service” function. For example, the government may decide to prescribe in a law the criteria for becoming licensed attorney, but it may delegate the task of granting the license to the bar association as a professional organization in the field.

Databases of public tasks

Considering the diversity and complexity of the government tasks and the legal instruments which determine such tasks it is generally hard to agree on overall categorization of tasks that would be applicable to all areas or all services. There are some attempts (e.g., Hungary) to create at least a database of such tasks.

In Hungary, the first attempt to map out the public administration tasks was made back in 1932. The collection included 9850 items along with the responsible state bodies and the references to the relative legal regulations. Since then only one other attempt was made to create such database (in 2007) but it was not complete and was never used officially. Since autumn 2010 the Ministry of Public Administration and Justice has been working on a so called “government task cadaster” but it has not been finalized so far. The chart is planned to be broken down into several levels sector, subsector, group of activities, activity, measure, submeasure etc., but the final concept may still change. According to the information provided by the Ministry it will be a dynamic database which will be regularly updated to bring it in line with the constantly changing legal regulations.

Decentralization and at which state level should tasks be delivered

Once the tasks are defined it is important to go a step further and decide which tasks are to be undertaken at what government level, i.e., central government or decentralized: regional authorities or local administrative units. Decentralization means the delegation not only of tasks, but also of responsibilities, resources and political decision-making authority to another state body working on local or regional level. The World Bank defines decentralization as *“the transfer of authority and responsibility for public functions from the central government to*

subordinate or quasi-independent government organizations and/or the private sector".⁶ It is a complex concept, which includes different components such as political, administrative, fiscal and market decentralization.

On the one hand, there are services which are nation-wide and could be better assessed or run at central level (rare diseases, people in special conditions). On the other hand, many European countries have recognized that regional or local units work closer to the grass-roots, understand local needs better and are more cost-efficient and flexible. However, that does not mean that they will be able to respond to all needs.

As a guiding criterion for dealing with the question of decentralization of tasks, some countries rely on the subsidiarity principle. The **subsidiarity principle** is based on the notion that when a need emerges in the society it should be addressed by the immediate community - those that are closest to that need. If not, then it should be addressed by the 'next level up in the system'. As a basis for social policy, this principle has determined the system of financing social welfare services in Germany for the last century and is strongly present today. Poland, for example, also adopted this principle in its new Constitution. This was the basis for the reform of the delegation and contracting out of tasks and inclusion of local authorities and non-state providers in those schemes.

This issue is closely related to the **budgetary and administrative autonomy**. Specifically, (a) what tasks must the central government provide for from the central budget; (b) what should – must? local governments provide for from the central budget; (c) what should – must local governments provide for from the local budget, and finally, (d) what may local governments (optionally) provide for from the local budget. If the local level is to decide on the needs, does it have the money to satisfy those needs from its own budget? In Netherlands, all the services are decentralized to private providers, the authority is keeping the responsibility to fund the services, to search for the best provider and to control the implementation.

In Bulgaria, the contracting of social services happens at the local level but the majority of the services are financed by the state (90%). The government decides annually which services it will finance each year. The municipality itself decides whether it will open a government funded service or not. In case it decides there is a need for a specific government funded service, it takes a decision, receives approval and requests money from the state budget. The funds for these services are then transferred to the municipalities which use it for provision of services (directly or to contract it out).

The municipality can also decide to provide additional services (not covered by the state budget). In this case, it has to cover the cost from its own income sources (local taxes and fees, sale of municipal property, etc.).

Finally it is important to be noted, that decentralization and the implementation of tasks at the local level are part of overall state policies. Therefore, the local government's freedom to adapt

⁶ World Bank, *What is Decentralization?*

http://www.ciesin.org/decentralization/English/General/Different_forms.html

the delivery of tasks to local conditions must be balanced by a common vision about the goals of the area and the purpose of decentralization in furthering these goals.

In general, the Law on the Hungarian Local Governments regulates a list of 21 tasks that the local government must particularly fulfill, including settlement development, settlement operation (public lighting, maintenance of cemetery, roads, parks etc.), basic health service, cultural services, kindergarten, social services, sport and youth issues, minority issues, waste management, environment-health issues etc. Besides, other laws may determine further local government tasks as well. The detailed rules for the implementation of these government tasks are laid down in sectoral laws and regulations.

As an example the compulsory social services are regulated in the Hungarian Law on Social Management and Social Services⁷ as follows:

“Article 86

*(1) The local government **must** provide:*

b) provision of meals

c) home support

d) certain social services depending on the number of inhabitants

e) access to the social services not mentioned above - with special regard to the family support.

(2) The local government on the territory of which

a) more than 2,000 permanent inhabitants live must provide family support,

*b) more than 3,000 permanent inhabitants live must provide the **basic service** under point a) and the day care of the elderly people,*

c) more than 10,000 permanent inhabitants live must provide the basic services under point a) and b) and other day care services not mentioned under point b),

d) more than 30,000 permanent inhabitants live must provide the social services under a)-c) as well as elderly home, homeless shelters, temporary accommodation for homeless people.”

Who executes the tasks?

As a matter of good practice the legislation of several countries (e.g., Hungary, Poland) specifically authorizes state bodies to contract out government tasks to non-state actors.

In Kazakhstan the Government adopted a Concept of State Support of CSOs which laid the basis for development of partnership between Government and CSOs in Kazakhstan by involvement of CSOs in delivery of socially important issues through the state social contracting. Also, the Law on State Social Contracts in Kazakhstan regulates the possibility for the state to request CSOs to provide different services in the areas of social assistance, culture, environment etc.

In some countries, such as England there is a joint responsibility of the government and private entities to ensure that the needs of the citizens are satisfied. The government maintains a list of public interest areas which it undertakes to ensure that they are satisfied. Therefore, when the

⁷ Law III of 1993. Available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300003.TV

government or local authorities want to provide services in those public benefit areas, they issue a tender and contract the service to the provider, which offers the service provision at “best value”. The tender is open to CSOs, local government institutions, or private companies. Generally, the service providers need to raise additional funds to match the public funding that will be granted through such bids.⁸

The Estonian, Code on Good Practice for Contracting Out Public Services provides that all public services, which can be implemented by ensuring the achievement of clear responsibility mechanisms, and which are not prohibited to be transferred by the Constitution can be subject to transfer to CSOs.

In Poland the area of public tasks and the procedure for contracting out these tasks to non-state actor – including CSOs- are regulated in the Act on Public Benefit and Volunteer Work.⁹ According to the Law, public administration authorities shall perform public tasks, prescribed in the Law (see below) in co-operation with non-governmental organizations and other entities (corporate entities, entities acting pursuant to provisions on relations between the State and the Catholic Church, other churches and religious unions; unions of local self-government units; social co-operatives; joint stock companies, limited liability companies, and sport clubs operating as companies but which do not operate for profit and allocate all of their profit to perform their statutory objectives, and they do not divide their profit between their members, shareholders, stockholders or employees). Such organizations and entities shall effect public benefit works entrusted to public administration authorities to the extent entrusted

to such authorities, and in territories supervised by the same authorities. Through the adoption of the Law the state operationalized the principle of “subsidiarity” which was introduced in the Polish Constitution. According to local partners, before the adoption of this Law there were no clear rules of financing CSOs from public money and there was corruption in contracting CSOs for public services. The Law contributed to changes of the attitude of the public administration towards CSOs changed and contracting CSOs became more frequent.

Types of government tasks which CSOs can be involved in

As noted above, governments tasks can be viewed from their “authority” or “governance” function and “service function”. Therefore, a distinction can be made between three types of services that the governments can contract out to non-state actors to realize this functions:

1. *Commercially non-viable services-* e.g., social services to vulnerable groups
2. *Commercially viable services that are “of public interest” or “general interest”-* such as utilities, garbage collection, park maintenance, toll roads etc.
3. *Services needed for the government to better perform its governance function* (policy making and law making) – such as polls, PR campaigns, impact studies etc.

⁸ Nilda Bullain and Luben Panov: A Handbook on Non-State Social Service Delivery Models. UNDP and ECNL, 2012. Available at: <http://ecnl.org/index.php?part=13publications&pubid=30>

⁹ Act of law of April 24th 2003 on Public Benefit and Volunteer Work

The inclusion of the different types of non-state actors is largely dependent on this differentiation- while the for-profit companies may be very active in undertaking activities under point 2) Some countries see merit in favoring CSOs under point 1) and, the CSOs should not be disadvantaged to contracting out government tasks under point 3).

The most traditional area of contracting out commercially non-viable services is the social welfare provision. In Hungary CSOs undertakes various social services, including the operation of elderly homes and homes for disabled people, home care for elderly people, homeless shelters and day care for homeless people. In some countries for-profit organizations are even excluded from this area. As an example, in Kazakhstan the Law on State Social Contracts allows only CSOs to compete for social contracts and business entities, political parties, religious organizations and trade unions are excluded from being the potential service providers of social services.¹⁰

Act on Public Benefit and Volunteer Work, Poland

Article 3 (1): Public benefit work shall mean work performed to the benefit of society by non-governmental organizations in the area of public tasks as set out herein.

...

Article 4.

