

DRAFT

Western Balkans Recommendation on Public Participation

Preamble

The Ministers in charge of Public Administration Reform from Western Balkan economies,

Acknowledging the Public Administration Reform as fundamental in the European Union integration process,

Convinced that poor regulatory environment undermines business competitiveness and citizens' trust in government,

Convinced also that modern economies need smart regulations for growth, investment, innovation, market openness and to support the rule of law and promote better lives,

Convinced further that in order to properly underpin markets and protect the rights of citizens, regulations must be developed through a comprehensive framework in which policies are assessed by employing empirical data,

Bearing in mind that systematic engagement of all affected stakeholders considerably helps with analysis of impact of new or amended laws and regulations, and that public participation is hence an important tool of evidence-based policy-making,

Considering that public consultations offer an opportunity for businesses, other organisations and individuals to participate in public life and that such participation considerably improves trust in institutions,

Concerned about common shortcomings in the legislative framework implementation in the field of policy coordination and development,

Concerned also about inconsistency of quality and effectiveness of public consultations as an integral part of the policy making process,

Recalling the SIGMA Principles of Public Administration,

Recalling the South East Europe 2020 Strategy “Jobs and prosperity in a European Perspective”,

Recalling further the Council of Europe Declaration on the Code of Good Practice for civil participation in the decision-making process, adopted by the Conference of INGOs in 2009,

Recalling also the Statement of the Ministerial Conference of the SEE Investment Committee “Sustaining Growth in SEE through Increased Competitiveness” held in Becici on December 9, 2015,

Recommend that governments of member economies regulate and implement public participation processes in accordance with the following

Recommendations

1. Key rules of effective public participation

1.1 EMBEDDEDNESS INTO POLICY MAKING PROCESS: Public participation needs to be firmly embedded in the policy-making process. Proactive engagement of stakeholders broadens the collection of data and evidence, fills data gaps and contributes to better examination and understanding of the benefits and costs of the proposed policy and legislative interventions. Public participation should therefore be an integral part of any regulatory impact assessment and evidence-based policy-making. Participatory processes should be consistently implemented in drafting of both primary and secondary legislation as well as in drafting of policies and strategic documents.

Participation may only be limited in exceptional cases. All exceptions (e.g. when this is required by the interests of security or defence, in order to eliminate consequences of natural disasters, or to prevent irreparable damage) should be defined in advanced. When an exception is used, it needs to be clearly justified, stating the concrete reasons for such decision.

1.2 CAREFUL PLANNING: Public participation needs to be carefully planned. Planning should involve: identifying the objectives and corresponding consultation methods, resources and time needed to achieve them, and timetabling the activities.

1.3 SUFFICIENT RESOURCES: Before initiating concrete policy making process, public authorities need to ensure that sufficient financial and human resources are available for the implementation of public participation processes.

1.4 PROPORTIONALITY: Public participation process needs to be planned proportionately to the complexity of the issue. More complex issues demand more complex approach, more

time, a variety of methods and stakeholders, while less complex issues may require significantly less.

1.5 SUFFICIENT TIME AVAILABLE: Reasonable time should be provided for information sharing, for the public to consider the issue and prepare contributions, and for public authorities to consider the comments and implement all steps in a quality manner.

1.6 PROACTIVNESS: As efficient public consultations provide free external expertise and may help with generating public support for the upcoming legislation, decision-makers need to act proactively when implementing consultation processes (e.g. actively seek and invite stakeholders).

Public authorities should consider encouraging participation by offering different kinds of supportive measures to stakeholders which get actively involved.

Public authorities should provide a permanent communication channel (e.g. web platform, liaison officers), through which the public and expert audience (business associations, academia, umbrella NGOs, think tanks, research institutes, etc.) could communicate their initiatives regarding public policies and legislation. Such contributions should be considered when preparing new or revised regulation.

