

**TRANSPARENCY AND PUBLIC PARTICIPATION IN LAW MAKING  
PROCESSES**

*Comparative overview and assessment of the situation in Macedonia*

**Final Draft  
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## **EXECUTIVE SUMMARY**

This publication presents the results from the comparative overview of *European Standards and practices in Regulating Public Participation* and the *Assessment of the Laws and Practices of Public Participation in Law-Making Processes in Macedonia*. It was commissioned by the Organization for Security and Co-operation in Europe (OSCE) Spillover Monitor Mission in Skopje.

The main goal of the research was to map the current level of transparency and public participation in law making process in Macedonia and to provide recommendations for their improvement based on best regulatory practices in countries of Europe and best practices in Macedonia.

The publication is composed of two sections. The first section provides a brief overview of European standards and models for participation of the public and civil society organizations (CSOs) in the process of law making on governmental level. It aims to help assess the compliance of Macedonian laws and practices with those standards and to help Macedonians consider models applicable and relevant for their context. The overview relies on standards adopted by the European Union and the Council of Europe. It also describes regulations and models from 9 countries throughout Europe – Austria, Bosnia and Herzegovina, Croatia, Estonia, Hungary, Republika Srpska, Romania, Slovakia and the United Kingdom.

The second section provides an overview of the legal framework concerning participation in Macedonia and how participation is practiced by the government and CSOs. The overview is based on analysis of the actual relevant laws and policies which determine the basic rules of inclusion of the public and the processes and procedures for adopting laws on governmental and parliament level. At the same time, mini researches were made through surveys and interviews with representatives of CSOs and bodies of the state administration. Relevant internet sites were also analyzed. The analysis is made for the regulation and practices which exist in the period of January 2007 to August 2010. It also highlights the major shortcomings and outlines recommendations for improvement of the framework and practice in Macedonia.

### **Main findings and conclusions**

The comparative overview revealed that the documents adopted on European level and in different countries address wide range of issues relevant for the participation of the public in decision-making processes. They create a framework for inclusion of the public and introduce rules which help increase transparency of the law making process. Most of them highlight the importance of including the public in law making processes from the outset – the moment of planning, through the drafting and finally in the process of implementation.

Since there are different stages in of law-making processes, the intensity and form of participation vary depending on the stage of the process. Three main levels of participation are highlighted: (1) access to information, (2) consultation and (3) active engagement through dialogue and partnership. All levels are underlined by the ‘dialogue’ as an active form of participation and a prerequisite for collaborative relationship. The tools and

models that different countries employ to foster participation may differ based on the level of engagement.

On level of European Union, the most important documents which address the issue of participation are the Lisbon Treaty, the 2002 European Commission Communication: *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, the 2009 European Parliament Resolution on the perspectives of *Developing Civil Dialogue under the Treaty of Lisbon*. These documents mainly regulate participation of the public in decisions made by the European Union institutions, and do not impose binding rules on member states. Nevertheless, some of them highlight the expectation for members states to follow these rules and adopt similar standards in their legal systems. In addition, the Council of Europe recommendations, including the most recently adopted *Code of Good Practice for Civil Participation in the Decision-Making Process* reinforce the importance of participation and highlight the main standards and tools that can be used to promote it nationally.

Rules and principles concerning public participation in policy and law making processes on government level in Europe are spelled out in different types of documents. Some are legally binding, others are not. Sometimes issues concerning participation can be regulated in several documents (e.g., law on access to information, rules concerning the legislative drafting) instead of a stand alone regulation. One of the lessons learnt is that to ensure successful and effective implementation it is important to plan for steps upon adoption of the document (e.g., promotion, awareness raising, capacity building).

The review of the documents from European countries analysed in the paper reveals that there is a general framework concerning participation which is common for most. This framework outlines important standards which can serve as recommendation for other countries. Those standards include:

1. Everybody should be informed and consulted in the process of law drafting.
2. Participation of the public may be limited in case of special working groups. The selection of the members for such groups should be done openly and based on predefined criteria to ensure credibility and legitimacy of the process.
3. Participation should be open to different groups (minorities, people with disabilities, women). Appropriate methods should be chosen to help facilitate and encourage involvement of such groups.
4. CSOs can play an important role in the process; they can facilitate the public participation, represent members and stakeholders' interests and keep informing on the process and the results.
5. While all laws and implementing regulations should be drafted in a participatory manner, certain conditions could require limitations in the process (e.g., natural disaster, conflict). Those cases should be clearly prescribed to ensure clarity and certainty when participation may be limited. Further, some countries impose minimum standards to be respected in such situations (e.g., the public must be informed and have access to the draft document; minimum time for consultation should be allocated).
6. Some countries require that clear, concise and comprehensive information should be provided to help ensure that interested parties understand the issues better and are able to offer more meaningful contribution. For the same reasons, the public should be able to gain access to the draft documents at the earliest stage of their development.

7. The timeline allocated for comments or participation in public meetings should be determined on several factors including the type of document, the issues raised, its length, available expertise, the size of the target group it affects. Most commonly countries allow between 10-30 days for comments. The timeline can be shortened; but it is recommended that the situations when this occurs are clearly prescribed and justified.
8. Providing feedback to the consulted parties increases trust and strengthens cooperation. It also encourages the public to be more committed and take part in future processes. Feedback does not need to be individualized. Instead a collective response can be made (mainly in a form of report) but all issues should be considered. Some countries provide additional guarantees that the opinions will be considered; for example the responsible state body may need to make the collective feedback public, and send it to the government and/or parliament as accompanying document to the draft law.
9. Some countries plan for an assessment of the process of participation – this can help improve future processes and share experiences for creative models used.
10. Different tools and methods can be used to support participation at all stages of the drafting and implementation process. The decision on which method to choose can be made based on several factors, but such decision should be made at the beginning of the process to ensure that the most appropriate method is selected and that it will bring the desired results.
11. Several measures can be undertaken to help prepare for the participative process and ensure that it will be executed effectively. For example, some government bodies assign coordinators who will facilitate the process and serve as contact person for the public and other ministry officials. Another example is developing a list of interested parties to be engaged in the process; this helps government bodies to decide who to contact when the process is planned. Finally, some governments propose the development of plans for the process which highlights the stages and deadlines.
12. Different tools should be used to ensure that the information about the launched process is distributed as widely as possible (e.g., web sites, newspapers, TV, CSO portals).
13. Governmental bodies use their web sites to facilitate the process of consultations. In general, those web sites contain information about the drafting process, have space for comments, contact person and other related materials.
14. Some countries have set up central on-line registers to assist with the coordination of information sharing and consultation, but also to provide tool for the public to meet in one place and comment on various undertakings by the government.
15. Other models used by the governments include:
  - a. Common comment model of Slovakia, where a comment which is supported by 500 signatures must be considered by the drafter of the law;
  - b. Organizing public meetings;
  - c. Organizing consensus conference.

In the Republic of Macedonia there are several documents which give the basics for public inclusion in the processes of law adoption, starting with the Constitution of Republic of Macedonia, through several laws, such as the Law on Referendum, the Rulebook of the Government, the Strategy for Cooperation of the Government with Civil Society. The main provisions defined in these acts are further elaborated in two documents: the Methodology

for Policy Analysis and Coordination and in Methodology of Regulatory Impact Assessment (RIA).

The Government determination to follow the rules for regulatory impact assessment is of fundamental importance as it will contribute towards transparency of the law making processes. Since this system is a novelty which was introduced in 2008, not all projected steps are fully implemented yet. Two main aspects are particularly not observed: the regular and consistent use of “external” consultations with involved parties and the timely publishing of the information about the draft laws on the web sites of the ministries and in the Central Electronic Registry of Legal Acts. This deficiency is also identified during the analysis of the forms for approximation of the regulations with European Union Law (this form is filled by the institution that is proposing the law). Analysis of submitted forms to draft laws and draft amendments to laws reveals that those forms do not contain information about the consulted parties and process, nor about the support received from experts or other parties.

Further, the Methodology for RIA contains a provision which binds the drafters of the law to include the concerned parties from the very beginning of the law drafting, and to provide availability through the Central Electronic Registry of Legal Acts. However this registry contains incomplete information, does not publish the information in timely manner, has ambiguities about the phase of the preparation of the law, and in many cases, the law adoption or amendment of certain law is not even mentioned in the Registry.

The public and interested parties, including CSOs have the possibility to be included in the process of law drafting in the Parliament of Republic of Macedonia. The Rulebook of the Parliament gives several possibilities for action to the public and to CSOs in the process while draft documents are discussed in parliament procedure.

In practice, the ministries recognize the importance of inclusions inclusion of CSOs and other involved parties in the preparation of laws, and they aim to have participatory processes. Inclusion of CSOs in the process, for the ministries is very important, because they provide expertise in relevant fields, and very often are partners in organization of public debates. Nevertheless, there are only few examples when laws, by-laws or implementing regulations are adopted in a participatory manner.

In their attempts to include the public and CSOs, the ministries are facing the problems of time constraints and insufficient financial means.

In the survey, CSOs expressed that the processes of law preparation are not transparent enough. According to them, the Government (and the ministries) does not apply fully the RIA instrument. The participation in networks or coalitions of the civil organizations is easing the informing and the inclusion in the processes of preparation of the laws.

On the other side, most of the CSOs don't have adequate capacities to be actively included in the processes of law adoption. In particular there is an absence of strong expert preparation and expertise on certain questions. Also, besides the often mentioned importance of inclusion of the organizations in the preparation of the laws, there are no concrete lobbying steps for improvement and establishment of clear, applicable, general and full-scale mechanism that will support such processes.