1. The area of public tasks, referred to in article 3 para 1, shall comprise the tasks performed in the following fields:

- 1) social assistance, including aid offered to disadvantaged families and individuals, and ensuring equal opportunities to such families and individuals;*
- 2) professional and social integration and reintegration of persons threatened with social exclusion;*
- 3) charity work;*
- 4) preserving national traditions; sustaining Polish identity and developing national, civic, and cultural awareness;*
- 5) work to support national and ethnic minorities and regional languages;*
- 6) protection and promotion of health;*
- 7) work to support the disabled;*
- 8) promoting employment and professional activation of the unemployed and individuals threatened with job loss;*
- 9) promoting equal rights of women and men;*
- 10) work to support the elderly;*
- 11) promotion of economic growth and entrepreneurship;*
- 12) promotion of development of new technologies, inventions and innovation, transfer and implementation of new technologies for companies;*
- 13) work to support the development of local communities;*
- 14) science, education, coaching, and upbringing;*
- 15) recreation of children and youth;*
- 16) culture, art, protection of culture and national heritage;*
- 17) promoting physical culture and sports;*
- 18) ecology, animal protection, protection of natural heritage;*
- 19) tourism and knowledge touring;*

¹⁰ Nilda Bullain and Luben Panov: A Handbook on Non-State Social Service Delivery Models. UNDP, 2012.

20) public order and security;
 21) national defense and the activity of Armed Forces of the Republic of Poland;
 22) promoting and protection of human and civil rights and freedoms, work to support the development of democracy;
 23) rescue systems and protection of residents;
 24) aid to victims of calamities, natural disasters, armed conflicts and warfare – in Poland and abroad;
 25) promoting and protecting consumer rights;
 26) work to support European integration, and the development of contacts and co-operation between societies;
 27) promoting and organizing volunteering;
 28) aid extended to Poles and Polish community abroad;
 29) work to support the veterans and persons who have undergone State repression;
 30) promotion of the Republic of Poland abroad;
 31) work to support families, promote motherhood and parenthood; promote and protect the rights of children;
 32) prevention of addictions and social pathology;
 33) work to support non-governmental organizations and entities listed in article 3, para 3 active in the areas listed in subpara 1-32.

2. The Council of Ministers may define, by way of regulation, tasks different than those listed in para 1 as relevant to public interest, in recognition of their particular benefit for the society and providing that they can be performed by entities specified in Article 5 para 1 in a manner satisfactory for the needs of society.

Also, there are good practices for the inclusion of CSOs in the implementation of government tasks related to environment protection. As an example, in Hungary the government has been financing these CSO activities for nearly 15 years despite the fact that the government structure and the source of money have changed numerous times within this period.

The Hungarian environment protection support program is called “Green Source” program and the latest call for proposals was published by the Ministry of Rural Development in 2012¹¹. The Green Source is supporting the implementation of such government tasks which can be effectively and efficiently contracted out to environment protection and nature conservation CSOs and are related to the areas determined in the III. National Environment Protection Program (2009–2014). The financial allocation for the 2012 call for proposals was HUF 85,000,000 (USD 383,800) which was secured from the budgetary appropriation of the Ministry of Rural Development called “Overtaking government tasks related of the implementation of the National Environment Protection Program”. The amount requested by the CSO had to be minimum HUF 300,000 (USD 1,354) and not more than HUF 2,000,000 (USD 9,030). In 2012 altogether 191 CSOs submitted an application out of which 136 met the formal requirements.¹²

¹¹ http://www.kormany.hu/download/5/72/90000/ZF2012Palyazati_Felhivas.pdf

¹² <http://nonprofit.hu/?q=content/d%C3%B6nt%C3%B6tt-vid%C3%A9kfejleszt%C3%A9si-miniszter-z%C3%B6ld-forr%C3%A1s-2012-p%C3%A1ly%C3%A1zat-nyertesek%C5%91>

There are also areas in which the government undertakes its governance functions. Such areas are typically related to monitoring of the activities of certain government institutions, organizing public consultations in the process of preparing draft laws, preparation of independent reports on specific topics, providing independent experts for participation in working groups, etc. Finally, there are areas in which CSOs have specialized expertise – preparation of analyses, regulatory impact assessments, organizations of trainings, fighting domestic violence, protecting human rights. In this case, an important fact is that CSOs are a tool to reach to the target groups of different policies or reach a wider audience and engage citizens in the decision-making process, and therefore they are increasingly contracted to provide such services.

In Kazakhstan there are several examples for contracting out research tasks to non-state actors. Some of these are undertaken by commercial organizations (e.g., in the field of industry) while in some other areas CSOs are the sole experts and therefore the ones that are contracted out by the state. As an example, the Ministry of Internal Affairs contracted the Union of Crisis Center to conduct a research on victims of human trafficking as a result of a sole source procurement procedure.

III. Financing of state services and inclusion of CSOs

The importance of the distinction between mandatory government tasks and those for which the government has no obligation to provide for is reflected in the direct financing policies for CSOs when they are involved in provision of government tasks or services. Most European countries have accepted legislative policies that assume the ***obligation of the state to finance mandatory services whether it is provided by a government institution or a non-state provider***. It is also becoming more common for governments in CEE to provide funding to private providers for those services that are considered obligatory and for which governments would have to pay anyway (for example the homeless shelters in Hungary).

The financing for the kinds of services that are not included among the legal obligations depend entirely on the policies of the central or local government (e.g., promotion of youth engagement through volunteering in civil sector). In those cases, the government body may decide to have a grant program for those CSOs who run programs addressing these state policies. In summary, the legal obligation for the state to ensure the provision of certain services is the main criterion for receiving financial support in service provision. Beyond this, the policies on the national and local levels will determine the grant-making priorities. *The ability of CSOs to lobby for the inclusion of their service in the relevant laws and the government budget, or to prioritize an issues on the government's agenda, will likely have direct influence on the level of state funding available for them.*¹³

A crucial element of the whole relationship between CSOs and the government is the element of partnership. It has many dimensions which are important in organizing the whole system of funding CSOs:

¹³ Nilda Bullain and Radost Toftisova: A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation. ECNL, 2004. Quotes are taken with the permission of the authors.

- CSOs are able to pilot many innovations and introduce many new services which are then taken over by the government. For example, in Bulgaria the whole process of introducing foster care was initiated by CSOs and currently the government has adopted a policy to close down all institutions for children in the next 15 years which will be replaced by different services which are in the family.
- CSOs have already invested substantial resources in areas where they have developed specific experience and know-how or have even created the infrastructure for providing certain services. In these cases partnership is the best approach rather than competition, opposition, etc.
- In certain areas CSOs are the natural partner of the government because there are no other providers and because the beneficiaries of the services are not able to pay for the services and therefore there is no business willing to provide them (unless the government provides sufficient resources to not only cover the expenses of the provider, but also cover some profit).
- CSOs, because of the way they operate, are able to attract additional resources to develop their services – they can use volunteers, they can attract donor funding and they can attract donations from individuals or corporations. These resources can help increase the quality of the services provided. Of course, it is very important that when the government provides funding, the funding is sufficient to cover the basic costs of the activities that the CSO is expected to undertake.
- Certain types of services e.g. in the area are not attractive for providers and there is no real market for them. It is the government’s task to try to persuade potential providers and help them develop services, try to bring providers to distant geographic areas, etc. CSOs, who have as their mission to help people, would be a natural partner of the state in such cases.

Mechanisms for state funding

When involving state actors in the delivery of tasks the government may use different forms. For example, the government may outsource its services. Government outsourcing may be defined in different ways, but in general it means purchasing a service from an outside provider to replace performance of the government task or function (provision of water, gas, electricity etc). When a government outsources a public work or service, typically the contract will involve the transfer of control and cash flow rights to a private firm in exchange for an investment of some kind in return.¹⁴

Most commonly, however, governments involve CSOs and finance their activities through services or grants.¹⁵

Service Procurement or Contracting is acquisition of goods or services at the best possible value or cost. In case of procurement or contracting the state or local authority should know exactly what it wants to receive as a service (e.g. providing day-care services to 10 children with

¹⁴ <http://www.outsourcing-law.com/services-outsourced/customer-care/government/>

¹⁵ The section relies on previous materials published by ECNL and especially the A Handbook on Non-State Social Service Delivery Models. UNDP and ECNL, 2012. Quotes are taken with the permission of the authors.

learning disabilities for a three-year period; or operating a district family help center for five years). The purpose of the contracting process is to make sure specific services are provided to the beneficiaries, achieving best quality at a reasonable price and possibly in a longer term. The term itself comes from the fact that between the parties there is a contract which lists the obligations of each party clearly.

Procurement is the mechanism that governments use mostly for all kinds of services. The procurement rules however, in certain areas may be too burdensome or limit the ability of CSOs to compete. Therefore, the contracting of some services, e.g., social services is not usually carried out under the usual procurement mechanism, given the different nature of the social services to be provided as well as, in case of CSOs, different characteristics of the service providers. That is why some countries have introduced additional mechanisms (specific contracting procedures) in areas where the specificities of the services need to be taken into consideration. In the EU these are called social services of general interest. When contracting these only two conditions need to be followed – public announcement and clear specification of the services to be provided.¹⁶

Grants are a form of financing specific activities of CSOs. Grants are usually provided to CSOs for implementation of certain policies or projects which would be of general interest. For example, the government may want to address the issue of increased number of young unemployed persons through its policy. For this purpose, it will invite proposals of CSOs who to address this problem through specific project proposals.

The first difference between a grant and the payment for a service is the fact that the grant-making authority does not receive anything in return for itself, the result is for particular targeted groups (third parties). Another difference is the level of detail in the allocated task. As noted above, when purchasing a service, the contracting authority clearly knows the parameters of the service – for example to organize training for 50 people on a specific subject. When funding projects the contracting authority wants to accomplish a specific goal but does not know the right way to achieve it (the specific activities to be performed). Therefore, subject of the application process is a proposal for activities which can help achieve the goal. A third difference is the ownership of what is produced - for instance, in the grant contracts the ownership of the manufactured products, materials, analyses, etc. is retained by the one receiving the funding (the grantee) or may be shared with the state. Funding through grants may be occasional, short-term, or long-term. But most often grants support shorter term goals, mainly because financing longer-term programs also means committing to multi-year funding from central or local budget. However, because of this grants may not always be appropriate in service delivery programs where a longer term and more sustainable approach is needed.

