

Marco Regulatório Já!

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Case study: Setting up a regulatory framework for partnership between civil society and public authorities in Brazil

Background

The promotion of a conducive environment for civil society organisations (CSOs) is one of the top priorities in the September 2012 Communication from the European Commission *The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations*.¹ To inspire EU Delegations and EU staff in headquarters, The Directorate General for International Cooperation and Development of the European Commission is developing a number of case studies to document good practice in this area. This particular case study portrays the development of the regulatory framework for CSOs in Brazil²

The initiative in brief

Brazil is a profoundly heterogeneous country where civil society and social movements are seen as vital actors.³ Public authorities have since long recognized the importance of civil society.

Nevertheless, in recent years civil society organisations have been calling for a reform of the partnership between public authorities and CSOs and the state funding rules. Brazil experienced rapid economic growth, making state funding an increasingly important resource for CSOs. CSOs at the same time became increasingly active



Photo Credit: Roberto Stuckert Filho/PR.

"The birth of the Regulatory Framework for CSO is a breakthrough of democracy in Brazil, which started to consider formally CSOs as legitimate entities in the relationship with the state. (...) Democracy is strengthened when the state opens to social participation. To give voice to citizens is a requirement for our inclusive development process, and CSOs are key actors in it with presence to reach citizens and choose the best alternative to perform."

- President Dilma Rousseff,
Brasília, 31/07/2014

¹<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF>
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132870.pdf

². The case study has been developed for the European Commission by the European Center for Not-for-Profit Law (ECNL) in consultation with the EU Delegation in Brazil, the General-Secretariat of the of the Presidency of Brazil and Brazilian Association of NGOs - ABONG. The content of this publication can in no way be taken to reflect the views of the European Commission or the European Union

³ According to the legal framework CSOs are considered as private non-profit legal entities without lucrative purposes that do not distribute their profit and implement activities to achieve their social objectives. Two main forms of non-profit organisations are the associations and foundations; however the broader understanding of civil society includes also trade unions and social movements. CSOs in Brazil typically provide social services, represent the interests of various sectors and promote respect for human rights, and lobby for social, political and economic changes.

in delivering social services on behalf of the Government. Where state funding was available there was no national legislation that would guarantee a fully transparent distribution of the funding, based on clear criteria. In parallel, foreign investment and funding for CSOs started to decline. This had negative implications for CSOs working on environmental issues, development and human rights who did not necessarily want to rely on state funding. These, and other factors prompted the CSOs to question their role in society, keen to ensure that their status as autonomous organisations would be recognised and strengthened.

To respond to these challenges the CSOs demanded a new regulatory framework that would improve the mechanisms and conditions for partnerships with the state and safeguard their overall role and viability. As a result, a new law regulating the partnership between CSOs and public authorities - Law 13.019/2014; (hereinafter: "the Law") - was approved by the National Congress and signed by President Dilma Rousseff in July 2014.

The Law aims to create better rules for contracting government services and distributing funds to CSOs through objective criteria and procedures. It also aims to strengthen sustainability of all CSOs by improving the tax framework for CSOs, and introducing mechanisms that will allow them to utilize different sources of funding. The framework also provides for a series of measures to support the implementation of the legal provisions in practice including capacity development, training and development for the public authorities and CSOs; communication and dissemination of information; and studies and research.

The new Law which regulates CSO partnership with the public authorities recognises CSOs as autonomous organisations, which can not only deliver but also propose projects that the state may fund. The Law prescribes clear rules and good practice standards for the process of distribution of the state funds, which need to be followed by all levels of the public administration. The objective is to increase legal certainty for the CSOs applying for state funds and make it accessible to a broader group of organisations. Moreover, the law foresees the creation of a national body - a council for collaboration and promotion - to strengthen the good practices and the framework for partnerships with CSOs.

The Process⁴

The drafting of the Law was conducted through a participatory process involving multiple stakeholders, coordinated by the General-Secretariat of the Presidency. The following three key elements were instrumental to the success (i) **civil society's engagement** in the process; (ii) **strong leadership** from the Executive that placed the agenda as a priority for the General-Secretariat of the Presidency; and (iii) the **cross-party support** secured in both houses of Congress.

More specifically, the process was characterized by the following elements:

⁴ This section was developed by heavily relying on Scardone, D. "Towards a new relation of partnership between civil society organisations and the State: The legal framework for civil society organisations and Law 13.019 in Brazil", 2014 (draft, awaiting publication).