## Recommendations

Having in mind the experience and best practices from the analyzed countries in the comparative overview and the current legal framework in Macedonia, as well as the practices and experience of Macedonian CSOs and state institutions, the following recommendations can be drawn:

1. There is a need for adoption of one, legally binding document, e.g., a rulebook for inclusion of the public in the law adoption process, or alternatively a code of good practices for inclusion of the public in law adoption process. Republic of Macedonia has a general framework which provides for the main guarantees for inclusion of the public and CSOs in law making processes (envisaged in several laws, the Rulebook of the Government, Methodology for regulatory impact assessment). However, there is a need for further elaborating and strengthening those guarantees in order to ensure compliance and effective implementation. In addition there is a need for those rules to be presented in more clear, simple and concise way so that they can be followed by the responsible bodies, the general public and CSOs.
2. The same rules concerning participation in law making should be applied in the preparation of the by-laws or other implementing documents.
3. The timeframe for solicited public comments and opinions in a consultation process should be made longer.
4. It is recommended that every ministry, with the annual plan for preparation and amendment of the laws, to foresee minimal financial means necessary to conduct a solid and more wide-ranging consultative process.
5. There is a need of standard mechanism for the manner of selection of CSO representatives in the bodies that will draft the laws. Some examples from Europe (public competition for selection; clear criteria based on experience and expertise; selection made with voting by the interested organizations; open registry, maintained by the ministries, of concerned parties etc.) can be reviewed and adapted according to Macedonian legal system and the general context.
6. There is a need to strengthen CSO capacities for inclusion in creating policies, especially in the processes of law adoption, through trainings and direct consultations with the interested organizations.
7. There is a need to build the capacities of the bigger national alliances/networks, which serve as platforms for timely exchange of information and organized contribution in the course of law preparation. The strengthening of the capacities and the knowledge needs to be focused to the processes of law adoption that are happening in the Government (the ministries), but also in the Parliament level.
8. There is a need to raise the awareness of public officials about the benefits of consultation and participation and the contribution that CSOs and other interested parties can make in the process.

## A. Introduction

The following publication provides an overview of European standards and practices in regulating public participation and an assessment of the laws and practices of public participation in law-making processes in Macedonia.

This publication is a part of the project “Transparency and public participation in law-making processes” implemented by the by the Organization for Security and Co-operation in Europe (OSCE) Spillover Monitor Mission in Skopje and the Macedonian Center for International Cooperation (MCIC).

The main *goal* of the research and assessment conducted under this project was to map the current level of transparency and public participation in law making process in Macedonia. The specific objectives include:

1. providing a general description of the regulatory practices in Europe;
2. providing a brief overview of the legal framework governing participation in Macedonia;
3. presenting an evaluation of the current practices in involving the public in the law making processes, the effectiveness and efficiency of the process and where possible the impact of the process on the regulation;
4. outlining the most common methods and examples in public participation.

The section on participation of the general public in the law making process in Macedonia was analysed based on reviews of the existing regulation and the input from the Ministries and CSOs. The practical experiences in participation in law making processes was analysed from the perspective of CSOs rather than individuals due to the limitations (financial and timeline) in addressing experiences of the citizens as such in the law making process. For the purposes of this paper, CSOs are perceived in a broad understanding of the concept of civil society as “public” including, trade unions, professional associations, experts, religious entities, academia).

The assessment considers previously conducted studies and analysis of the process of participation in Macedonia and builds on existing recommendations in order to present the most viable solutions for the improvement of the processes of participation.

The assessment results in general observations and recommendations for improvement of current legal framework and practices of involving public into law making process.

### Methodology

The main methodological framework of the publication is the transfer of knowledge on models and mechanisms for ensuring effective participation by the public in the law making processes from comparative and domestic perspective. The comparative overview and domestic assessment aimed to identify practices which have proven to be the most effective in countries of Europe and Macedonia in order to facilitate sharing of different innovative approaches. They also highlight the challenges that limit public participation in Macedonia in order to develop steps which could help remove the regulatory obstacles and contribute towards improving the environment for public participation.

The assessment of the selected initiatives (regulatory framework and practices) was conducted through the following steps:

- Identification of models and regulatory approaches in Europe and of the initiatives in Macedonia;
- Analysis and description of the identified models, with specific highlight of potentially applicable examples;
- Assessing whether the initiative is transferable and appropriate for the local context.

The domestic assessment results in general observations and recommendations for improvement of current legal framework and practices of involving public into law making process.

The methodology of the domestic assessment consisted of:

- desk research of European standards and models from European countries;
- desk research of relevant regulations in Macedonia;
- review of the forms which accompany draft laws submitted by the Government to the Parliament (to identify how the Government reports on the participation process and where possible the level of participation in the legal initiatives);
- questionnaires answered by 15 CSOs and follow up interviews where necessary;
- semi-structured interviews with Ministry officials.

A focus group of representatives of the most active CSO networks (e.g., Macedonian Civic Platform, Macedonia without Discrimination, All for Fair Trials) was consulted in the process. The participants were asked to provide their opinion on the findings, conclusions and recommendations of the assessment and provide recommendations for further improvement of the text.

The following *criteria* for selection of the initiatives (i.e., domestic regulations and practices) were considered:

- the date of the enactment of regulation – only those effective as of 2007;
- types of acts: laws and secondary regulation (implementing regulations);
- field of regulation – only those in the field of human rights and rule of law;
- initiatives that have yielded significant lessons about implementation;
- initiatives which were the most innovative or unique;
- initiatives that have the potential to serve as models;
- initiatives on national level.

## **B. Comparative Overview of European Standards and Practices in Regulating Public Participation<sup>1</sup>**

### **I. Introduction**

The following section provides a brief overview of European standards and models of public participation in decision-making processes, specifically drafting laws and regulations on governmental level only. It aims to help Macedonians benchmark the legal framework and practices against European models, and identify what elements of those models may be relevant for their context.

The section relies mainly on standards adopted by the European Union (EU) and the Council of Europe (CoE). It also describes practices of regulation and models of participation from 9 countries throughout Europe. The overview does not analyse the implementation of the adopted documents, rather only what they prescribe for. The countries were selected based on geographical criteria and those with system similar to the Macedonian. Countries with well developed participatory practices (e.g., the United Kingdom) were also considered in order to present different approaches undertaken to advance participation. The overview highlights those models which are potentially applicable, appropriate and transferable considering the local context.

*“Many years ago, a large American shoe company sent two sales representatives out to different parts of the Australian outback to see if they could drum up some business among the Aborigines. Some time later, the company received telegrams from both agents. The first said, /No business here . . . natives don't wear shoes.’  
The second one said, ‘Great opportunity here . . . natives don't wear shoes!’”<sup>2</sup>*

The possibility of the public to influence drafting of a law that will affect their live is integral to many democracies. Efforts to promote participation in law making processes however meet hurdles. If in some places it does not exist, or if it is sidelined or disrespected it does not mean that it cannot be properly introduced. With sincere effort many countries have been able to create practice of effective public involvement and thus strengthen the potential for the successful implementation of the laws and regulations.

### **II. Benefits and Challenges of Participatory Law making**

Participation in decision-making processes means a possibility for the citizens, civil society organizations (CSOs) and other interested parties to influence the development of policies and laws which affect them. The importance of engaging the public in these processes is increasingly recognized by EU institutions, CoE and national governments. They have identified several benefits of participatory processes. Specifically, participation can help towards:

- Creating fair policies/laws reflective of real needs enriched with additional experience and expertise;
- Facilitating cross-sector dialogue and reaching consensus;

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<sup>1</sup> This section was developed by Katerina Hadzi-Miceva Evans, Senior Legal Advisor, European Center for Not-for-Profit Law (ECNL), [www.ecnl.org](http://www.ecnl.org)

<sup>2</sup> By John M. Capozzi

- Adopting more forward and outward looking solutions;
- Ensuring legitimacy of proposed regulation and compliance;
- Decreases costs, as parties can contribute with own resources;
- Increasing partnership, ownership and responsibility in implementation;
- Strengthening democracy - preventing conflict among different groups and between the public and the government and increasing confidence in public institutions.

### III. Values and Principles of Participation

In regulating the procedure for consultation institutions and organizations in Europe have highlighted several principles which guide the process. Some of those include:

- Commitment;
- Recognition of rights and responsibilities;
- Access and clarity of information;
- Continuity (ongoing);
- Proper structure (coordination);
- Publicity;
- Transparency;
- Openness and consideration;
- Objectivity and equal treatment;
- Resources;
- Sufficient time;
- Accountability for the process and result;
- Acknowledgement and feedback;
- Evaluation, etc.

The values that these principles aim to promote have been summarized well by the International Association for Public Participation as *Core Values for Public Participation*:<sup>3</sup>

1. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

In addition to flagging the benefits it should be noted that ensuring participatory law making processes has own *challenges* too.

1. Governments may be pressed by deadlines to adopt certain legislation.
2. It may not be clear who to consult or engage; or how to do it.

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<sup>3</sup> IAP2, *Core Values for Public Participation*, 2007 [www.iap2.org/associations/4748/files/CoreValues.pdf](http://www.iap2.org/associations/4748/files/CoreValues.pdf), last accessed in September 2010

3. Participatory processes are costly; they require investment in organizing meetings, writing comments, providing feedback.
4. The political context may not be supportive of public involvement.
5. Those who participate may not have enough understanding of the issues at stake.

The standards enshrined in the documents adopted on level of EU and in different countries aim to minimize the effect of those challenges and to pave the way for more effective participatory law making processes. Therefore, when developing the appropriate standards for participation in one country it is important to consider not only the opportunities, but also the challenges that surround it so that appropriate mechanisms are adopted to address and circumvent them.

#### **IV. International Documents**

The importance of public participation in policy and law making has been recognized globally. Major intergovernmental organizations have not only produced documents which aim to strengthen citizen participation; but they have also created models to support such participation, and are increasingly involving the public and CSOs in their own decision making processes. Although some of these documents are not legally binding, they lay out standards, principles and best practices which should be considering in initiatives on national level.

##### **International level**

Perhaps the first and most notable document internationally is the *Aarhus Convention*<sup>4</sup> which requires that the parties of the Convention guarantee *rights* of access to information, public participation in decision-making and access to justice in environmental matters. The Convention sets out minimum requirements for public participation in various categories of environmental decision-making, and also envisions the development of compliance mechanism to ensure that the parties implement its provisions.<sup>5</sup>

The United Nations have several mechanisms to include CSOs in their work and consult them on the development of policies. For example, *the UN Non-Governmental Liaison Service (NGLS)*<sup>6</sup> facilitates information sharing and inclusion of CSOs in deliberations concerning the development of UN policies. In the addition, the World Bank<sup>7</sup> and OECD<sup>8</sup> have also undertaken initiatives and produced guidelines to increase participation in decision-making processes.