Since grants¹⁷ are typically easier to administer than other financing mechanisms discussed here, countries often support service provision through grant schemes rather than service contracts. In these countries grants may be seen as a good solution to bridge the gap between existing needs and provider capacities.

¹⁶ EU Directives 17/2004 and 18/2004 (article 21, 23, 35).

¹⁷ Nilda Bullain and Luben Panov: A Handbook on Non-State Social Service Delivery Models. UNDP and ECNL, 2012. Available at: <http://ecnl.org/index.php?part=13publications&pubid=30>

In European countries, one can also find the following two forms of financing CSOs involvement in delivery of government tasks:

Subsidies are a form of support for which there is usually no competition and the obligation to provide the service might be part of a mandatory task defined in a law. In many countries of Central and Eastern Europe subsidies are given to different unions as representative organizations of groups such as people with disabilities.

Third party payments are mechanisms used to select providers of services paid by the government. In this case the beneficiary of the service receives the right to use a service and has to choose which will be the provider from the preliminary approved/licensed providers. Since the decision is vested in the beneficiary this is conserved more as a market-oriented mechanism for service provision payment. Introduction of third party payments usually requires legislative reform or some other act of approval by the state.

This system may pose some difficulties to the providers; specifically the service has fixed expenses (e.g., rent, commodities, etc.) which have to be covered regardless of the number of clients served. So providers may be at a loss when they open a service but do not have an indication of the clients expected (and providers may choose not to take the risk so the choice of providers may be limited).

One type of this mechanism is the *voucher system*: the government gives vouchers to target groups (mostly low-income) that they can use to purchase services (most typically in the area of health, education, culture). Such system exists in Czech Republic or France. Also, in Sweden, for example, educational vouchers provide parents an opportunity to purchase their children's education from both public and private schools which satisfy criteria for performing such service. This system was introduced in 1992. It is based on a virtual "voucher" which is equivalent in value to the average cost of educating a child in the local state school. Parents can use this "voucher" to "buy" a place at the school of their choice. The idea is that funding follows the pupil and, in this way, the state supports the schools that are most popular with parents.¹⁸ Vouchers are considered to have many advantages especially for the Scandinavian welfare states, as they have led to stronger competition between both public and private suppliers and a more cost-efficient service provision.¹⁹

Another type is the *per capita payments*, sometimes called "normative" payments (as they are determined by certain norms in terms of service standards and price) are most often used in maintaining social institutions, such as homes for the people with disabilities, institutions for children without parental care or residential homes for the elderly. The government determines the cost of the service, which is usually done on a per capita basis and the CSO is reimbursed based on the number of clients it serves.

An example is Hungary where the two main areas of normative payments are the

¹⁸ For a discussion on this see, Lessons on School Choice from Sweden, Adam Ozimek, Forbes, 12.03.2013, <http://www.forbes.com/sites/modeledbehavior/2012/12/03/lessons-on-school-choice-from-sweden>

¹⁹ 21st Century Public Services – Jørgen Abilgaard & Torben Vad, in Progressive Politics, vol 2.1, 2003 www.policy-network.net/uploadedFiles/Publications/Publications/Abilgaard%20&%20Vad.pdf

education (both public and high education) and the social service provision. The amount of normative payment is determined in the annual state budget. In the area of social service provision more specifically related to social child welfare and child protection providers a separate Government Decree²⁰ regulates the procedure of acquiring transferring and monitoring normative payment. The operator of the social institution shall submit an application to the regional directorates of the State Treasury (Regional Directorates) for claiming normative payment until November 30 prior the subject year. Only such operators are eligible to receive normative payment which have legally binding license for the subject year. In general the decision is made until January 16 in the subject year. In case the claimed amount would change during the year the operator may submit additional claim or waiver every quarter year. The Regional Directorates send the total amount of claims to the Ministry which transfers the requested amount to the Regional Directorates. The Regional Directorates then transfer the normative payment to the operator on a monthly basis until the 10th of each subject month. The operator shall account the utilization of this amount separately in its accounting. The operator shall settle account on the utilization of the normative payment until January 31 the following year. The Regional Directorates decides on the acceptance of the settlement or if necessary further payments until March 31. The Regional Directorates sum up the settlements and send it to the Ministry until April 15. The legality of the claim and the due process of the settlement are monitored by the Regional Directorates. Each operator shall be checked at least once in 2 years.

In Netherlands and in England there is a system of *personalized budgets*. Under this system, service users (health, or social services) are given a needs-based indicative budget which they can use to develop their own care-plan based on their individual priorities and needs; they can use that budget to purchase support from various providers: the private sector, CSOs, neighbors, friends or family members.²¹

The following table illustrates the general differences between the main types of mechanisms typically available to support financially CSO inclusion on service provision.

	GRANTS	PROCUREMENT AND CONTRACTING	THIRD PARTY PAYMENTS
<i>Aim</i>	Implementation of government policy	Providing services to government	Providing a gov't service
<i>Terms of contract</i>	Set by the government	Set dominantly by government	Set by law

²⁰ 213/2009. (IX.29.) Government Decree on the state normative support of the social, child welfare and child protection providers operated by church and non-state operator service providers. Available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900213.KOR

²¹ For the UK example, see: How to Cost Appropriately with Personal Budgets, ACEVO 2010, <http://www.acevo.org.uk/Document.Doc?id=771>

Key selection principle	Best ideas and project plans	Highest quality at the lowest price	Fulfillment of legal requirements
NGOs funded	Several applicants	One bidder	Several licensees
Cost structure	Project budget	Fee based budget	Budget according to regulations
Indirect costs related to activities	Percentage of project budget	May be fully covered in fees	General overhead % set by law

Table 1: General features of the different mechanisms

We have tried to differentiate between the different mechanisms based on their most common features in Table 1. In the area of procurement or contracting, the procedures intersect. For example, in Bulgaria the provider of the hotline for children in risk is selected after a procurement process even though it is about a social service that has to be provided to people on behalf of the government. Similarly, in Kazakhstan procurement is the most common form.

As noted above, government objectives are intertwined and very often investing through one mechanism improves the results in another area. The example given above was the investment in CSO capacity (through grants), which in its turn improves the quality of services provided by the CSOs (including under a contracting procedure for example).

Purposes of the financing mechanism

The selection of the mechanisms would depend on various the purposes of the funding mechanism and what does it support. the table aims to illustrate what purposes do different mechanism aim to address and the type of activities for it.

PURPOSE	SUPPORTS	MAIN FORMS
Implementing, complementing government policy	Project implementation	Grants, Subsidies In-kind support
Support the development of the sector	Support for CSOs institutional development	Grants, Subsidies In-kind Support
Purchasing services for the government	Service provision	Service contracts
Delivering government tasks	Service provision	Third party payments

Table 2: Purposes and type of support provided by different mechanisms

The need to achieve certain policy objectives in the case when the specific activities are not clearly defined (either because the government is not certain what the best approach is or it wants to be able to compare different approaches to a problem). In such cases a grants scheme is the mechanism used.

The need to support the development of CSOs in general – the most typical form of financing in this case is through grants, subsidies, or in-kind support. These could be based on a project proposal submission (with the aim to achieve specific organizational objectives) or a subsidy supporting the existence of a certain organization.

The need to provide specific services, when these are clearly defined – in these cases contracting is used as the state wants to be able to choose the provider of the services.

Provision of clearly defined services when the state wants the beneficiary to choose the provider – third party payments, vouchers, etc. In this case the government defines who are the beneficiaries and what their needs are. It also sets requirements for the potential providers and what are the pre-qualification criteria they need to cover. It gives licenses/accredits more than one service provider so that the clients have a choice of providers.

Most of the objectives are also achieved through a combination of several funding tools. For example, in the Australian province New South Wales, in addition to the general ways to contract CSOs for provision of specific services, the government has stated the importance to provide grants to CSOs for increasing their capacity (which in its turn increases the quality of the services provided) or the need to provide a supportive framework in which CSOs operate e.g. providing incentives for donations to CSOs (which brings additional income of CSOs and could increase the quality of the services they provide).

IV. Contracting government tasks

In this chapter we describe the basic characteristics of the contracting procedure, which is the most typical procedure used for inclusion of CSOs in provision of government tasks. We also outline some of the issues that need to be taken into consideration when designing the contracting procedure.

What is the purpose of contracting?

As explained above, in the contracting process the state contracts out the provision of a service to a private provider. An important fact is that the state maintains the ultimate responsibility for the service so in case of a failure of the selected provider, it is the government that undertakes the task to select a new provider. The state, however, maintains its responsibility for:

1. Funding the service;
2. Control of the spending; and
3. Control of the quality of the service.

Some of the reasons why it is beneficial for the government to contract out services:

- *Limited human and institutional capacity* – the state does not have the personnel and institutional background (e.g., equip and maintain an elderly home with the required number of beds) necessary to provide all the services it has obligation to provide. Moreover, many countries have a policy of reducing the state apparatus and contracting the provision of services is a good way to achieve this.
- *Improve the quality, the efficiency and availability of services* – The provision of government tasks shall be guided from the need to protect the public interest and the rights of the beneficiaries. In many cases the private entities are able to provide better quality services in a given area.
- *Focus on core functions* – the delegation of certain tasks to independent providers allows the state to focus on functions such as policy making and monitoring.
- *Better accountability* – the government can exercise better and stricter control over the quality of the services when they are provided by an independent entity. It is not easy for one department of the government to control another one.