1.7 ADVANCE NOTIFICATION: Public consultations should always be announced well in advance in order for the public to reserve enough time for active participation. The most systematic approach would be to publish an annual consultation plan along with the Government's annual legislative plan. In order to effectively reach stakeholders, public authorities, along with the advance notice, should also invite stakeholders to express their interest for participation in development of a specific draft.

1.8 EARLY INVOLVEMENT: Public participation should take place from the earliest stage of the drafting process. At each stage of the policy-making cycle all relevant stakeholders should be included.

1.9 TARGETED APPROACH: Public participation should always be targeted. Communication channels, chosen methods and information being provided must be adapted to the issue at stake as well as to individual characteristics of different stakeholders. While e-consultations are widespread due to their easy use, cost-effectiveness and broad outreach, their limitations should also be taken into account. For public authorities, the use of e-consultations significantly reduces the possibility of simplified presentation of proposed solutions, and for the public there is a demand for a time-consuming written response. Public authorities should therefore typically use other methods in combination with e-consultations.

1.10 ACCESSIBILITY OF INFORMATION: At all stages of policy-making, all relevant information should be available to stakeholders and presented in clear and easily understandable

language and in an appropriate and accessible format, without undue administrative obstacles.

1.11 RESPONSIVENESS, TRANSPARENCY AND TRACEABILITY: To gain the public's trust as well as support for the policy at hand, and to improve its implementation, public authorities should always provide feedback on received contributions. Stakeholders should be informed if significant changes to the draft are made during the process.

Every contribution needs to be registered and analysed in a transparent manner. Such exercise will result in a clear legislative footprint and will help ensure that interest groups' influence on policymaking is not disproportionate, and that undue influence and state capture are prevented.

1.12 CONTINUOUS QUALITY CONTROL

Public authorities should monitor the implementation of participatory processes. They should monitor the process itself – implementation of planned activities, the timeline and the use of resources; as well as its quality – how the activities were implemented and if the set objectives were realised.

When the process is over, it needs to be internally evaluated. The evaluation should include the assessment of implemented methods, appropriateness of the set objectives, success with the identification and involvement of stakeholders, incurred costs and reached benefits and impact.

Public authorities should establish an appropriate institutional framework for central quality control and oversight of participatory processes and set clear criteria for documents which should be submitted to the government for consideration (i.e. which are the required documents and what is the expected content of key complementary documents, e.g. impact assessment, information about the results of the consultation process, etc.). Central quality control body needs to be empowered with the authority and capacity to review the content of the proposals against the set requirements and to take action if the requirements are not met (e.g. to make recommendations, to return the draft to the sponsoring ministry).

Such body could also be responsible for further increase of awareness about the importance of public participation and ensuring harmonised implementation of public participation by different bodies.

Centre of Government or other body with similar responsibilities should be responsible for the centralised quality control.

Public authorities should establish a compliance mechanism that would enable complaints and potential redress in cases when public consultations failed to be implemented in accordance with the rules.

2. Recommendations by stages of the policy-making cycle

2.1 Issue identification

As the objective of this stage is to identify core issues and detect whether the problems lie in legislation or practice, consultations should on one hand be broad, involving all who are connected to the issue (e.g. those directly affected by the issue, with special consideration of vulnerable and marginalized groups, such as older people, younger people, people with disabilities, etc.; those involved in its implementation, etc.) and, on the other hand, in-depth, which is achieved through cooperation with expert audience (business associations, academia, umbrella NGOs, think tanks, research institutes, etc.).

Public authorities should, in a clear and simple manner, inform the public about the issue discussed, their expectations regarding the input from the public and the importance of their involvement. To gather most needed information, they should develop sets of short and clear questions corresponding to objectives of the public participation process and targeting different groups. They should also publish information about different possibilities to get involved (e.g. announcement of public events and opportunities for participation). In more complex legislative initiatives, a separate public consultation document may also be developed to explain the proposal and invite comments on the specific elements of the policy proposal.