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<sup>4</sup> UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted on 25th June 1998

<sup>5</sup> For more information see: <http://www.unece.org/env/pp/welcome.html>, accessed on September 14, 2010

<sup>6</sup> <http://www.un-ngls.org>, accessed on September 14, 2010

<sup>7</sup> World Bank, *A Call for Participatory Decision-Making: Discussion Paper on World Bank-Civil Society Engagement*, 2005

<sup>8</sup> See for example, OECD, *Citizens as Partners: Information, Consultation and Active Participation in Policy-Making*, 2001

## European Union

The participatory approach of making policies and laws on level of EU and its member states is enshrined in the *Lisbon Treaty*.<sup>9</sup> Specifically, article 10 prescribes that: “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.” Further, article 11 provides that:

1. *“The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*
2. *The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.*
3. *The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.*
4. *Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”<sup>10</sup>*

Even before this Treaty was adopted, the European Commission (EC) launched action to improve participation in policy and law making process on EU level. In 2001, it developed the *White Paper on European Governance*,<sup>11</sup> which, among others, aimed to reinforce the culture of consultation and dialogue on EU level and thus increase the legitimacy of the decisions. The paper highlights five principles of ‘good governance’: openness, participation, accountability, effectiveness and coherence, which not only “*underpin democracy and the rule of law in the Member States, but they apply to all levels of government – global, European, national, regional and local.*” The principle of participation highlights the importance of inclusion of the public in all stages of the drafting process and explains that participation creates confidence. It also stresses the role of Member States in enforcing participatory approach in relation to EU policies development:

*“The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies.”*

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<sup>9</sup> Consolidated Version of the Treaty on European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>, accessed on September 14, 2010

<sup>10</sup> According to article 11(5) the Lisbon Treaty and article 24 of the Treaty on the Functioning of the European Union, the European Parliament and the Council, are to adopt the procedures and conditions required for the citizens' initiative and the minimum number of Member States from which such citizens must come. [http://ec.europa.eu/dgs/secretariat\\_general/citizens\\_initiative/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/index_en.htm), accessed on September 14, 2010

<sup>11</sup> COM(2001) 428



The White Paper recommended changes in several directions, and obliged the EC to undertake action to implement them. As one of the results, in 2002 the EC adopted a communication: *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*<sup>12</sup> [hereinafter: EC Principles and Minimum Standards]. They emphasize the importance of providing clear consultation documents, consulting all relevant target groups, leaving sufficient time for participation, publishing results and providing feedback.

In efforts to promote the dialogue with civil society as undertaken by the Lisbon Treaty and following upon the EC Principles and Minimum standards, in 2009 the European Parliament adopted a resolution on the perspectives of *Developing Civil Dialogue under the Treaty of Lisbon*.<sup>13</sup> The resolution is important in that it reinforces the significance of consultation and calls on EU institutions to adopt binding guidelines concerning the appointment of civil society representatives, methods for organizing consultations and their funding, and calls on them to maintain registers of actives CSO. Further, the resolution calls on EU institutions and Member States to make full of use of legal provisions and best practices to “*step up dialogue with citizens and CSOs*”, and especially in those regions and sectors where it is not fully developed. The resolution also acknowledges that dialogue with citizens at all levels (EU and Member States) requires certain financial resources, and therefore calls on the stakeholders and responsible bodies to ensure that such dialogue is adequately funded.<sup>14</sup>

### Council of Europe

The issue of participation is also addressed by the CoE in several recommendations.

- *“Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.” [CoE, Recommendation CM/Rec (2007) 14]*<sup>15</sup>

The Explanatory Memorandum further elaborates this recommendation: *“It is essential that NGOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important*

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<sup>12</sup> COM(2002) 704. These standards are not legally binding, but aim to provide guidance to EC officials when they conduct consultation. Nevertheless, their implementation and compliance in European Commission *Action plan “Simplifying and improving the regulatory environment”, COM(2002) 278* and the reports on “Better Lawmaking”. [http://ec.europa.eu/governance/better\\_regulation/reports\\_en.htm](http://ec.europa.eu/governance/better_regulation/reports_en.htm), accessed on September 14, 2010

<sup>13</sup> P6\_TA(2009)0007, 13 January 2009

<sup>14</sup> For further information see: EurActiv.com, *“MEPs Push for ‘Structured Dialogue’ with EU Citizens”, 14 January 2009*, <http://www.euractiv.com/en/socialeurope/meps-push-structured-dialogue-eu-citizens/article-178503>, accessed on September 14, 2010

<sup>15</sup> Council of Europe, Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe



*contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed.”<sup>16</sup>*

- *“Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.” [CoE, Recommendation CM/Rec(2010)5]<sup>17</sup>*

Most recently, the CoE adopted *Code of Good Practice for Civil Participation in the Decision-Making Process* [hereinafter: CoE Code on Participation]<sup>18</sup> which defines the general principles, guidelines, tools and mechanisms for active participation of CSOs in the decision-making processes. Although it is a nonbinding mechanism the Code is drafted with the aim to support the development of participatory decision-making processes on national level. Towards this end, the CoE Committee of Ministers adopted a Declaration which calls on national authorities to consider the Code when developing undertaking initiatives to foster participation in the decision-making processes.<sup>19</sup>

## V. Principal Issues Concerning Participation in Law Making

The documents adopted on European level and in different countries address wide range of issues relevant for the participation of the public in decision-making processes. The section summarizes general considerations related to participation and specific issues which most commonly arise in the process.

### 1. What are the different levels of participation?

Participation can be viewed as a continuum of interaction between government and the public which ranges from informing and listening at one end, to implementing jointly agreed solutions at the other; and in between there is dialogue, debate and analysis.<sup>20</sup> All stages of the process (preparation, drafting, adoption, implementation, evaluation) should be subject to public participation to ensure better laws. This is also highlighted by the *EC Principles and Minimum Standards*: *“The quality of EU policy depends on ensuring wide participation throughout the policy chain – from conception to implementation”*.

Since there are different stages in of law-making processes the intensity and form of participation will vary depending on the stage of the process. International documents and country specific regulation recognize the following levels of participation: (1) access to

<sup>16</sup> Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe

<sup>17</sup> Council of Europe, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

<sup>18</sup> Council of Europe, *Code of Good Practice for Civil Participation in the Decision-Making Process*, adopted by the Conference of INGOs, 2009

<sup>19</sup> Council of Europe, *Declaration by the Committee of Ministers on the Code of Good Practice for Civil Participation in the Decision-Making Process*, 2009

<sup>20</sup> Adapted from Bryce-Lambert Forum, *Building Effective Consultations* (1990).

information, (2) consultation and (3) active engagement through dialogue and partnership. The following is a summary of how these levels are described in different documents.<sup>21</sup>

*(1) Access to information* is the first, basic and important right which is underlying the whole process of participation. Whilst it means that the government informs the public about its plans and the types of documents it wants to adopt at the beginning of the process, it also highlights the right of the public to have access to all information (e.g., drafts, comments and reasoning) throughout the process. The access to information is right regulated in specific laws. While at this level there is no need for intensive interaction between the government and the public, the government should not apply measures which would prevent the public from receiving the information crucial for the process.

*Consultation* is a form of participation where the government invites the public to provide its opinion, comments, views and feed-back on a specific document. Whilst the issues on which the public is consulted are defined by the government, this process should also allow for the public to express opinion on other issues contained in the draft. Consultation can be organized with a broader group of participants from the public. It is a reactive way of participation – the public becomes involved because the government requests this. However, this is not to say that the public cannot request to be consulted. Indeed, it should act and remind the governmental bodies about the need to be asked to comment on laws which will affect them.

*Active involvement (partnership)* in law making means collaboration and jointly undertaken responsibilities at all stages of the decision-making process (agenda setting, issue identification, drafting, decision and implementation). It is the highest form of participation; it may be described as a situation where the representatives of the public share a seat at the table with the government representatives. The initiative can come from both the sides. Whilst there should be an agreement about the common goals of the process, those involved from the public should be able to retain their independence, and to advocate and campaign for the solutions which they want to see adopted.

The **CoE Code of Good Practice** also highlights the *dialogue* as an active form of participation. Indeed, dialogue is prerequisite for collaborative relationship. It requires “*a two-way communication built on mutual interests and potentially shared objectives to ensure a regular exchange of views.*” The dialogue is an underlying form of a collaboration which is built around a specific issue of interest and should lead to commonly agreed outcomes.

It is important to recognize these different stages and levels of participation when aiming to regulate participation or to design models. The nature of the different levels and the relationship which arises from them desires consideration of compatible models specific to that level and relationships so to ensure effective participation.

## **2. Framework for public participation**

*“To ensure that the essential contributions of CSOs are enshrined in the political decision-making process without discrimination, an enabling environment is required.*”

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<sup>21</sup> See for example: CoE, Code on Participation 2009; OECD, Citizens as Partners, 2001; also Austria, Croatia, Estonia, Romania.

*Conditions of an enabling environment include the rule of law, adherence to fundamental democratic principles, political will, favourable legislation, clear procedures, long-term support and resources for a sustainable civil society and shared spaces for dialogue and cooperation. These conditions allow for a constructive relationship between NGOs and public authorities built on reciprocal trust and mutual understanding for participatory democracy.”<sup>22</sup>*

Rules and principles concerning public participation in policy and law making processes on government level are spelled out in different types of documents.<sup>23</sup> They emphasize different values that they aim to promote and accomplish and they all underline the importance of participation in law making.

The ultimate goal of the *Croatian Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts*<sup>24</sup> “is to facilitate interaction with citizens and representatives of the interested public in the democratic process, and encourage more active participation by citizens in public life.”<sup>25</sup>

The *Austrian Standards of Public Participation – Recommendations for Good Practice*<sup>26</sup> [hereinafter: Austrian Standards] have been adapted to: “to help administrative staff of the federal government in the concrete conduct of high-quality participation processes. They are a contribution to good governance in Austria”.

The *Romanian Law on Transparent Decision-Making by State Bodies and Local Governments* from 2003 [hereinafter: Romanian Law] aims to “increase the degree of accountability of public administration toward citizens as beneficiaries of the administrative decision; stimulate active participation of citizens in the administrative decision-making process and in the process of drafting normative acts; enhance the degree of accountability of the entire public administration.

Documents which regulate participation differ in terms of whether they are legally binding or not. Also, issues related to participation are not necessarily regulated in one place, they can be found in different documents. However, they should be consistent and documents adopted on national level should not undermine practices which already exist or which create higher standards. Some adopted documents (e.g., the Croatian Code) explicitly refer to this.