Some benefits of having CSOs provide services are described below:

- *Close to the problems to be solved* – CSOs usually work really close with the groups that need support and know best their needs. That is why they are also more trusted in their social work.
- *Innovative* – As mentioned above CSOs are the first ones to introduce innovative solutions to problems (as was the case of deinstitutionalization in Bulgaria, or homeless shelters in Hungary).
- *More flexible* – If the framework allows it, CSOs could use more flexibly the workforce (for example, they do not need to open a full-time position if the job can be done part-time). Also, they are less bureaucratic and can immediately react in case of emergency e.g., pay the transportation costs of someone who was sexually harassed and needs special medical treatment).
- *Additional resources*: They can bring additional resources such as volunteers and donations.

Who is a service provider? Who can be contracted by the state to provide services?

Until recently, in the former socialist countries the state (local or national level) was the sole provider of all services. Now this has changed and many countries have opened the possibility for non-state actors/private entities to provide services.

In the process of provision of services, there could be a distinction as to whether public and private providers compete in equal way. For example, in Poland when competitions for services are announced, public administration authorities also place their bid, on an equal footing with other entities (as mentioned above). In Bulgaria, it is the mayor that decides whether to contract a service or provide it directly by the municipality with hired personnel.

However, another element concerns the status of private providers – in the case a competition is announced, is this open only for CSOs or for commercial entities as well? If the only

consideration is the quality of services, then it is logical that all potential providers should be allowed to bid. In case there are also other objectives – then there might be special limitations.

According to the Estonian Code on Good Practice for Contracting out Public Services the public authorities will treat all applicants who wish to provide the service equally. As discussed above, in Kazakhstan only CSOs can apply for provision of services under the Law on State Social Contract. In Bulgaria, any physical or legal entity (both commercial and nonprofit) can participate on an equal footing contracting of social services. In reality, almost all of the contracted services are provided by CSOs. But the Bulgarian legislation does not allow for CSOs to provide healthcare services. In the Netherlands, only CSOs are allowed to be contracted by the state, in case of social service provision. Companies are allowed to be sub-contracted by the CSOs or to be paid directly by the clients – as fees or through the personal budget system.

Are there any special considerations if limiting contracting only to CSOs?

In general, this should be considered on area by area base, and the type of functions or services it wants to contract. In addition, any limitation should be imposed only after consideration of whether such limitation may unjustifiably discriminate amongst providers and would it limit competition, which otherwise would prove beneficial to attract better quality providers. For example, in the case of contracting in the area of education, the interest of the state is to provide best quality services, and therefore it may wish to encourage competition and allow for different providers to cover for it. However, sometimes there may be areas where CSOs are the only providers or CSOs may be better positioned to provide for it, vs. other providers. One area that is limited only to public benefit CSOs in Bulgaria is the procedure for international adoption. In this case, the government in a way asserted that adoption of children is not commercial activity and it is a service that has special features. This justified limiting it to CSOs only.

What are the areas in which CSOs are contracted most often?

Naturally, CSOs are often contracted in those areas where they are traditionally dominating providers of tasks. Such areas are the ones which affect vulnerable groups. An international survey²² carried out in 33 countries shows that among all studied countries the healthcare and social service sectors are the ones in which the funding for civil society is dominated by the state. Other traditional areas include education and nature protection. Examples from these areas include:

- In the social area CSOs seem to have the biggest capacity to provide services. In Bulgaria 18% of all social services (services that help representatives of disadvantaged groups to lead a normal life) funded by the national budget are provided by CSOs (the rest of the services are almost entirely provided by the local authorities themselves);
- In Cambodia 4-year contracts with CSOs were signed in 12 districts for the management of primary health facilities²³;
- Literacy courses were provided by CSOs in different African countries (Senegal, Burkina Faso, Chad)²⁴;

²² Global Civil Society. Dimensions of the Nonprofit Sector, Volume 2; Lester Salomon, S. Wojciech Sokolowski and Associates, 2004

²³ Public-Private Partnership handbook, Asian Development Bank

- The areas to be included in the EU Natura 2000 program (areas in which construction or business activities are subject to specific regime) according to 2 EU directives are usually evaluated by CSOs, contracted by the government. In Bulgaria these were two organizations – Green Balkans and Bulgarian Society for Protection of Birds;
- In Kazakhstan the Law on State Social Contracting describes the spheres of state social contracting implementation, including 1) education, science, information, physical education and sports; 2) public health protection, propaganda of healthy life style; 3) environment protection; 4) support of youth related policy and children related initiative; 5) resolution of demography problems; 6) resolution of gender-related problems; 7) support of socially vulnerable population groups; 8) assistance to orphans, children from incomplete and large families; 9) assistance with respect to individuals' employment; 10) protection of rights, legitimate interests of individuals and organizations; 11) culture and art development; 12) protection of historical and cultural heritage; 13) strengthening of social accord and national unity; 14) other socially significant directions, not in conflict with the legislation of the Republic of Kazakhstan.
- In Poland, as noted above (section II) there are over 30 areas where CSOs can be contracted out or financed.

From a practical perspective, the first prerequisite for CSOs to provide services is for them to have the capacity to do that. A good approach is to carry out a sectoral study – which are the areas in which only CSOs provide services, which are the areas in which both CSOs and the government provide services and which are the areas in which there are other providers as well.

What are the models for contracting services to CSOs?

There are different procedures for contracting CSOs depending on the country and the area. In many countries the leading law dealing with „purchasing” CSO services is the public procurement law. However, in different countries and certain areas there are separate procedures which are developed and used. For example, in Kazakhstan, there is a law on „social order” which provides specific instructions on how the government can contract CSOs in different areas. From a procedural point of view, though, the law on „social order” is similar to the general procurement procedure.

In Bulgaria, in the area of social services, the Social Assistance Act allows a separate procedure only for contracting of social service providers. Also, the general regulations of the Public Procurement Law have been applied to contracting out services in the areas of health and education in Moldova in the past few years. As a very recent development, special regulations were elaborated and are waiting for adoption specifically related to contracting out social services. So while the general rules of procurement will apply for social services there will be some special regulations which need to be kept when contracting out social services. Importantly, the price should not be the single and lead criteria for the decision-making but other factors should be taken into consideration with a higher weight, including the quality of

²⁴ Use of public-private partnership to deliver social services: advantages and drawbacks, Bjorn Harald Nordtveit, October 2005

service, the previous experience, the competence of staff etc. (in numbers- price: 40%, quality: 60%)

Regardless of the applicable legislation, the procedures fall in several broad categories. Below we describe the different possible procedures for selecting service providers:

- **Tender** – this is the procedure in which the government invites more than one providers to bid for a service. In some cases, this may be an open call and in other cases the government may invite a limited number of qualified candidates. In Bulgaria and Poland this is the traditional way to organize a social contracting procedure.
- **Negotiation** – This possibility is usually applied in cases when there is only one potential candidate (Bulgaria), when the candidate is an eligible provider with a solid track record (New South Wales) or when there is an emergency or under a specific amount (Poland- see below) .
- **Partnership agreement** – This is an approach in which the government and the provider share the burden of financing the service e.g. the provider may have a building and the government provides funding. Another example is the case of co-financing different projects (some donor-funded projects require cost-share which can be provided by the respective local or national government).
- **Third party payment** – as described above, this is a mechanism prescribed through which the client of the service selects the provider.

In most of the countries all types of contracting models exist; and which will be used will depend on the specific area, the services to be provided, the available funding, availability and capacity of existing providers and similar. Some models may be preferred then others. For example, contracting all services in the social area are always contracted - it is considered that if the state provides directly the services this is a conflict of interest, because the authority cannot ensure in the same time policy development, obligation to provide services, providing them and monitoring the quality.

In **Poland** the general rule is that non-state actors shall be selected via an open bid tender. Still, there are some exemptions described by law. Negotiation may take place in the event of a natural disaster, technical breakdown, or when it is necessary with regard to protection of human life or health or to material social interest. Also, the executive body of the a local self-government unit may commission the performance of a local or regional public task to a non-state entity without an open bid tender provided that 1) the amount of co-financing or funding of the public tasks does not exceed PLN 10,000; 2) the public task is to be performed within a period not longer than 90 days. Still in this case, the non-state entity needs to submit a bid based on the same formal requirements which will be published by the executive body for 7 days (e.g., at the website and premises of the local-government). Within this time period anyone can submit comments to the bid and the executive body shall conclude an agreement after considering these comments. The total amount of funds allocated to one non-state entity shall not exceed PLN 20,000 in the same calendar year. Also, the total amount allocated through negotiation shall not exceed 20% of the amount planned for the performance of public tasks by non-state entities in the budget year.

According to the **Estonian Good Practice for Contracting Out Public Services** the public authorities will act pursuant to the nature of the service and the market when putting into place the service provider selection procedure. If required, provisions of the Administrative Cooperation Act, Public Procurement Act or a specific law regulating the service provision will be applied. The Code also stipulates that organizing a request for tenders is justified if the level of competition in the marketplace is sufficient, if the evaluation of service objectives is straightforward and if it is sufficiently simple to replace the service provider. Selecting the service provider through negotiations is justified if the level of competition in the marketplace is insufficient, if specifying the objective of the service is complicated and if the public authority is prepared to be the service provider if necessary. Planning and execution of the service in cooperation with a single provider is justified if the time and resources for transferring are limited, if there is only one provider on the market, if the public authority has limited capabilities to provide the service or if the environment for providing the service is unstable.