- (1) **Collective and coordinated approach by CSOs:** In 2010, The Brazilian National Association of NGOs (ABONG) and other national organisations started an advocacy campaign for the adoption of the regulatory framework. They created the *Platform for a New Regulatory Framework for Civil Society Organisations* (hereinafter: “the Platform”), which engaged over 50,000 organisations, social movements and networks and became the main channel for dialogue and negotiation with the Federal Government. The Platform developed a web site⁵ to facilitate broader consultations.
- (2) **Ensuring commitment from political leadership:** At the beginning the Platform concentrated its advocacy efforts towards the executive branch. First, in the run up to the elections, it initiated a political dialogue by sending an open letter outlining CSO proposals for reform to all the presidential candidates. Formulating credible proposals was important to get the buy-in from the administration. Two presidential candidates supported their campaign, one of them the current President Rousseff who responded with an open letter of support and own proposals. As a follow up to the elections, the Platform initiated a structured dialogue with the Rousseff administration.⁶ Second, this dialogue contributed towards the formulation of various proposals that were sent to the Congress and were subject to debates. Ultimately, in the Congress, the Bill gained political strength, as it received multi-party support from both the Government and the opposition, as well as the support of influential rapporteurs from political parties in both houses of the Congress.



Approval of the Law in the Congress
Photo Credit: Marco Ninni/Secretaria-Geral da PR

- (3) **Intensive and cross country consultation:** An inter-ministerial working group was set up and coordinated by the General-Secretariat of the Presidency. It was composed of seven ministries and 14 CSOs (seven acting and seven substitutes). It organised several public debates and bilateral meetings with public authorities and civil society. In 2011, the group held an international seminar to build a plan of action and guidelines for its activities. In 2014 another seminar was organised where President Rousseff signed three decrees⁷ aligned with the overall spirit of the framework and the Law. The group also produced a detailed report with concrete recommendations for reform.
- (4) **Ownership** was maintained through a participatory process which involved all interested parties – CSOs and public administration.
- (5) **Reliance on both domestic and international experience.** In consideration of the proposals, international and European experiences were studied and discussed to inspire the formulation of a domestic model created for the national context.

Ensuring successful implementation

In Brazil, the Law will need to be implemented on all levels and by all public authorities: the federal administration, the federal district, 26 states, 5,570 municipalities and more than 300,000 CSOs. To ensure harmonized implementation the General-Secretariat of the

⁵ See: <http://plataformaosc.org.br/>

⁶ As described in: Case Study Platform for a new CSO regulatory framework in Brazil, “Advocacy Toolkit”, Open Forum for CSO Development Effectiveness, January 2012; page 43

⁷ National Policy for Social Participation, Decree for implementation of Law 12.101/09, which establishes the Certificate for Charitable Social Assistance Entities, and Decree for regulating remuneration of CSO public interest workers engaged in partnership projects with the Federal Government.

Presidency organised over 70 seminars to raise awareness and hearings on the potential of the Law. An online consultation on a draft implementation decree was also organised.⁸ In total, more than 12,000 people had taken part in these activities. Several audio-visual⁹ materials were produced.¹⁰

During this process, it became clear that more time is required to prepare the ground for implementation. As a result, in October 2014, the President signed an interim measure to postpone its entry into force for nine months to allow the government and CSOs time to prepare for the new requirements. The consultative collaboration between CSOs and the government in this process is seen as an important step to ensure that the implementation of the Law results in the desired benefits.

The role of the EU Delegation to Brazil

The EUD Brazil has a strong partnership with the Brazilian civil society and the government. As a case in point the EUD Brazil has provided continuous and increasing political support to the reforms regarding the enabling environment. It also financed projects by the CSOs as the local reform initiatives were developing and unfolding. Support was provided mainly under the previous thematic programme Non-State Actors and Local Authorities in Development (NSA-LA) and the European Instrument for Democracy and Human Rights (EIDHR).