#### *Binding or non-binding document*

Some countries have included procedures and rules in legally binding documents (laws, regulations), others in documents with no binding measure (codes, standards). Legally binding documents have been adopted in Bosnia and Herzegovina (rules of government) and Romania (stand along law), while codes and guidelines in Austria, Croatia, Republika Srpska and the United Kingdom.

For example, the *Austrian Standards* contain (1) performance standards for politics and administration to achieve optimal involvement of citizens and interest groups in

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<sup>22</sup> CoE, *Code on Participation*, 2009

<sup>23</sup> A detailed list of all relevant documents used in this research is provided in the Bibliography section.

<sup>24</sup> November 2009, <http://www.uzuvrh.hr>, accessed on September 14, 2010

<sup>25</sup> Section II of the Code.

<sup>26</sup> July 2008, <http://www.partizipation.at>, accessed on September 14, 2010

the decision-making process and (2) quality standards for the participants as a measure which citizens and interest groups can use to assess the quality of the administrative behavior with respect to public participation. The standards of public participation are recommendations for good practice and offer service and practical support in public participation processes. They are grouped as standards related to the (1) preparation, (2) implementation and (3) monitoring and evaluation of the participation process. The standards are defined in a form of a question to help with assessment of the compliance.

*Stand alone document or not.*

Issues concerning participation can be found in one document specifically dedicated to that issue (e.g., law or code regulating the participatory procedure such as Romania or Croatia). They can also be found as part of different documents which address other issues. For example, in Bosnia and Herzegovina, Hungary and Slovakia participation issues are included in the laws which concern the process of law drafting; in Finland, Hungary and Slovakia, as part of laws concerning access to information. In the UK and in Hungary, several documents regulate issues concerning participation.

For example, In **Hungary**, the right of participation has been included in the Constitution<sup>27</sup> and is elaborated in the Act on Legislation.<sup>28</sup> The provisions of Act are very broad and have not been supported by ministerial decrees, which left them unimplementable in practice. Even more, some of its provisions were repealed by the Constitutional Court.<sup>29</sup> In the meantime, in 2005, the *Law of Freedom of Electronic Information*<sup>30</sup> [hereinafter: Hungarian Law] was adopted which is the most relevant legislation from the access to information and consultation point of view. The law details deadlines, methodology and procedures for publishing such information and commenting on drafts, and the way feedback should be provided.

The legal nature of the document is important as it can ultimately have an effect on how much the provisions can be enforced in practice, and the types of measures that will need to be undertaken to ensure compliance by the responsible state bodies. For example, under the **Romanian Law state** officials may be subject to disciplinary action if they breach provisions of this law. On the other hand the Croatian Code is a guiding document and has no enforcement mechanism. The *UK Code of Practice on Consultation*<sup>31</sup> [hereinafter: UK Code on Consultation], is also a non-binding document. However, if a government body decides to

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<sup>27</sup> In Hungary, section 36 of the Constitution states that while performing its duties, the government shall cooperate with concerned CSOs. However, it is up to the government to follow up on the form of cooperation. The implementation of this article has been subject to several Constitutional Court decisions. See: Golubovic, D., "Citizen Participation in Legislative Processes: A Short Excursion through European Best Practices", in *Cooperation between the Government and Civil Society in Legislative Processes*, published by the Government of Croatia Office for Collaboration with CSOs, 2008

<sup>28</sup> Act no.XI of 1987 on Legislation.

<sup>29</sup> The provisions were repealed with pro futuro effect - 31 December 2010. A new act on participation is currently drafted to strengthen the information sharing, consultation and active participation.

<sup>30</sup> Act XC of 2005 on Freedom of Electronic Information

<sup>31</sup> Revised in 2008. The Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform maintains a list of state bodies that have adopted it. <http://www.bis.gov.uk/files/file47158.pdf>, accessed on September 14, 2010

adopt it then it is expected to comply with its provisions, and interested parties are encouraged to comment on how different bodies have used the criteria in the code in a specific consultation process.

Regardless of which type of document is developed it is very important **to adopt measures to ensure its compliance and harmonize implementation in practice**. Indeed, as noted above the fact that the provisions of the Act on Legislation in Hungary have not been supported by implementing regulations left them open to various interpretations (which was resolved to some extent with the adoption of the Hungarian Law on Access to Information).<sup>32</sup> To address this challenge:

- It is important to *plan the type of resources* (human and financial) which will be needed for implementation. An assessment of the Romanian Law concluded that: “*the failure to assign the required resources has represented a practical difficulty as far as the implementation of the Law on the Transparency on Decision-Making was concerned*”.<sup>33</sup>
- Specific *regulations* can be developed to help implement the law or adopted rules. For example, in Bosnia and Herzegovina Ministry of Justice adopted a Rulebook, which contains detailed provisions relating to the implementation of the on Consultation in Legislative Drafting within the Ministry of Justice.<sup>34</sup>
- *Guidelines or standards*, or even client friendly brochures can be developed to further explain the provisions of the document, increase understanding and also ensure harmonized application by different bodies of the government (e.g., Austria<sup>35</sup>, Croatia).
- Activities to *raise awareness and build capacity* among the public and state officials can be undertaken (difficulties with implementation of the documents have been associated with the fact that the parties were not familiar with their content or they were not clear how to apply it in their work).

For example, in line with the provisions of the Croatian Code, the Government Office for Cooperation with Association produced draft guidelines, which are currently being discussed with interested parties and CSOs. In the UK, upon adoption of the *Code of Practice on Guidance on Regulation*,<sup>36</sup> the Department for Business, Innovation and Skills developed Guidance to the Code to support its implementation among various government agencies.

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<sup>32</sup> Fridly, J., Pasko, I., “*Civil Organizations in the Legislative Process*”, edited by Judit Fridli and Ildi Pasko, a Publication of the Hungarian Civil Liberties Union, Budapest, April 2000

<sup>33</sup> Stan, V., “*The Transparency of Governance and the Participation to the Decision-Making Process - Concept, Legislation, Restrictions In A Democratic Society*”, 2009

<sup>34</sup> Bosnia and Herzegovina, Ministry of Justice, *Rulebook for Implementing the Rules on Consultation in the Development of Legal Acts in the Ministry of Justice*, 2008

<sup>35</sup> In Austria worksheets on different topics have also been developed including check-lists to facilitate the participatory process. <http://www.partizipation.at>, accessed on September 14, 2010

<sup>36</sup> Developed in 2008, revised in 2009. This Code highlights eight rules government agencies should follow when publishing guidance for businesses and CSOs on how to comply with a legal act. <http://www.bis.gov.uk/policies/better-regulation/code-of-practice-on-guidance-on-regulation>, accessed on September 14, 2010

### 3. Parties that should be involved in the process

The issues as to who should the government call when they want to organize participatory process is often raised. In general, most of the countries allow for every individual to be able to take part in consultations, while they may limit the participation in specific working groups to selected representatives. The role of CSOs in raising awareness about the process, facilitating participation and reporting on the outcomes is important – their active and responsible role can help increase the quality of the law and the possibility for more successful implementation.

#### Who to involve?

Participation in law making should be open to the public. Documents of institutions on level of Europe and national governments refer to public as – anybody who will be affected by the specific decision, an interested party. Public means citizens, in their individual capacity, or through their formal and informal organizations. Different law making processes will require involvement of different representatives of the public depending on who is most affected.

- The **Austrian Standards** state that *“The term public encompasses individuals just as much as groups of persons. Groups of persons may form on occasion (citizens’ initiatives, for example, form in most cases in connection with a concrete project and have but a very loose internal organizational structure) or with a specific long-term objective and clear organizational structure (= organized public).”*
- According to the **Bosnia and Herzegovina, Rules for Consultations in Drafting of Legal Regulations** [hereinafter: BiH Rules for Consultation]<sup>37</sup> in case of laws which have significant influence on the public, the institution can consider to involve not only the general public and CSOs, but also domestic and foreign experts, medial government bodies, lawyers, prosecutors, judges.
- The **Croatian Code** applies to interested public, which is defined broadly as: *“citizens, CSOs (informal civic groups or initiatives, associations, foundations, funds, private institutions, trade unions, associations of employers), representatives of the academic community, chambers, public institutions and other legal entities performing a public service or who might be affected by the law, other regulation or act which is being adopted, or who are to be included in its implementation.”*
- The **Romanian Law** refers to “interested persons”, who can be citizens and legal persons. Legal persons are defined as a “civic organization, trade union, employers association, or other associative group of civic representation.”

While access to information should be open the whole public, sometimes consultation or active involvement can be focused on a specific target group.

For example, a Ministry of Labor aims to develop a law concerning people with disabilities. The Ministry can plan a targeted, focused, consultation which individuals and organizations which work on this issue by organizing specific roundtable discussions or focus groups. However, it should also provide an opportunity to others who may have an interest to provide an opinion by, for

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<sup>37</sup> Adopted in 2006.



example, posting the draft concept or draft law on its website and giving timeframe for opinions to be submitted.

In the case of active involvement, the respective government body may decide to limit the participation of certain groups to the drafting process, e.g., as members of a working group. However, the inclusion of such groups should be made based on clear and open criteria. This will ensure credibility of the process, increase legitimacy and respect of the results. For example, the **Croatian Code** outlines that when members of public are invited to take part in working groups the following should be considered: expertise, previous public contributions on the subject matter, qualifications relevant to the matters regulated by the law, or other regulation or established by the act of the state body. In addition, the public should not be denied the opportunity to provide its opinion on the draft legislation prepared the working group; as a good practice the overall rules on consultation should still apply.

Importantly, efforts should be made so that people with certain disabilities or those belonging to particular group (women, youngsters, minorities) are able to take part in the process. This is highlighted by several recommendations on European and country level.