Requirements for inclusion of CSOs in the contracting process

In many areas of service provision there are some requirements towards the providers of services. In some areas the precondition may be to have minimum capital (e.g. bank or insurance sectors) or dispose of a proper real estate (e.g., in Hungary operator of permanent living institution), in others this may be years of existence. After all, the preconditions shall depend on the type of the service provided. Very often the preconditions are more difficult to complete because these are sensible areas (e.g., services for children).

In the different countries there are different requirements for the participation of the service providers, but there are some generalities in the different approaches:

- The preconditions are mandatory and are usually regulated by law set as formal criteria for provision of particular services;
- Most of the systems include both requirements to be able to become a provider and quality standards CSOs have to follow when providing the service.

We can divide the preconditions in two main groups:

1. Registration regime - meeting the formal criteria allows the provider to receive provider status;
2. Assessment regime (licensing, accreditation, certification) – the provider is assessed based on standard criteria set for service provision in order to ensure certain level of quality responding to beneficiaries' needs.

There are no universally accepted definitions for registration, certification, accreditation and certification but they are generally applied with the understanding as follows.²⁵

Registration procedure

²⁵ This section is based on: Nilda Bullain and Luben Panov: A Handbook on Non-State Social Service Delivery Models. UNDP and ECNL, 2012. Quotations used with permissions of the authors.

In some countries, there is a basic requirement for any service provider to register with a competent authority at the national level, no matter who funds the provision of the service (e.g., in Macedonia CSOs who want to provide social services should register with the Ministry of Labor and Social Affairs). Registration procedure is a preliminary filter to ensure that service providers have the minimum capacity to undertake the service, and fulfils overview and supervision purposes rather than standard setting. The register is usually maintained by an authorized state body and every person (provider) should be entered in it before providing the services. The registration procedure, is simple, it includes formal check of required documents and in general the application should be accompanied with documents such as court decision for the establishment, tax registration, etc. If the provider fulfills the legal requirements the state body cannot deny registration. The entry in the registry has constitutive effect, the registry is public and anybody can check the information there.

In Bulgaria there is a separate law – for restriction of the state power for regulating the free market and according to it every registration or licensing regime that the state wants to establish should be regulated in a legal act, adopted by the Parliament. For example, there is a registration procedure for all private providers of social services and it is an obligatory precondition to start providing social services. All private providers are subject to registration – physical persons, legal entities – CSOs or companies. This does not apply to public bodies or entities owned by public bodies (for example, if the municipality wants to manage a social service – daily center for people with disabilities by itself or through its entity they are not obliged to register). Registered providers are required to submit annual report on their activities to the registry.

Assessment procedures

The two most typical assessment procedures and licensing, certification and accreditation.

a) Licensing

The licensing refers to the organization (institution, CSO, company) that runs the social service and which has to fulfill certain criteria as set out by law or relevant regulation (e.g. related to its governance, internal policies, physical infrastructure, safety and hygiene, financial management etc.). The provider may only run certain services if it is licensed to do so. Licensing is mostly used in the case of institutional services. In most of the cases, a committee is evaluating the applications (often several agencies are represented) and the decision can be appealed. The license has a concrete term according to the law and before its expiration it needs to be renewed if the provider wants to continue providing the services. In case the provider violates the law the license may be withdrawn by the competent authority.

In *Bulgaria* a separate National Agency is licensing different stakeholders for giving them the right to provide vocational trainings and professional qualification. Further, every private provider who wants to provide services for children must have a license and only after that it can register as a social service provider with the Social Assistance

Agency. The licensing body is the State Agency for Child Protection – the main body responsible for controlling both children rights and quality of the children services. The license can be removed if the provider is in violation and is given 6 months terms for elimination of the violation. A new license can be awarded after a year.

In *Hungary* a separate government decree regulates the licensing and supervision of the operation of social service providers and institutions. In case the service provider/institution undertakes several types of social services the authority still need to issue one license including all services. In case of positive decision the authority issues a licence which shall be posted at the registered office or other areas open for the beneficiaries. The service provider shall request the amendment of the license in case some data in the license has changed. Also the licensing authority shall check at least once every 2 years whether the service provider/institution operates in conformity with the legal regulations and the license.

b) Certification

Certification refers to the provider of the service (i.e. social worker, child protection professional, nurse, tourist guide etc.), who needs to fulfill certain educational and professional criteria as defined by law or relevant regulation in order to be allowed to engage in service provision. The certificate is a proof that the provider may engage in the service, and possibly receive certain funding for that.

Certification may also be provided in collaboration with CSOs. Notable example is the case of Philippines, where the six main CSO networks, coordinated by organization CODE NGO, formed the Philippines Council for NGO Certification (PCNC) with the mission: “to certify nonprofit organizations that meet established minimum criteria for financial management and accountability in service to underprivileged Filipinos.” It also aims to simulate and integrate the efforts of the non-profit sector to elevate its standards of service delivery.²⁶

c) Accreditation

Accreditation refers to the service (e.g., personal assistance, day-care, soup kitchen), which is being assessed against standards set out by law or relevant regulation; if it complies with the minimum standards, the services will be accredited by a dedicated body. Accreditation of the service could mean that the service provider is allowed to provide a specific service, and/or that the provider is entitled to receive the government funding for that service. Accreditation criteria may include the certification requirements of service personnel. During this procedure the authority is evaluating directly the *activity performance* – a complex evaluation procedure in certain period of time to allow the activity to continue if it meets quality standards and criteria (while in the case of licensing – the evaluation is preliminary and referred more to the facility and resources of the providers to execute certain activity). The accreditation is a system with different scores/levels of evaluation. In most of the cases a separate/independent body for

²⁶ <http://www.pcnc.com.ph/>

accreditation is established and the procedure has 2 levels – preliminary and periodical. If the provider doesn't meet the requirements, it must close the activity.

In Moldova²⁷, public and private providers of social services can organize and provide social services only if they are accredited under the law. The conditions of accreditation of social service providers are regulated by the Law on Accreditation of Social Services which was adopted last year and came into effect with the end of January 2013. The Law and the Regulation on creating and functioning of the National Accreditation Council establish the framework for quality control and accreditation of social service providers, as well as their evaluation and monitoring of implementation. The adoption of the Law was based on the assessment of the areas of health and education which were the only two sectors where accreditation existed before. The Regulation of the Procedure of Accreditation still needs to be adopted and the Council will be set up this year as well. There will be a group of highly qualified experts who will be responsible for the evaluation in rotation, for reviewing the quality standards and ensure that minimum standards exist in all areas of social service provision.

Public benefit status

CSOs can pursue any legitimate aim, including both private benefit and public benefit. In most countries, however, the state does not want to extend benefits (tax exemptions, state funding) to all CSOs; instead, it typically extends benefits to a subset of these organizations, based on their purposes and activities and in return it requires a higher level of governance and accountability. By providing benefits, the state seeks to promote certain designated activities which are of interest to the public. CSOs pursuing such activities are given many different labels, including “charities” and “public benefit organizations”. Moreover, in some countries, there may be no explicit status defined in the law, but certain purposes and activities are nonetheless linked to certain benefits.²⁸

Very often having ‘public benefit status’ is included as a requirement for some of the contracting procedures (e.g., Poland). Requiring public benefit status may limit the pool of the potential applicants. Public benefit recognition usually indicates (1) that an CSO provides services and activities that are considered publicly beneficial; and (2) that the state provides special recognition for these activities through direct or indirect support, or engaging such CSOs in the provision of services. In most of the countries, receiving public benefit status means ensuring more transparency, publicity and accountability of the provider. Therefore, this precondition is not related to the quality performance of the services, but to the accountability of the contracting party.

Sometimes governments choose to limit state funding to PBOs because as described above those organizations are engaged in activities predefined as of public interest and because they are subject to stricter regulations and increased supervision, which increases their accountability.

²⁷ Law No. 123 of 18.06.2010 on Social Services

²⁸ David Moore, Katerina Hadzi-Miceva, and Nilda Bullain., *A Comparative Overview of Public Benefit Status in Europe*, The International Journal of Not-for-Profit Law, Volume 11, Issue 1, November 2008.

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However, creating a general requirement that only public benefit organizations (PBOs) should be allowed to contract out may limit the scope of providers unnecessarily. Therefore, it may be better to allow the public authorities to decide on whether they will require public benefit status in each government funding, tender or contracting procedure. Allowing a wider group of organizations to be contracted (as opposed to only those with public benefit status) can prove to be more beneficial for the government. First of all the status is voluntary, and by making it a general requirement for government contracting (or in general, any government funding) many otherwise capable and eligible organizations may lose the opportunity to receive funding and implement projects which the government needs. In countries where public benefit status requirements are high and only a small portion of the CSO sector undertakes to apply and assume the related obligations, it may prove counterproductive to exclude non-PBO organizations from the process. Second, different contracting opportunities require different criteria and, sometimes having public benefit status may be beneficial, sometimes it may not be necessary. Third, the reporting, supervision and accountability requirements can also be part of the contract which the government will sign with the organization and therefore there is no need to limit it only to those with PBO status. Fourth, the (local) government may wish to provide grants or contracts to local CSOs to undertake community projects (such as the rebuilding of a playground or cleaning of the cemetery). Local CSOs which may best be suited to undertake such projects do not always apply for such status.²⁹

In Hungary state, public administration and budgetary organs can sign so-called “service provider contract” (contract to perform public task on behalf of the state entity) only with those CSOs which have public benefit status.³⁰ The following, however, are not considered service provider contract under the Law: the support to finance the task in case all the conditions of providing the support are determined in legal regulations and the decision-maker does not have discretionary right when making the decision.

Should the government contract with one umbrella organization or contract wider group of CSOs?