Generic email invitations and a publication on the public authority's website are often not enough to attract interest. It takes a more proactive approach, which starts with tailor-made invitations. Public authorities should consider what in relation to the issue could particularly attract the interest of specific stakeholders and then emphasise these elements in the invitation.

For efficient consultations, public authorities should adapt their methods when targeting different stakeholders. A combination of different methods (e.g. online or standard (phone) survey, interview, public debate, conference, individual meetings, etc.) should be used.

Public authorities should inform the public, participants of consultations in particular, about the findings and decisions made, as well as about the following steps.

2.2 Policy formulation (drafting)

As this stage mostly involves expert deliberation, through which different solutions are discussed and concretised, public authorities should cooperate with external expert groups and representative associations (business associations, trade unions, umbrella NGOs, think tanks, research institutes, etc.) from the field in question.

The most recommended method is a working group with key stakeholders as members. If stakeholder groups are several and diverse, different focus groups and deliberative workshops should be organised.

To enable founded comments, public authorities should share with stakeholders all background documents and other material at their disposal (e.g. explanatory notes, impact assessment report, etc.).

If the draft changes significantly during the process, public authorities should check the appropriateness of new solutions at least with the stakeholders already involved in the process.

2.3 Decision-making

Final public consultations before the adoption of the decision should be organized at this stage. Generally - as the process should be inclusive from the very early stage - the purpose of final consultations should not be making a radical intervention in the draft, but rather to measure a general attitude towards the draft, make a final check of the public interest, identify potential conflicts and build support and legitimacy of the draft. This exercise should be broad. Therefore, the most appropriate methods are e-consultations in combination with meetings (in-person) for those that are not used to using electronic tools or writing in general.

In case the public was inadequately included in the earlier stages of policy-making, the final consultations need to be extensively broader, thorough and comprehensive.

For the publication of all drafts and related background and public participation documents (e.g. explanatory notes, regulatory impact assessment reports, reports on the outcome of consultations, etc.) a single centralised e-platform should be established. The e-platform should be easy to use for public authorities and the public. It should enable search filters for consultations according to responsible authorities, status of drafts and consultations and access to archive. It should also provide advanced solutions for interactivity (e.g. chat rooms, possibility for online meetings, etc.).

The timeline allocated for public consultations needs to provide sufficient opportunity for the public to properly prepare and submit constructive comments.

Minimum deadlines for public consultations need to be clearly defined in a regulative framework. The minimum deadline should not be less than 20 days with a possibility of 40 days for more complex issues. Longer deadlines should also be considered in case of very comprehensive and extensive policy and legislative reforms.

After the consultations, a report on the outcome of consultations should be prepared. In the report, public authorities should present all contributions which they received from the

public, as well as how they have informed the draft. The report should contain at least the list of all participants with their contributions and concrete reasons for adoption or rejection of every individual contribution. It should be published at the end of the process on the same page as the original documents for public consultations.

2.4 Implementation

Business and civil society organisations as well as other groups can be actively involved in the implementation phase by promoting the regulation and gathering feedback and experience with its implementation. To enable efficient cooperation during implementation, public authorities should consider appropriate collaboration methods and discuss them with stakeholders already in the drafting phase.

The effectiveness of legislation should be evaluated in 3 to 5 years after its adoption. However, it is recommended to monitor the consequences and impact of the new legislation from its adoption on. For this purpose, public authorities should cooperate with stakeholders, especially those that participated in earlier stages.

For monitoring the implementation of comprehensive reforms and policies, a special advisory council could be established. For other legislation, public authorities should enable the public to communicate their experience, either through an e-platform or other channels.

2.5 Evaluation

While evaluation is the last step of the old policy, it is also a first step of the new policy, since its results should inform the new policies or their revisions. Therefore, authorities need to apply the same recommendations as in the earliest stage of the policy-making process, namely the identification stage.