- The **EC Principles and Minimum Standards** provide that EC should ensure adequate coverage of (1) those affected by the policy, (2) those who will be involved in its implementation and (3) bodies that have stated objectives which gives them direct interest in the policy. When determining who should be involved, EC should consider several elements such as: the impact on a policy area, the need for certain knowledge and expertise, track record in previous consultation, the need to involve non-organized interests, and should aim to maintain a balance between different groups (large or small organizations, those from EU countries and non-EU countries, wider constituencies such as churches, or people with special needs – elderly, minorities, unemployed).
- **Council of Europe Rec(2001)19** discusses specifically steps and measures to encourage categories of citizens who, for various reasons, have greater difficulty in participating, such as women, young people, underprivileged social groups and certain professional groups, foreigners.<sup>38</sup>
- The **Estonian Good Practices of Involvement**<sup>39</sup> [hereinafter: Estonian Good Practices recommend that in case of draft documents which affect foreign language speaking population, the state body should consider the need and possibilities for the information related to the participator process to be translated in that language.
- The **UK Code on Consultation** recommends that alternative versions of consultation documents are used to reach wider audience, such as young person's version, a Braille and audio version, translated version in relevant languages, etc.

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<sup>38</sup> Council of Europe, Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life, 6 December 2001

<sup>39</sup> The document was developed by the representatives of both ministries and NGOs in 2005. It gives recommendations for planning and implementing participatory processes to make sure that all stakeholders could take part in them; <http://www.valitsus.ee/?id=5603>, accessed on September 15, 2010

### The responsibility of CSOs towards stakeholders

CSOs and their umbrella organizations are often more active at the stages of active participation – specifically by taking part in working groups of different ministries, but also at the level of consultation, when they send comments on behalf of the groups they represent. The responsibility of CSOs towards the groups they represent is important as the constituencies ought to know the issues that are being discussed. In addition, some CSOs represent certain interest which affects wider group of people (e.g., minorities, women) and therefore they can help inform these groups about the legislative proposals and sometimes even facilitate their participation in the process (e.g., by assisting them to develop own comments). CSOs can also help educate the public about the issues at stake and the adopted laws, which can also contribute towards better application of the law. Overall, CSOs can help increase accountability and transparency of the drafting process.

The **EC Principles and Minimum Standards** state that *“interested parties must themselves operate in an environment that is transparent, so that the public is aware of the parties involved in the consultation processes and how they conduct themselves. Openness and accountability are thus important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent: which interests they represent and how inclusive that representation is”*.

*The Compact on Relations between the Government and the Third Sector in England*<sup>40</sup>, outlines specific commitments that CSOs should fulfil. Specifically, CSOs should include their stakeholders (beneficiaries, members, volunteers) when preparing responses to consultations, and should give feedback as to what was communicated to the government and what is the outcome. CSOs should be clear whose views they represent and what were the bases for development of their comments. They should promote consultations among other organizations and respect the requirements for confidentiality.

The **UK Code on Consultation** provides that *“in order to ensure that responses are analysed correctly, it is important to understand who different bodies represent, and how the response has been pulled together, e.g. whether the views of members of a representative body were sought prior to drafting the response.”*

## **4. Specific Issues to the Process**

### Should participation be open for all legislative drafts?

Whilst most of the countries apply the obligations, or principles and standards to all legislative acts, some Bosnia and Herzegovina and Republika Srpska make a distinction based on whether the law will have significant influence on the public or not. Both documents list the areas of regulation which are considered to have such influence (e.g., criminal law, election law, labor laws etc).<sup>41</sup>

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<sup>40</sup> Revised in December 2009

<sup>41</sup> See articles 9-14, of the BIH Rules of Consultation and article 6-10 of the Republika Srpska Guidelines.



According to the **BiH Rules for Consultation** there are minimum obligations concerning consultation in case of pre-drafts and refer mainly to the requirement to inform those on their consultation lists about the process and give them 21 days to provide opinion. In case the law will cause a significant influence on the public, then there is a need for a wider and more open distribution of the draft (e.g., via media), involvement of experts, individuals, CSOs in working groups and organizing public meetings.

#### Types of documents open for participation

In a law drafting process draft laws, regulations and other acts and documents which are related to them should be open to the public. This is a most common rules in European countries discussed in the paper.

The **Croatian Code** applies to draft laws, regulations and other acts (e.g., strategy, resolution, declaration, program) of both parliament and government, the **BiH Rules for Consultation** on draft laws and regulations. The **Hungarian Law** applies to drafts of laws, but also concepts of laws and other preparatory materials related to law drafting processes as well as ministerial decrees. In **Slovakia**<sup>42</sup> the documents of programmatic, concept and strategic nature and the draft rules of law should be made public. The **Legislative Rules of the Government of the Slovak Republic**<sup>43</sup> [hereinafter: Slovak Legislative Rules] apply to both laws and regulations drafted by its bodies.

The **Estonian Good Practices** list the specific documents which should be open for participation:

- Drafts of laws and their amendments;
- Drafts of the regulations and directives of the Government of the Republic;
- Drafts of Ministers' decrees;
- Documents, concepts, policies, development plans, and programs that are important to the country's development;
- Drafts of legislation of European Union institutions and other strategic documents (i.e. green and white books);
- Instruction and procedures for rendering public service;
- Conventions and international agreements, as well as the documents that are worked out within their framework, and that influence the society.

#### What other information is provided?

Various documents stress the importance of providing clear, concise and comprehensive information needed to facilitate the process. Therefore, high consultation standards are not satisfied by mere publishing of a draft document. In addition complementary information should be provided to ensure that the comments which will be submitted are meaningful, and useful; and that the consultation targets the most relevant issues.

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<sup>42</sup> Act on Free Access to Information and Amendments of Certain Acts (The Freedom of Information Act), 2000 (as amended in 2006 and 2009)

<sup>43</sup> Legislative Rules of the Government of the Slovak Republic, 1997 (last amended 2010)

- **EC Principles and Minimum Standards:** the documents for consultation should be complemented by summary of the context, scope and objectives of consultation, issue of particular importance or for which input is needed, type of feedback to be provided, details about the overall process, follow up steps, contact details and deadlines, and documents that are related and referenced.
- **Hungarian Law:** when the draft law aims to amend at least one fifth of the provisions of another act, the act to be amended must also be disclosed on the website in a structure which integrates the envisaged amendment.
- **Romanian Law:** announcements about law drafting process, among others, should contain justification or information about the approved need for drafting such law, the complete draft law, the deadline, place, and method as to how to submit proposals, suggestions, and opinions.<sup>44</sup>
- **Slovakia:**<sup>45</sup> the announcement about the publication of the draft law on the internet has to include information on the title, reference number, internet address where the law can be found, date when the draft was posted, deadline for comments, and email address where comments should be sent and link to other relevant materials.

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### When to involve?

As a matter of good practice, the public should be able to gain access to the documents at the earliest stage of their development. Only in this way they will be able to familiarize themselves with the issues and prepare themselves to provide useful and credible contribution. This will allow them to consult their constituencies and stakeholders, research the issues, or even agree on jointly developed contributions. While it is understandable that government bodies may not feel comfortable to release early version of the draft laws, they could nevertheless provide short summaries of issues they plan to address. In addition, by involving CSOs and other interested parties in the actual drafting process, they can also allow for these groups to consult their stakeholders and bring back initial views on some issues. Such approach can save time and decrease potential disagreements in the later stages when wider consultation is conducted.

- **BiH Rules for Consultation:** draft version of laws should be made public, and if possible at any time of the drafting process but before it is finalized for submission.
- **Estonian Good Practices:** consultation and participation should start as early as possible in the preparation of the draft. It can be preceded by informing and consulting on an informal basis in order to inform the parties about the problems related to the field of regulation.

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<sup>44</sup> However, it is not mandatory to mention the date when the announcement was made. So there is no guidance as to how to calculate the deadline for sending the public comments and this can be misused in practice.

<sup>45</sup> Slovak Legislative Rules and *Methodological Guideline for the Preparation and Submitting of Documents for Government Deliberations*, issued by the Head of the Office of the Government, 2001

<sup>46</sup> The announcement must be sent to the bodies which the drafter must consult (listed in article 9 of the Slovak Legislative Rules). The drafter may also decide to send the announcement to other state bodies, bodies of self-government, professional associations, and other institutions.

- *Republika Srpska, Public Administration Guidelines on Participation of Public and Consultations in Legislative Drafting* [hereinafter: Republika Srpska Guidelines] the public should be included even at the phase of developing preliminary drafts of the law.
- **Romanian Law:** announcements about the drafting of a law should be made 30 days before submitting the draft for analysis, approval or adoption.
- **Slovakia:**<sup>47</sup> ministries, other central bodies of state administration and bodies of local state administration shall disclose materials upon their release for inter-ministerial commentary period. So the general public should receive the text the moment other state bodies do, but in any case prior to its submission to the Government.
- **UK Code on Consultation:** *“It is important that consultation takes place when the Government is ready to put sufficient information into the public domain to enable an effective and informed dialogue on the issues being consulted on. But equally, there is no point in consulting when everything is already settled. The consultation exercise should be scheduled as early as possible in the project plan as these factors allow.”* In addition, the Code encourages the Government to undertake informal consultations to obtain initial evidence and gain understanding of issues that will need to be addressed in formal consultation process. Awareness should be raised before the process starts so that interested party can prepare for it.

#### Timeline for comments or discussions

When planning for a consultation it is important to consider how much time is given to the public to comment on the document. Different tools may require different timeframe, and the timeline will need to correspond to the type of document, the issues raised its length and the issues that are raised available expertise on the issue. For example, if the document raises new issues the public may need more time to familiarize itself with it. The same if the law affects wide range of issues. Although most of the documents described here set a certain timeline, most of them specifically mention the possibility for this timeline to be extended.

- **EC Principles and Minimum Standards:** highlight the importance to balance the need for adequate input and swift decision-making. To this end the process may be extended (e.g., in case CSOs need to consult members, in case of public holidays) depending on the circumstances. They prescribe 8 weeks for reception of responses in case of written consultation, and 20 working days notice for working meetings.
- **BiH Rules for Consultation:** consultations should be conducted at any stage of the process but prior the submission of the draft to the Council of Ministers. For draft laws which do not have significant influence on the public the deadline for comments is 21 days; for the rest, and in cases when written comments are required, at least 30 days.
- The **Croatian Code** proposes 15 days from the time the draft law has been posted on the web site of the responsible government body.

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<sup>47</sup> Act on Free Access to Information and Amendments of Certain Acts (The Freedom of Information Act), 2000 (as amended in 2006 and 2009) and Slovakian Government Legislative Rules.