Contracting the services with one umbrella organization for covering the services provision in the whole area /country (all the places that the services should be provided) requires huge capacity of the providers that should meet these criteria - covering all technical requirements, providing access to everybody that shall need the service and facilities.

In the **Netherlands** MEE (a CSO) is contracted by the state to provide first entrance services (front office) for everybody who needs and has questions for how to get support from the social system in the country. This service is a combination of providing authority task to inform and help everybody who has questions how to receive support and a first step social support. MEE has offices all over the country and is obliged to provide this service to everyone who is searching for information or support and if the

²⁹ Public Funding for Civil Society Organizations - Good Practices in the European Union and Western Balkans, commissioned by EU/TACSO <http://www.icnl.org/research/resources/ngogovcoop/engb54.pdf>

³⁰ Article 35 of CLXXV of 2011

case is that additional services are needed they guide the person to special social services. The social departments are informed only if there is a need to „open a case” for social protection and start to manage the case.

In this model the “umbrella” organization deals with the complicated reporting and administrative requirements while small, local organizations can provide the services. A similar model is now employed in the UK – the prime contractor model. There are, however, different problems with this approach. In the UK contracts are usually won by big companies (not by CSOs) and there is no transparency on who the sub-contractors are and how are they chosen. The market is monopolized and as in other monopolies, prices are hard to control. Moreover, as it is not clear how the local providers will be chosen, the benefit of being closer to people might be lost.

In general, simplifying the procedures and allowing for more CSOs to be included in the contracting process may bring longer term benefits. For example, it can stimulate market development and in the long run there will be alternative providers with high capacity. However, such development perspective requires time and so sometimes contracting to an umbrella organization may be the more desirable approach.

V. Monitoring, evaluation and reporting

Monitoring and evaluation are important phases of all government funded processes. The monitoring has major goal – to ensure accountability for public spending. It also has two parallel objectives: (1) to ensure the quality of the delivery of the task (that was agreed to be performed during the contracting procedure) and improve it if possible; and (2) to control the expenditure of the public money. The purpose of evaluation is to assess whether the proposed services actually achieve or have achieved the goal of their creation (e.g. to improve the living conditions of vulnerable groups, to increase the level of literacy, etc.).

Principles of Proportionate Monitoring and Reporting, England³¹

For funders, good monitoring and reporting:

- help to ensure value for money
- show how the recipient spends the money, and
- demonstrate the impact of funding.

For funded organisations, good monitoring and reporting help them to:

- showcase the work they are doing, and
- learn and develop

Who can monitor

Monitoring can be done through:

³¹ Cabinet Office, Office of the Third Sector

Public control (by authorities): optional bodies within the law that are provided to ensure the public control on the policy related to social services provision and the quality of the services provided in a certain municipality.

Client control: in the quality framework the most important evaluation belongs to the self-control tools or the clients' control. It is in fact the only tool to assess objectively the most difficult part (but also the most important) of the services performance – how really the service affects the quality of life of the client. Moreover, the good practices of services investigation also include collecting/receiving feedbacks from clients or parents and this is serving as tool to check the outcomes of inspectors' evaluation.

Independent evaluation (by independent experts) – in this procedure the evaluation itself is a scope of contracting out to private and independent experts. This ensures more objectivity of the services performance and relies on higher level of expertise in the assessment of the results. In addition, there are different watchdog organizations that can also provide independent analysis of the quality of the services provided or the overall tendering procedure.

In **Bulgaria** it is a practice to contract out the evaluation of the services performance developed by the projects which are funded with EU programs. Also in some of the cases for the special children investigations independent experts with special expertise (i.e. doctors) can be included as internal part of the inspection teams. One of the most popular cases was in an investigation in one baby home when the state agency included in the investigation team of three pediatricians and their report managed to prove the lack of adequate healthcare for the abandoned babies and gave recommendation for restriction of the medical staff within the institution.

Types of control and monitoring

Control and monitoring can occur at the level when the contract is agreed upon. Through the process of registration, licensing, accreditation or certification a first level control is undertaken which gives right to only those candidates who qualify under the requirements to provide the services. Measuring quality of services is the second type of monitoring. The most common approach for measuring the quality is to use standards and criteria methodology: the standards define the quality requirements of the services and the criteria are the indicators which are used to evaluate the relevance between the provision of the services and the standards.

Rules for monitoring the implementation of state social contracts in Kazakhstan, 2012:

Authorized Agency shall carry out the monitoring of implementation of state social contracts every six months for the following indicators:

- 1) the impact of social programs and social projects implemented under the state social contracts on achieving the strategic goals and objectives of government policy established in the Strategy of Kazakhstan's development till 2030, the annual Message of the President of the Republic of Kazakhstan to the people of Kazakhstan, and other strategic documents;
- 2) the impact of social programs and social projects implemented under the state social contracts on achieving the objectives of the strategic plan of the government body;
- 3) the completeness of coverage of the target audience within the framework of the programs and projects implemented under the state social contracts;
- 4) the level of interest and meeting the needs of the target audience as a result of the implementation of state social contracts by the government body;
- 5) the amount of budget funds spent on the implementation of programs, projects under the state social contracts;
- 6) the qualifications of the service providers for the implementation of state social contracts.

Monitoring processes

Using standards as the basis, the inspection (carried out by the respective authorities) should result in a report highlighting good practices, areas for improvement and recommendations that should be followed. In line with best practices, reports should be public. In most of the cases quality control processes can include site visits which can be planned or can be undertaken without notice to the provider (very often after the authority is approached for that). The inspectors follow certain methodology that allows them to evaluate and monitor the quality of the services.

Estonia, Good Practice for Contracting Out Public Services

4.2. Exercising supervision over the performance of the contract must be sufficient for the public authority and thereby the public to objectively assess the accomplishment of agreed goals and the conformity of payments made to contractual partners to relevant goals and legislation. Important contract supervision measures will be, among others:

- customer surveys and satisfaction surveys
- regular and unscheduled inspections, incl. evaluation of buildings, measures, activities and personnel
- examining agreed documents
- submission of reports on a regular basis containing previously agreed content
- financial audits
- impartial audits.

Quality performance and payments

A way to link quality performance to payment is the performance based contracting. In it the provider is evaluated against certain milestones/benchmarks. If the benchmarks are achieved, the provider receives a bonus. One of the simplest “performance-based” systems is to divide the annual payment in 13 parts and if the contractor achieves the desired results after the end of the year, it receives the 13th payment.

The UK uses a system called “payment by results” or in the service provision it is called financing based on results. Payment by results is a form of financing based on which payments are contingent on the independent verification of results. This system However is very problematic for CSOs because the payment is received only after the results are visible. In the meantime all the costs are covered by the CSO. This may eliminate small providers from the service market as they cannot afford to cover the costs in advance.

Each provider is obliged to keep track of its performance and provide reports on the services provided and the clients served as well as other types of data which the provider is required to provide. These requirements are usually part of the contract and are used to evaluate the quality and the access to the service.

Another type of approach is measuring results is the “value for money” which essentially means the optimal use of resources to achieve the desired impact and results. Under this approach, the government assesses whether or not an organization has obtained the maximum benefit from the goods and services it provides, within the resources available to it. It is not only about whether the provider used the resources for the provision of the services, but also to evaluate the mix of quality, cost, resource use, how it relates to the purpose, timeliness, etc. to judge whether or not, when taken together, they constitute good value. Achieving this may be described in terms of the 'three Es' - economy, efficiency and effectiveness.³²

VI. Ensuring harmonized approach in implementation of various financial mechanisms

We recognize that the choice of financial mechanisms to support CSO involvement in government tasks delivery will depend on various factors discussed in this paper including, the type of policy, the service, the financial models and which public authorities provide for that service or financial support, requirements for CSOs, etc. Nevertheless some countries have adopted documents (laws or codes or guides) which set up a framework for the public funding procedures. These documents define and elaborate the principles of funding and detail the specific procedural requirements that are necessary for those principles to come to effect. These documents aim to unify the procedure and guarantee that the principle requirements are applied across all bodies and agencies of the government which distribute such funds. In

³² For more see: DFID approach to value for money
<http://www.dfid.gov.uk/Documents/publications1/DFID-approach-value-money.pdf>

addition, they also aim to ensure that the organizations who are applying for funding are informed and understand the framework that guides the funding process.³³ They can be adopted in different forms and result from different processes. In France, Hungary, Poland and Romania these principles are part of legal documents. In Croatia, Estonia, Macedonia the governments adopted codes. In England the government provides several guidance tools in order to facilitate the funding processes. Here we provide a brief overview of approaches from selected countries in Europe.