Mr. Jérôme Poussiélgue (EU Delegation to Brazil), speaking at the 2nd International Seminar with Ms Laís Lopes (General Secretariat of the Presidency) and Ms Vera Masagão (ABONG)
Photo credit: Leandro Portes

To support the reform process, the EUD Brazil undertook several approaches. Most notably:

- The EUD Brazil **followed, supported and promoted** the regulatory framework initiative **from early stages and continuously**. It attended debates and meetings, promoted the General Secretariat of the Presidency and the Platform, and encouraged exchange with a broader group of organisations.
- Through the so-called EU-Brazilian Dialogue Project, it **facilitated exchanges with international experts and local organisations**, through seminars and research. Specifically, it participated in and funded the *2nd International Seminar of the Regulatory Framework for Civil Society Organisations in Brazil*, in May 2014. The event brought together 500 participants and 35 speakers from more than 10 countries. The Seminar aimed at strengthening CSOs by stimulating the debate related to issues that the new regulatory framework aimed to address.¹¹
- The EUD Brazil also supported CSOs in their **engagement with the media**. It provided political and financial support for the seminar *Press and Civil Society Organisations* which addressed the importance of the sector and its contribution to society,

⁸ See: <http://www.secretariageral.gov.br/> and http://www.secretariageral.gov.br/atuacao/mrosc/consultas/consulta_15dezembro.pdf

⁹ See: <https://www.youtube.com/user/tvmrosc>

¹⁰ See: <http://www.participa.br/osc>

¹¹ Supported by the 7th call for proposals within the framework of the EU-Brazilian Dialogue Facility Project which took place from 21-23 May 2014 in Brasília. <http://sectordialogues.org/pt-br/noticia/seminario-debate-marco-regulatorio-das-organizacoes-da-sociedade-civil>

development, social justice and democracy¹². The event highlighted the important role the media can have in promoting CSOs and bringing them closer to the public;

- Finally, the EUD Brazil maintained a **continuous dialogue with CSOs and their networks**.

More broadly, the EUD Brazil has integrated issues regarding the enabling environment in initiatives which aim to create **synergies and experience sharing with European counterparts** giving the possibility to the CSOs to contribute to the political dialogue and to show the importance that the EU attaches to the involvement of civil society in different forums. For example:

- The *EU-Brazil Civil Society Roundtable* was set up in 2009 by the European Economic and Social Committee (EESC¹³) and the Brazilian Council for Economic and Social Development (CDES¹⁴). The Roundtable reflects a commitment by both parties to contribute to the implementation of the provisions of the joint EU-Brazil action plan concerning the cooperation between civil societies within the framework of *the EU-Brazil Strategic Partnership*. The Roundtable takes place once a year and the EUD Brazil supported and participated in the last one in Brasília in September 2014.
- The *EU- Brazil Civil Society Human Rights Seminar* organised once a year, discusses CSO related themes. In addition, in 2014, for the first time, one CSO was able to present the results and recommendation from this seminar at the *EU – Brazil High Level Human Rights Dialogue* in the presence of the EU Special Representative of Human Rights, and the Brazilian Minister for Human Rights. This was an initiative launched by the EUD Brazil.

Lessons learned

The EUDs and international donors can have an important role as funder and supporter. The following key principles and elements can be considered in similar initiatives.

- Assistance can be provided in terms of **funding** for projects regarding the legal reform but also for capacity development. Delegations can provide assistance also through **political dialogue**. The presence of the EUD Brazil at various seminars sends a strong message of support for the reforms and the initiatives of the civil sector.
- Applying a realistic **bottom-up approach**, which relies on the assessment of the situation and the context, is beneficial for understanding the needs, critical points, challenges and for identifying good practices. This can ensure that programming and support is targeted to the actual needs and priorities of civil society.
- **Regular consultation and dialogue with CSOs** allows for mutual learning and understanding. It can also help increase awareness of the types of support the EU can provide at various stages of the reform processes and increase visibility of that support.
- **An continuous, long-term approach** is important, especially in enabling environment reforms as it will allow for engagement and interventions at all stages of the process – from assessment, consultations, and drafting up to adoption.
- Providing political and financial **support for follow-up and implementation** of reforms is also an important part of all law reform processes. It can help ensure that the

¹² See: http://www.andi.org.br/sites/default/files/Analise-de-midia_OSCs_16Dez-2014-1.pdf

¹³ http://www.eesc.europa.eu/index_en.asp.

¹⁴ <http://www.cdes.gov.br/>

laws are applied in a harmonized manner by the authorities; there is awareness about the new rules and understanding as to how CSOs can utilize them.

- **Creating synergies with European CSOs** can allow for efficient and effective bridge-building and experience sharing between European and local CSOs and adaptation of good practices based on the local needs. Strengthening partnerships between European and local CSOs can be facilitated through networks or regular dialogue.

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