- **Estonian Good Practices:** consultations generally should last for a minimum of 4 weeks. The length of the consultations must be extended in the case of very voluminous and substantial drafts, or in the case of with state holidays and vacations.
- **Hungary:** a time period of at least 15 days for opinions, comments or proposals from the day the draft was posted on the web site of the state body. In the case of emergency procedure the same timeframe which is indicated for consultation with state bodies should be given to the public.
- **Republika Srpska Guidelines:** preliminary draft of the law is open for consultation for 15 days while the final draft law for 8 days from the day it is posted on the internet.
- **Romanian Law:** In case of written submissions - 10 days should be given for sending comments. Public debates they should be held within 10 days from the date when the location and day have been announced.
- **Slovakia Legislative Rules of the Government:** the period for submitting comments is 15 working days from the day the information about the draft is posted. The drafter of the act may assign a longer time period.
- **UK Code on Consultation:** consultation should last 12 weeks. Longer period should be allowed when consulting during holidays, or when issues are particularly complex.

#### Acknowledgement and Feedback

Providing feedback to the consulted parties increases trust and strengthens cooperation. It helps guarantee that their opinion is indeed considered, and included in the draft law when appropriate. The feedback does not need to be individualized, especially when there are wide consultation processes. However, a summary of all responses and the action upon them should be provided in a collective report. The feedback and guarantees that the opinion of the parties will be considered are integral part of documents concerning participation.

- The **EC Principles and Minimum Standards** prescribe that all received contributions will be acknowledged (either by sending individual or collective response via email and web site depending on the number of contributions). Concerning feedback, legislative proposals should be accompanied by an explanatory memorandum which will contain information about the consultation process, the results and how those results were considered in relation to the legislative proposal.
- The **BiH Rules for Consultation** prescribe that oral consultations must be recorded. All comments must be considered, and the institution must develop report on the accepted and rejected comments with explanation on why it has accepted/rejected certain comment. The draft law submitted for adoption must be accompanied by a statement which contains: (1) statement that the minimum consultation obligations have been fulfilled, (2) statement whether the law will have significant influence on the public, (3) explanation for selection of the of consultation and the process, (4) statement that the institution has acted upon the received comments and has submitted the report on the comments. This statement is attached to the law adopted by the Council of Ministers and forwarded to the Government.

- These provisions further elaborate the provisions in the **Unified Rules for Drafting Legal Documents in BiH Institutions**<sup>48</sup> which require that all justifications of draft laws also contain information about the conducted consultation, and specifically list CSOs and international organizations as parties that should be consulted when developing preliminary drafts and draft laws.
- The **Croatian Code** proposes that summarized unified explanation of the rejection of the comments is announced publicly on the web site of the body responsible for drafting or in another appropriate manner.
  - **Estonian Good Practices**: a summary answer should be prepared by the initiator of the participation, which should include all submitted comments and an explanation on those that have not been accepted. The summary will be posted on the internet and sent to participants within 30 days from the end of the consultation, and when necessary also transmitted via the mass media.
  - **Hungary**: The competent ministry should consider the comments and publish a summary on its website of all comments which have been accepted and the reasons of those which have not been accepted, unless the comments are considered to be ungrounded.<sup>49</sup>
  - **Romanian Law**: public authorities must develop an annual report about the law-making process which is made public at the location of the specific authority, through displaying it on the poster board at the department site or through presenting it in a public meeting. The report should contain information about:
    - total number of recommendations received from the public;
    - total number of recommendations included in the drafting of normative acts and in the content of decisions passed;
    - number of participants at public meetings;
    - number of public debates organized to discuss drafts of normative acts;
    - record of trails brought before a court as a result of noncompliance with the law;
    - self-evaluation of the established partnership with citizens and civil associations;
    - number of meetings that were not publicly held and the reasons for restricting access to these meetings.<sup>50</sup>
  - **Slovak Legislative Rules**: a meeting with representatives of the public must be organized in case the drafter does accept a comment sent collectively by at least 500 persons (see details below). When submitting the draft law to the Government, the responsible body must also include a statement that the law does not have provisions which are disputed by other state bodies or members in the public. In case it contains disputed provision those must be indicated and reasons for not settling them provided.

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<sup>48</sup> Adopted 2005

<sup>49</sup> The law does not determine who shall decide whether a comment is ungrounded or not.

<sup>50</sup> According to the opinion of our local partner, the law lacks check and balances because it does not regulate what will happen if the public authority is not taking into consideration the suggestions and comments of the public. This discourages the public to get involved in the process. Currently, the law is going through an amending process within the Parliament.

- **The UK Code on Consultation:** the Government should provide a summary of who responded to the consultation and a summary of the views expressed to each question. A summary of any other significant comments should also be provided. The summary should be published before or alongside any further action related to the draft; and those who have participated in the process should be informed about it.

### Waiver of the rules/standards

While all documents insist on the importance of conducting participatory processes in law drafting, they do list the situations when certain exceptions may be in place. Most commonly, deviations (either a shortened period or no consultation) from the prescribed processes can occur in the case of:

- emergency situation (e.g., BiH, UK);
- exceptional circumstances such as threat from human rights, basic freedoms, security, economic damage, state of emergency etc (e.g., Slovakia);
- obligations related to the EU or international treaties which have or have not been anticipated (e.g., BiH, Croatia, Estonia, Slovakia, UK);
- issues particularly important such as defense, national security, financial, foreign affairs, nature conservation or inheritance protection interests or when there is an outstanding social interest linked to its particularly rapid adoption (e.g., Hungary);
- when law needs to be adopted outside of a legislative agenda, due to an urgent need (e.g., Slovakia)
- when only few amendments are made (e.g., Estonia).

According to the **BiH Rules for Consultation** the institution must provide detailed reasons about the exceptions. The situation which requires exemptions however does not release the institution from the prescribed minimum obligations concerning consultation prescribed in the rules (described above in the text).

Under the **Romanian Law**, in the case of critical situation<sup>51</sup>, which requires urgent measures and protection of the public interest, the draft can be submitted according the emergency procedures.

The **Slovak Legislative Rules** provide that even in such cases which require urgent adoption the time period for consultation should be at least 7 days.

**UK Code on Consultation** allows for shorter consultation period, however the reasons must be clearly stated and the responsible body should consider alternative ways to involve wider audience.

### Assessment of the process

Assessment as to how the participatory process was conducted can help improve such processes in the future. Even more, they can help transfer experiences, correct certain

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<sup>51</sup> Local organizations however have reported that this article is a too vague and prone to interpretations, therefore they recommend that this article should list specifically those 'critical situations' which allow derogation from the provisions of the law (e.g., natural disaster).



obstacles that have appeared and help record creative methods and tools that have been used. Such assessment can also be done in collaboration with those who took part in the process.

The **Austrian Standards** provide for several questions to be considered when the process of participation ends. The aspects they mention include:

- Documenting measures of the policy, the plan, the program or the legal instrument already implemented and those which are still pending.
- Documenting experiences with the public participation process so they can be considered or passed on in future procedures.
- In case of large processes evaluation by evaluation by an independent agency.
- Making the documentation available to those who may benefit in the future.
- Verifying that the objectives of the public participation process have been met.
- Involving the public in the monitoring and the evaluation, e.g. through participation in a monitoring group.

The **Estonian Good Practices** suggest conducted mid-term and final assessment of the process. All parties take part in both assessments with the aim to provide guidance for improvement in future processes. The mid-term assessment aims to assess the way the involvement is conducted, the feedback and to determine the need to undertake supplementary methods of involvement. The summary of the assessment can take many forms (e.g., verbal, written report, brief) but should be sent to all interested parties and include any important decisions that are being made. Final assessment is done in relation to process and results.

- Concerning the process, the following is assessed: the initial assignment; the productivity of the forms and methods of engagement that were used; the motivation of the parties to participate; the efficiency of the administrative work; the efficiency of the feedback; the satisfaction of the target group with the engagement, etc.
- Concerning the result, the following is assessed: correspondence of the results to the initial assignment; whether alternatives were considered; the applicability of the results to the subsequent development of the topic being consulted on; etc.

The **UK Code on Consultation** provides that its criteria should be reproduced in consultation papers alongside the contact details of the consultation coordinator. Those who have participated in the consultation process are invited to submit comments to the coordinator about the extent to which the criteria have been observed and any ways of improving consultation processes. Further, government bodies should monitor the consultation process, and share learning with other bodies.

#### *What if procedure is not followed?*

Some documents, mainly those with legally binding nature, prescribe certain measures in case the government officials do not respect the procedures for participation.

- The **BiH Rules for Consultation** prescribe that the Council of Ministers may return the draft law to the institution to comply with the rules on consultation if it has not done so before submitting the law.

- According to the **Romanian Law**, any person may launch complain according to the administrative procedure in case of infringement of rights under the law; the complaint or appeal are considered under emergency procedure and are exempt from taxes. Public servant may be penalized if s/he *“does not allow the access of individuals to the works of the public sessions or prevents the interested parties from getting involved in the elaboration process of public interests regulations, under the conditions of the present law.”*<sup>52</sup>

## VI. Models for public involvement

Countries use different tools and methods to support participation at all stages of the drafting and implementation process. The decision on which method to choose can be made based on: the issues that are subject to consultation and the size of the group they target, whether the issue introduces novel solutions, time period available, costs that are allocated for the process, other laws that may be affected with its introduction; level of expertise available (or need for additional expertise and information) etc. These issues should be considered at the beginning of the process to ensure that the most appropriate method is selected, to help explain to the interested audience why that method was chosen and to help guarantee that the desired result will be achieved.

Here is a summary of examples of tools and models which are used in process of law drafting specifically, and which are considered in laws, codes or guidelines:

- *access to information*: creation of on-line central portals (registers), publishing information on the government and its bodies' web sites, transmitting information in media (TV, newspapers), official gazettes, CSO portals, CSO newspapers, etc.
- *consultation*: publishing call for consultation on on-line central portals (registers) or on the government and its bodies' web sites, media (TV, newspapers), portals or newspapers of CSOs, public hearings, conferences, roundtable discussions, citizen advisory groups, focus groups, on-line chat events, email lists, written comments, experts panels, public debates etc.
- *active participation*: cross-sector working groups, experts meetings, email lists, on-line chat forums, etc.

Application of one tool should not mean exclusion of another. Governments should adopt different tools which may be needed to solicit wider input and include all groups that may be affected by the law. For example, the EC and several countries have established a web portal to facilitate and coordinate information sharing and consultation. However, they also apply other methods to solicit input (e.g., public hearings, press releases, contact points).