³³ Public Financing of Non-Governmental Organizations in European Countries, ECNL (awaiting publication)

	England ³⁴	Estonia ³⁵	Hungary	Hungary	Macedonia	Poland	Romania
Name of document	Decision Support Tool (DST) 2009	Code on Good Practice for Contracting Out Public Services	Act CLXXXI of 2007 on Transparency of Financial Support Provided from Public Funds	Law CXCV of 2011 on fiscal administration³⁶	Code of Good Practices in Financial Support of Associations and Foundations (2007)	Law on Public Benefit and Volunteer Work(2003)	Law no. 350/2005 on the conditions of non-refundable financing from public funds assigned for general interest non-profit activities
Legal force	A web-based guidance tool (non-binding)	Non-binding	Binding	Binding	Non-binding	Binding	Binding
Types of funding mechanisms and models it covers	Funding models available to the public authorities (grant, grant-in-aid or procurement)	Contracting	Generally all funding models available to the authorities (grants, subsidies, contracting)	Generally all funding models available to the authorities (grants, subsidies, contracting)	Grants	Contracting	Grants
Scope and purpose	To provide practical support for decisions	The objective of the Code is to ensure that the	The Law applies to the financial supports	The overall purpose of the Law is to ensure	The Code prescribes the general	The Law regulates 1) the public benefit work of	The Law applies to any contract assigning non-

³⁴ England also introduced another tool called “*Successful Commissioning: How to secure value for money through better financial relationships with third sector organizations*”, March 2010. This guide targets all commissioners, procurement officers and managers, and grants officers who work in local authorities and local health organizations, including in primary care trusts. The guide provides the main issues for effective financial relationships with CSOs; makes use of existing guidance in an accessible and practical way, and; dispels some of the ‘myths’ that exist around commissioning with the third sector.

http://www.nao.org.uk/sectors/third_sector/successful_commissioning/successful_commissioning/guide_home.aspx For more information about the approaches in England see: http://www.nao.org.uk/our_work_by_sector/third_sector.aspx

³⁵ <http://ngo.ee/node/279>

³⁶ Available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100195.TV

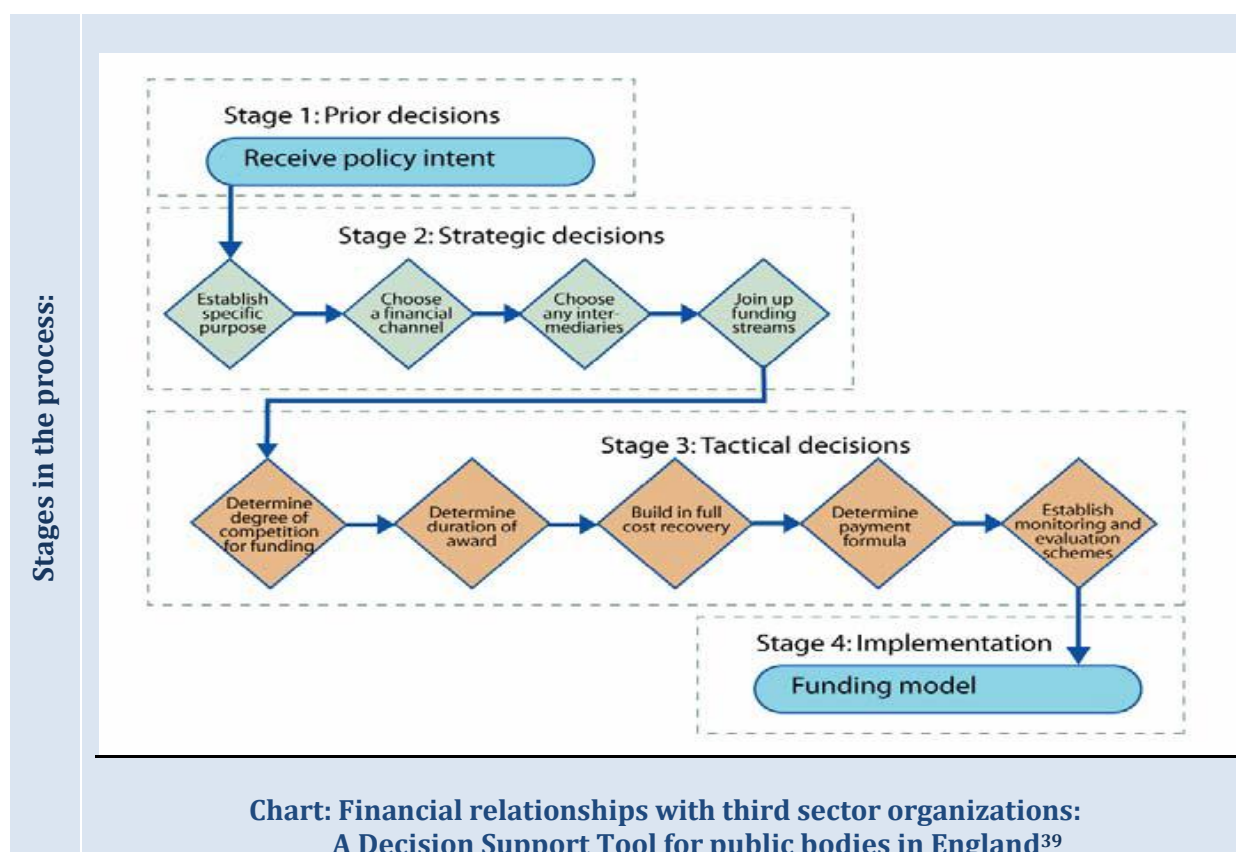
	England ³⁴	Estonia ³⁵	Hungary	Hungary	Macedonia	Poland	Romania
	<p>about the design of appropriate funding models; therefore it should be used before making the decision on which funding channel to use and before starting the process.</p>	<p>public authorities as transferor and the CSOs as service providers base their provision of the service on the same principles in order to make sure that goals important to the society are achieved.</p>	<p>provided with a special decision from the subsectors of the fiscal administration; EU sources; other programs financed on the basis of international agreements.</p> <p>It applies to both cash and in-kind contributions, financial support provided through tender procedure or without tender procedure. If the conditions of the state financing is prescribed by law and the decision-making authority cannot decide on the financing, then this Law does not apply.</p>	<p>the operational conditions of a transparent fiscal administration in order to fully implement the public tasks. The Law has a separate chapter on budgetary support, which applies to all cash contributions provided from the subsectors of the central fiscal administration without consideration.</p>	<p>procedure for allocating funds to associations and foundations from the Budget by state administration bodies, the principles and the basic criteria.</p>	<p>non-governmental organizations in the area of public tasks and cooperation of public administration authorities with non-governmental organizations;</p> <p>2) acquiring a public benefit status by non-governmental organizations, and operation of PBOs;</p> <p>3) supervision to be exercised over public benefit work;</p> <p>4) establishing and operation of Council of Public Benefit Work</p>	<p>refundable financial allowance from the state and, local budgets, external financial aid, or external loans contracted or guaranteed by the state or by the local public administration bodies, as well as internal loans contracted by the local public administration bodies to non-profit natural or legal persons – associations or foundations set up according to the law, or religious denominations, admitted by the law.</p>

	England ³⁴	Estonia ³⁵	Hungary	Hungary	Macedonia	Poland	Romania
Who does it apply to	Public sector officials responsible for financial relationships with CSOs	Public authorities, including the state, local governments and their agencies	Public authorities that provide funding from the state budget	Public authorities that provide funding from the state budget	The Government and state administration bodies which support CSO projects through grant schemes.	Section 1) applies to all public administration authorities intending to commission the performance of a public task to non-state actors.	Any public institution, as defined by the Romanian Constitution, including the body of judges, as well as any national or regional public interest institution, which has the quality of loan manager, according to the law
Main issues covered	The DST elaborates four stages of design, beginning with the policy intent (the objective to be achieved), strategic decisions about the design of the programme, tactical decisions and concluding with implementation. Officials can use	The Code prescribes 1) the principle for the scope of public services that can be contracted out; 2) the objective of contacting out; 3) the issues that are considered and determined when planning to contract out a service; 4) the principles of selecting a service	The Law regulates: 1) the circle of information of public interest related to the financing process; 2) the disclosure of public information (website operated by the Government); 3) the circle of people/organizations that cannot be	The Law regulates 1) the criteria which shall be met by the beneficiary to receive funding; 2) the methods of providing the support (pre/post financing, in one sum or by installments etc.); 3) reference to the application of the Public Procurement Law	The Code covers the following issues: principles of the procedure, general criteria for CSOs, (though state bodies are allowed to develop more specific criteria), requirements of the procedure, how public calls should be announced, selection of the	Related to section 1) the Law prescribes the procedure of an open bid tender, including the content of the open bid tender announcement; the methods of announcement; the content of the offer; the principles of evaluating the offers; the	The Law prescribes 1) the principles of providing state funding; 2) the stages of project selection procedure; 3) the circle of public interest information; 4) transparency and publicity requirements related to the announcement of

	England ³⁴	Estonia ³⁵	Hungary	Hungary	Macedonia	Poland	Romania
	<p>the whole DST, or select the parts of it which are needed in specific situation.³⁷</p> <p>It covers the principles in designing financial mechanism, and how to apply them, program objectives, how to choose a funding channels, how to choose contract scale, measures to ensure CSOs are not disadvantaged, duration of award, full cost recovery, EU state aid etc. It also provides links to useful documents and case studies.</p>	<p>provider (justification for organizing a request for tender/selecting the service provider through negotiations/planning and execution of the service in cooperation with a single provider); 5) conclusion of agreement and the conditions that needs to be agreed; 6) contract administration and supervision; 7) responsibility of the parties.</p>	<p>applicant and receive funding (conflic to interest rules); 4) the procedure in case conflict of interest arises; 5) the content of the conflict of interest statement submitted with the application.</p>	<p>in case the preconditions apply; 4) reporting obligation of the beneficiary; 5) rules on reclaiming the budgetary support; 6) supervision of the budgetary support.³⁸</p>	<p>proposals, notification of results, conflict of interest prevention, provisions regarding the agreement with the CSOs, information to be published on the internet, general procedures for monitoring, coordination and assessment.</p>	<p>selection of the tender board evaluating the offers; the obligation of both parties (e.g., the authority shall concurrently be obliged to provide financing for the completion of the task); the term of the contracting; the principles of monitoring and evaluating the implementation; the reporting rules, the conditions of cancelling the open bid tender; the exemptions for the open bid tender.</p>	<p>the call for proposal, the awarded projects, the annual report of the authorities on the concluded contracts and their result in the fiscal year; 5) the deadline for the project proposal submission; 6) the eligibility criteria; 7) the conclusion, execution and termination of the contract</p>

³⁷ An illustration of the main steps provided by the DTS is provided below.