Further, as outlined in the **Estonian Good Practices**, the chosen method of involvement should consider the effect of the draft document on the parties to be involved, the needs, opportunities and other conditions. Below is summary of some models addressed in European documents:

### 1. Preparation for the process

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<sup>52</sup> Art. 14, Law 52/2003 on the Decision-Making Transparency in the Public Administration



Several countries provide for certain suggestions or requirements as to what institutional methods to use to ensure successful participation.

#### Assigning participation coordinators/facilitators

Several countries propose the assignment of specific government officials in each government body to coordinate and monitor the consultation process, to ensure compliance and harmonized application of the prescribed law or code (e.g., Austria, BiH, Croatia, Estonia, Republika Srpska, the UK).

- **BiH Rules for Consultation:** each institution must designate a Coordinator for Consultation responsible to coordinate all consultative processes within the institution, and in addition a separate official may be designated for particular consultation process.
- **Estonia:** each ministry appoints officials, whose direct responsibilities include involving the public in decision-making processes. These people supervise the implementation of the Code of Good Practice on Involvement in their respective ministries, and help both government officials and nonprofit organisations in the matters of involvement.<sup>53</sup> The names of the contact persons are available on the common web site for consultation. According to the **Best Practices**, the coordinator of the involvement should advise the parties, analyze the process and summarize the results.
- **Republika Srpska Guidelines:** each institution should assign a coordinator for consultation who takes part in the process of drafting laws and is responsible for applying the Guidelines to the process.
- **UK Codes on Consultation:** every government body should assign a consultation coordinator, to advise different officials who run the specific consultation. The coordinator receives information from the parties about the way consultations have been conducted and how the Code was respected in the process, and shares learning within its government body and among government bodies as to how to improve the consultation process.

#### Developing a list of interested parties

Developing list of individuals and organizations that work in the area of activity of a government body or would be interested to take part in the process is a useful tool to facilitate more effective participation process. Such lists help answer the questions as to 'who to involve' and also can help promote cooperation even beyond the law drafting process. However, the existence of such lists aims to facilitate the process and it should not inhibit the possible participation of other parties which may be affected or have an interest to take part in consultation on a specific law.

- **Estonian Good Practices:** the responsible body should register all interested parties which want to be informed about the preparation of certain document in general. In addition, when determining who to involve in a specific process, aside for the

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<sup>53</sup> Kubar, U., "Estonian Civil Society Development Concept (EKAK): Framework for Cooperation Between Third and Public Sector", 2008

registered parties, the body should consider other possible interest groups to be involved in that particular process. When deciding who else to involve, the responsible body can consider the representativeness of the party and their expertise.

- **BiH Rules for Consultation:** each institution should keep a list of interested organizations and individuals; request to be included in the list should be made in writing.

### Developing plans

Developing plans as to how the process should be conducted can help government bodies clarify the objectives of the process in the beginning, and decide on the best method to choose for that process. Even more, it can help them assess the amount of financial resources needed and plan for them in advance.

The **Estonian Good Practices** recommend the preparation of a 'plan for involvement'. The content and format of the plan should correspond to the type and content of the document which will be consulted. The following issues should be addressed: participants in the process, stages of involvement, coordinator of the process, beginning, length, final deadlines, forms, methods of consultation, information channels, interim assessment of the process and final results.

The **Austrian Standards** provide for several questions which need to be considered in the stage of preparation for a participatory process. Those include: objectives and goals of the process, target group, outlining topics and issues which can be changed, and those which cannot (from the legal provisions), determining the scope of influence by the public and informing them how much their comments will be binding, level of involvement (information, consultation, participation), methods to be applied, assigning facilitator to lead the process.

## **2. Providing information about the process**

Good practices require that the public is informed in time about the intended law drafting process. Sending information to the public could help interested parties to prepare in time for the upcoming process, and contribute meaningfully to it. Different tools should be used to ensure that the information is distributed as widely as possible.

- According to the **BiH Rules for Consultation** each institution should post on its web site the list of planned activities in terms of law drafting, send it to those on the consultation list and give to anybody who requests it in writing.
- According to the **Estonian Good Practices** documents and references related to the involvement process should be made public through the electronic information channels, if necessary through alternative channels (libraries, CSOs, local government, information points) and through the mass media.
- According to the **Romanian Law** announcements regarding law drafting process must issued in the respective department, in a location that is accessible for the public; moreover, they must also transmit these announcements to the central or local mass-media channels and to all the people that manifested interest in receiving such information.

### 3. Using the Internet

#### *Web sites of government bodies*

In several European countries, the governmental bodies are asked to post draft laws on their web sites, and some of them detail the way information should be posted.

In **Bosnia and Herzegovina** the Ministry of Justice website has a section dedicated to public consultation with information on the planned drafting processes; details of a contact person for consultation, list of organizations; the relevant rules and guidelines; the internal rule book; and the form for making submissions, and it also aims to contain the draft laws open for consultation.<sup>54</sup>

In the **UK** different departments also contain special sections on their web site dedicated to online consultation processes. In general, the web sites host information about open and closed consultations. Comments can be given by answering questions asked by the department via an online form, or via email or by sending comments by post (depending on the format the department chooses to use). The web site provides short description about the aim of the document open for consultation and its content, the questions which are focus of the consultation, related materials, information on when the process was open, when it will be closed/deadline for submission of comments, reference number, and contact person and also the intended target group for the consultation. The closed consultations also contain links to the responses received during the process.

In **Hungary**, the concepts of laws, draft laws and decrees, the relative proposals and professional arguments and the status of their conciliation shall be posted on the web site of that ministry which is operated by the minister preparing the law. The interested parties may provide their opinion without registration by sending it to e-mail addresses specified in case of each draft law. The law does not specify the scope of opinion nor does the competent ministry raise specific questions therefore the interested parties may touch upon any aspect of the examined draft law and may also upload document in the e-mail. The draft legislation and related documents should be kept on the web site of the ministry for a year following the adoption of the legislation.

#### *Central electronic portals*

In addition to posting on individual web sites, some governments host central electronic portal/database which also aims to facilitate information sharing and consultation.

The EC Principles and Minimum Standards provide that open public consultations should be published on the internet of its bodies and also announced in a single access point, and for this purpose it will use the *Your Voice in Europe portal*<sup>55</sup>. The portal is a tool for submitting comments and views on EU policies, discussion on current issues, chat-online with EU leaders. It also facilitates communication with MPs, and other bodies, informs about opinion polls, etc.

<sup>54</sup> <http://www.mpr.gov.ba/en/str.asp?id=224>, accessed on September 14, 2010

<sup>55</sup> [http://ec.europa.eu/yourvoice/index\\_en.htm](http://ec.europa.eu/yourvoice/index_en.htm), accessed on September 14, 2010

In Finland<sup>56</sup> the [web register and information portal hare.vn.fi](http://www.hare.vn.fi) aims to facilitate information sharing and help increase transparency about the work of the government departments. It contains information on all projects and law drafting activities by the Parliament, Government and different government bodies. The online register enables the public to obtain information and to monitor and evaluate the work of state bodies. It contains information the goals of the document which is prepared, the timeline, contact persons, and members of the project or working group. It also contains information on how the project advances and of its publications. Information is sent to the register as soon as the project or law drafting is launched.<sup>57</sup>

The [Direct.Gov web](http://www.direct.gov.uk) site in the UK hosts a central consultation web site,<sup>58</sup> which contains links to direct consultation web sites of the government departments as well as search engine of all open and closed consultations. It provides guidance and tips on how comments should be provided.

In Estonia, the [participation portal Osalusveeb.ee](http://www.osalusveeb.ee)<sup>59</sup> was launched by State Chancellery in 2007. It aims to complement other methods of participation and consultation. The portal allows CSOs and individuals to post comments about the ongoing consultation processes, while the ministries can provide the public with their annual work plans, draft laws, background materials as well as post polls. The web site hosts information about success stories of participation, handbook on participation, and contact points at each ministry responsible for involvement of CSOs. It runs a searchable database of current laws and draft laws. Although submission is currently voluntary, this portal is used by all ministries.

The main features of the portal are as follows:<sup>60</sup>

- The portal publishes drafts of laws, amendments and development plans. Drafts are posted at the early stage of their development.
- The portal allows all registered users (registration is unrestricted) to express their opinion and make suggestions on a published draft act within an announced deadline. Individual feedback is not provided, however all comments are analysed by the drafters of the document. All comments, suggestions and ideas are answered with information on how the suggestion is to be treated: incorporated in the paper, acknowledged, left for further incorporation at a later stage (implementation phase, second amendment etc.), or ignored (reason is given for each exclusion). The

<sup>56</sup> <http://www.hare.vn.fi/> accessed on September 14, 2010

<sup>57</sup> The description about hare.vn.fi is drawn from Holkeri, K., *Accompanying Mechanisms for Public Scrutiny and Access to Information: A Case Study from Finland*, presented at Forum on Ensuring Accountability and Transparency in the Public Sector in Brazil, 5-6 December 2001

<sup>58</sup>

[http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/PublicConsultations/DG\\_170463](http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/PublicConsultations/DG_170463), accessed on September 14, 2010

<sup>59</sup> <https://www.osale.ee>, accessed on September 15, 2010

<sup>60</sup> The description of the web site is taken from Mandel-Madise, Marie., *Participation Web Site Estonia, Study on Stakeholders' Involvement in the Implementation of the Open Method of Coordination in Social Protection and Social Inclusion*, Carried out by INBAS GmbH and ENGENDER on behalf of the European Commission, Employment, Social Affairs and Equal Opportunities DG, 2009; and also E-Practice.eu <http://www.epractice.eu/cases/osale>, accessed on September 15, 2010

results are written in a report and published on the site. After the process is closed for consultation the draft is processed for inter-ministerial discussion, and this process can be followed on the e-legislation web site.<sup>61</sup>

- The portal facilitates creation of interest groups to support or comment on a specific draft act, policy etc. as a one-off action; interested parties can collect signature for example. They can also launch initiatives, present ideas and submit petitions.