³⁸ The detailed rules of these issues are laid down in the 368/2011. (XII.31.) Government Decree on the implementation of the Law on fiscal administration. Available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100368.KOR



VII. Recommendations for next steps

The present document aimed to raise various issues for the consideration of the working group of the Ministry of Economic Development in Mongolia, in order to support the elaboration of the concept on contracting. During our visit to Mongolia we understood that some steps need to be taken to create a more enabling legal and fiscal environment for contracting out government tasks to non-state actors, including CSOs. The following recommendations are based on our field trip and the desk research of good practices of various countries, including Bulgaria, Hungary, England, the Netherlands, Kazakhstan, Moldova, Poland. In the light of this information we would suggest the following next steps to be considered:

1. Mapping out of government services

Generally, the legal system of the countries determines various tasks at different levels (constitution, laws, decrees etc.) which are mandatory to be provided by the state and local government administration. Also, the government has an obligation under the international law to ensure the provision of basic services to the population. Due to the complexity of the legal framework and the oftentimes different approach used by the various legislators to identify the

³⁹ http://www.nao.org.uk/guidance_and_good_practice/toolkits/better_funding.aspx#toppage

compulsory government tasks it is inevitable to start with mapping out the existing circle of government tasks and the authority responsible for their implementation.

Such mapping out of government tasks could ideally result in the categorization of these tasks. According to our understanding such categorization was already started by the Institute of Academy for Management. The mapping could help identify areas and functions that CSOs could be potential service providers. Also, it may result in identifying further services which would be desirable for the citizens but so far was not considered as a mandatory government task.

2. Mapping out areas where CSOs are engaged and forms of involvement

The state is responsible to design an appropriate policy framework to deliver services to the population. However, this does not necessarily mean that it needs to deliver the services itself. The mapping out of government tasks would provide a great opportunity to review what are the government tasks, functions which are currently undertaken by non-state actors, including CSOs, and what are the other areas where the involvement of CSOs would be also possible and beneficiary. In the same time, it would be beneficial to understand better what are the areas where CSOs are already engaged in and provide service, in order to match the government tasks, needs and capacities of the sector.

We learned during our trip that some of the ministries, including the Ministry of Environment and the Ministry of Population Development and Social Protection have several years of experience with working with CSO. According to our understanding, however, they are generally providing grants to CSOs and the mechanism of contracting out government tasks is less widespread at the moment. Therefore we would encourage mapping out the existing methods of financing (grant, subsidy, contracting, third party payment) and considering whether the currently used methods in a given area are the most beneficial to involve CSOs in the implementation of government tasks. As an example, the grants are a good mechanism to strengthen the capacity of CSOs to provide specific services or they can be used to design innovative services for which there are no existing service standards. On the other hand, they may be less suitable for strictly defined services and longer term engagement with the target groups, which is particularly important in the area of social services. It would be important that both grants and contracting exist and are used depending on the needs and resources available. Also, they can be combined to enhance the system of contracting. For example, the government can provide grants for increasing the capacity of certain social service providers and then announce a social contracting competition for the provision of the specific service. The state may also design grant programs to provide co-financing to other donors' programs which target the delivery of specific social services.

3. Assessing capacity of CSOs in areas where they are or could be engaged

Parallel to mapping out the government tasks and the areas where CSO involvement would be possible and beneficial it also needs to be considered whether the CSOs have enough fiscal and institutional capacity to undertake the given task. As we learned from various meetings, the lack of CSO capacity is an existing problem in most of the areas of service provision (if not at all) in Mongolia. However, we encourage the decision-makers not to consider this as an obstacle for the

involvement of CSOs but rather an opportunity to find the tools to further strengthen the civil society.

As we described earlier the involvement of CSOs have several added value: CSOs are closer to the problems, innovative and can be more flexible when immediate steps shall be taken. Also, contracting out government tasks may result in higher quality and better accountability of service when on the other hand it would relief the government from setting up the infrastructure necessary for the given service and would allow focusing on its core functions. Considering these benefits, the importance of a strong civil sector in a stable and democratic state as well as to promote the partnership and workshare between government and civil society for the effective fulfillment of state/local task several European countries set up separate funds/foundations to support the development of the civil society as such.⁴⁰ This could be one of the tools to strengthen the capacity of CSOs and enable them to increasingly participate in the implementation of government tasks.

4. Mapping of laws in each field to determine opportunities for contracting and identify the legal barriers

As a matter of good practice the legislation of several countries (e.g. Poland, Hungary) specifically authorizes state bodies to contract out government tasks to non-state actors, including CSOs. In other countries, e.g., Kazakhstan, the Government adopted a Concept of State Support of CSOs which laid the basis for development of partnership between Government and CSOs and CSO involvement in delivery of socially important issues through the state social contracting. Such authorizations generally create the opportunity to contract out to CSOs and therefore it is important to adopt them. Still, there may be other legal barriers which influence the capacity of CSOs to deliver services. As an example, in some countries it was (or is still not) allowed for CSOs to engage in direct economic activities and therefore they had/have to set up a separate legal entity to undertake such activities. Some of the examples are Armenia and until most recently, Ukraine. The restriction of economic activity means that CSOs technically cannot participate in contracting procedures. We encourage the state authorities to map out the existing legal framework in order to make sure that such barriers do not hinder contracting out government tasks to CSOs.

On the other hand, it would be important to review the legal framework of the different mechanisms to fund non-state entities for service delivery, including grant, contracting out, procurement, and third-party payment. The lack of such regulation is an impediment to developing them. While in some countries the general procurement rules apply for contracting out services it is generally more beneficial to set up a separate mechanism for such purposes (similarly to Poland). One reason is that very often procurement is overly burdensome for smaller local governments and civil society organizations. More importantly, under procurement the leading criterion for determining the winner is normally the lowest price (this is the case in Kazakhstan where social contracting uses the procurement procedure). The lowest price should

⁴⁰ Agency for Support of Civil Society in Albania, National Foundation for Civil Society Development in Croatia, National Foundation of Civil Society in Estonia, National Civil Fund Program/National Cooperation Fund in Hungary

not be the leading evaluation standard in contracting, because in several services (including the social services) it is important to obtain the best possible quality or standard quality service for more people at a certain price.

In the same time, we have learnt that there already good practices and regulations in ministries in Mongolia, which involve CSOs. Therefore it would be beneficial to map and review those, and see what are the common denominators, opportunities, challenges and learning points that could be applied to other areas.

Considering the diversity of services it may not be possible to regulate all aspects of contracting out in one single law, but could be more suitable in the separate laws of the different subsectors. Even in such a case it is beneficial to lay down the overarching principles of transparent and accountable approach in contracting out /funding CSO, in a single Law/Code that would guide all authorities which are providing financial support to CSOs through this mechanism. Such examples may be found in several countries, including Estonia, UK, Poland and Hungary.

5. Assessing capacity of state authorities

In order for the process of contracting to be launched there is a need to have qualified civil servants that understand the ideas and purpose of the process, as well as the technicalities of the procedure. Governments should focus on increasing the capacity of the public officials that deal with designing of contracting procedures, carrying out, evaluating and monitoring contracting. Officials should also understand the importance and value added of involving CSOs in the services delivery system, the various methods that they can use and how to implement them. Capacity building programs would be one approach towards this, another is to develop guidelines that would provide step-by-step procedures and forms public authorities can use (as the example of the English Decision Support Tool).

6. Piloting contracting mechanisms in one area

The sequencing of such investment in capacity building is a critical challenge for many governments, as they cannot implement an effective contracting system without the capacity but the immediate and ongoing need to deliver services puts a serious resource constraint on the capacity development process (both financially and in terms of availability of human resources).

This dilemma can be overcome by taking a more sequential approach to introducing contracting out; e.g. launching a systematic effort initially only in certain territories or in certain types of services. It is advisable to start with areas where the essential pre-conditions are met, e.g. there are enough capable CSOs, service standards are already developed and / or local authorities have not only the mandate but also the financial resources. A gradual approach provides the opportunity for focused learning and skill building of a specialized part of the administration, who can then pass on the learning to other departments.

7. Assess available funding

By default, the government should fund the total cost for the services that it has a legal obligation to provide. In cases where there is no legal obligation, e.g. desirable services, the government may decide to fund only part of the service recognizing that they are important for a specific part of the population or contribute to the welfare of all local citizens. In general, however, when there are strict standards and other parameters of the services, the government should be prepared to fund the costs of service in exchange for the desired quality and quantity of the service.

Putting the beneficiary perspective at the heart of services provision, there is also the need to secure long-term sustainability of the services. This means that funding should be predictable so as to enable CSOs and other non-state service providers to plan the future service provision having an indication of the approximate funding that will be available for this type of service. Once funding is predictable, CSOs may be willing to invest in developing their capacity for service provision, including buying technical equipment because they will know that this investment could be used in the future. If funding priorities change annually or if only short-term contracts are awarded, CSOs are not likely to invest in building their capacities for long-term services delivery.

Predictable funding is more feasible when the government has a clear policy aiming to support the contracting. In addition, it is important that in the budget (local or national), there is a separate / distinctive line item for services which does not change unpredictably or dramatically each year. Predictable funding also means that multi-year planning is possible, thus allowing a service provider to enter into long-term (multi-year) agreements. This is of utmost importance from the beneficiary perspective as multi-year funding framework provides continuity of service, and also continuity of familiar service provider (as long as the provider is providing good quality services in line with the prescribed standards).

Based on the above we would encourage the state authorities assess the existing resources and whether sufficient funds are allocated for the implementation of government tasks directly or through contracting out to CSOs.