In Hungary, the on-line Central Electronic Register of Public Information<sup>62</sup> hosts information about documents (e.g., laws, publications) developed by different bodies performing public duties and data of public interest (e.g., name of the head of the government body). It also provides links to the web sites of bodies performing public duties and informs about ongoing consultation processes. Bodies performing public duties must send a description about the data of public interest and documents that they are developing to this register site as soon as the information is published on their own web sites. The information must be updated regularly (immediately after its change/submission, quarterly, permanently or within 60 days after the decision was made according to the type of data<sup>63</sup>) and be accurate on both the central electronic list and the web sites of the responsible body. A so-called *Single Public Information Retrieval System* hosted on this register ensures that the documents are categorized and may be searched based on specific criteria which are uniform (e.g., title, subject and the deadline of the commenting). The register and the retrieval system are operated by a non-profit company on behalf of the National Development Ministry.<sup>64</sup>

#### 4. Submitting comments – example of ‘collective comment’

The *Slovak Legislative Rules* in article 9 and 10 regulate in more detail the right of the public to submit comments to a legislative draft. Comment is defined as a proposal to adjust the draft act, submitted and justified within the allocated time for comments. The comment could be:

- Proposal for new wording;
- Recommendation for an adjustment to the wording, such as supplements, change, deletion or rephrasing of the original text.
- A reasoned proposals, which explains the specific reservations regarding the draft text and provides proposal as to how to remedy the opposed shortcomings. In this case the comment has to state clearly in which parts and in what way the draft should be amended.

The initiator of the draft law is not obliged to consider the comment nor evaluate proposals (opinions, ideas, recommendations), which do not meet these three requirements.

The rules provide guidance as to ‘how’ to present the comment. Namely, the comments should be clearly formulated and their legislative benefit should be apparent. They should

<sup>61</sup> <http://eoigus.just.ee/>, accessed on September 14, 2010

<sup>62</sup> <http://www.kozadat.hu> accessed on September 14, 2010

<sup>63</sup> The annex to Act XC of 2005 on Freedom of Electronic Information contains specific list of all documents which should be made public and specifics about when changes must be reported.

<sup>64</sup> Neumann Nonprofit Ltd. de facto operates the register and the system on behalf of the minister.

be divided into 'general' and 'comments on individual provisions' of the draft. Comments can be submitted in electronic version through the web site of the drafter of the law (where the draft is published), in electronic version at the designated electronic address or in hard copy. Comments can be submitted individually or collectively.

The commentator (whether a government body or member of the public) can mark the comment as of 'principle comment' if it believes that the comment is of particular importance. The drafter of the law is required to accommodate to that comment, and if not it will be considered that there is a 'subject of disagreement' because of which a 'settlement procedure' will need to take place. For a comment of the public to be considered as a 'principle comment' it must be supported by 500 signatures of natural or legal persons<sup>65</sup> and the signatories should have authorised a person to represent it. Such a 'principle comment' must then be dealt with by the drafter of the law, who must also explain why it was or it was not accepted.<sup>66</sup> If the comment was not accepted, a 'settlement procedure' needs to take place, which is conducted through organizing a meeting with the authorised representative of the public. If an agreement is not reached during this meeting, the draft law that will be sent to the Government should include the issue of disagreement as well. 'Settlement procedure' may also be conducted even if 500 signatures are not collected, based on decision of the drafter of the law. However, if the conditions for a 'settlement procedure' are fulfilled, and the drafter considers that there are serious reasons not to organize such procedure, it must publish those reasons on the internet.<sup>67</sup>

## 5. Organizing public meeting and working groups

According to the **Republika Srpska Guidelines** consultations are conducted by forwarding the preliminary law to the interested parties to give objections and suggestions in writing, or by creating cross-sector working group with representatives of all interested parties. Consultations on the law are conducted during the development of the draft law and have to be finalized within 15 days, after which the prepared draft legislation enters into regular drafting procedure. After the draft is finalized interested parties can still comment on it, within 8 days from the day it is posted on the web page of the drafter of the law.

The **Romanian Law** contains specific provisions as to how public meetings on a draft law are organized. Public meeting is meeting organized by a government body to which every person can have access. The meeting must be advertised at least 10 days before it is planned on the web site of the department, displayed in the department offices and also transmitted through the public media. The announcement must include the time, date, venue and agenda. All parties that have submitted written comments to the draft (prior this meeting) must be informed about the meeting. A person responsible for civil society relations within the department is required to distribute the announcement and send special invitations. At the actual meeting, people may participate within the available limit of seats, and the chairperson makes an order of speaking based on the topics of interest. Mass media is also

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<sup>65</sup> Or 300 signatures in case the document is of non-legislative nature.

<sup>66</sup> This can also have a negative effect, e.g., a government official may decide to disregard any comment which does not have 500 signatures even if it is relevant and useful to the process. See: Staroňová, K., Public policy-making in Slovakia, Slovak Governance Institute,

<sup>67</sup> Mlynarcikova, Viktoria., Public Participation in the Legislative Process in Slovakia, presented at the Citizen Participation in Legislative Process, seminar, Mongolia, 14-17 January 2007



invited. The opinions expressed should be considered as recommendations. The public authorities must write, archive and make public the minutes of the meeting.

## 6. Organizing consensus conference

Organizing a consensus conference is considered in the Austrian Standards and can be used in cases of (politically or socially) controversial question. A selected group of 10-20 interested parties (lay people) works out the answer to the issue in collaboration with experts, who support their opinion. Those selected familiarize themselves with the issue. A three-day conference is organized during which the experts elaborate all matters related to the subject, while the participants question the experts and discuss the issue in depth. At the end a written report is composed which explains the consensus achieved (points of view, recommendations). This report is then presented to the decision-makers (politicians). Media and the public can also be present.<sup>68</sup>

## VII. Concluding Remarks

Participatory policy making processes are recognized and practiced internationally. Intergovernmental institutions and European countries have adopted documents to strengthen, guide and help guarantee the participation of the public, CSOs, and various organizations in their decision-making processes. While some of these documents do not have a binding force, they set out clear guidance and framework. If they are considered in the local context they can help in strengthening the legal environment and supporting the practice of participation.

The texts of the adopted documents on EU level, Council of Europe and the described regulations of countries in Europe provide a general framework of standards which can be considered and applied in participatory processes in other countries. The following concluding remarks about how participatory processes should be designed can be drawn from these documents.

Rules and principles concerning public participation in policy and law making processes on government level are spelled out in different types of documents. Some are legally binding (e.g., Bosnia and Herzegovina, Romania), others are not (e.g., Austria, Croatia, the UK). Sometimes issues concerning participation can be found in different documents. Documents adopted on national level should not undermine practices which already exist or which create higher standards. Upon adoption of the document (law or code) it's important to undertake follow up steps to ensure effective implementation.

The law drafting process is composed of several stages. The public should be involved in all of them, i.e., from the planning through their implementation.

There are three major level of participation: access to information, consultation and active engagement through dialogue and partnership. They require employment of

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<sup>68</sup> As explained in: Arbter, K., Handler, M., Purker, E., Tappeiner, G., Trattnigg, R., *The Public Participation Manual – Shaping the Future Together*, 2007. For more information see: <http://www.peopleandparticipation.net/display/Methods/Consensus+Conference>, accessed on September 14, 2010

different tools and methods and are characterized by different intensity in the relationship between the government and the public.

Everybody should be informed and have the possibility to be consulted in the process of law drafting. Additional efforts should be made to include those who will be most affected by the laws. When special working groups are formed, participation may be limited; but the selection of the members of the public or CSOs should be done openly and based on predefined criteria to ensure credibility of the process. Participation should be open to different groups and methods should be chosen which will help facilitate involvement of groups with special needs.

CSOs can play an important role in the process – by facilitating the involvement of the public, representing stakeholders' interests and by informing on the results.

All laws and implementing regulations should be drafted in a participatory manner. Sometimes there may be conditions which would require certain limitations in the process. However minimum standards should be respected – the public must be informed and have access to the draft, minimum time for consultation should be provided before the draft is sent for adoption in the parliament, and interested parties should be able to take part in the drafting process.

Some documents recommend adoption of clear, concise and comprehensive information to be provided so as to help ensure that interested parties understand the issues better and are able to offer more meaningful contribution. For the same reasons, the public should be able to gain access to the draft documents at the earliest stage of their development.

The timeline allocated for comments or participation in public meetings should be determined on several factors including the type of document, the issues raised, its length, available expertise, the size of the target group it affects. The timeline can be shortened; but it is recommended that the situations when this can occur are clearly prescribed.

Providing feedback to the consulted parties increases trust and strengthens cooperation, and it also ensures that they will be more committed to take part in future processes. While the feedback does not need to be individualized, a consideration of all issues raised should be made when developing collective response. Some countries provide additional guarantees that the opinions will be considered; for example the responsible state body may need to make the collective feedback public, and send it to the Government and/or Parliament as accompanying document to the draft law.

Assessment of the process of participation helps draw recommendations to improve future process and share experiences. Therefore, such assessments should be conducted after the law is adopted.

Different tools and methods can be used to support participation at all stages of the drafting and implementation process. The decision on which method to choose can be made based on different factors, but such decision should be made at the beginning of the process to ensure that the most appropriate method is selected and



that it will bring the desired results. Governments should adopt different tools which may be needed to solicit wider input and include all groups that may be affected by the law.

In preparation for the process, some government bodies can assign coordinators who will facilitate the process, develop a list of interested parties to take part in the process, and develop plans for the process.

Different tools should be used to ensure that the information about the launched process is distributed as widely as possible (e.g., web sites, newspapers, TV, CSO portals).

Governmental bodies use their web sites to facilitate the process of consultations. In some countries, central on-line registers have been set up to assist with the coordination of information sharing and consultation, but also to provide tool for the public to meet in one place and comment on various undertakings by the government.

The laws that are enacted affect people. Passing a law is a demanding process. It requires investment from both the government and the interested parties involved, in terms of time, financial resources and energies. Governments may decide not to ask the public for opinion on the draft. In such cases, they may not be able to implement the law properly, people may not be willing to comply with law which they do not understand and have not been consulted about. The government will need to amend the law more often to adjust to the needs or circumstances which were not foreseen, and thus spend additional resources and time. This will decrease trust in its work. Open processes bring government bodies and the interested parties together, resources needed for the process are shared, the proposed laws have increased legitimacy and ownership, and responsibility for the implementation is shared. Ultimately, participatory processes can ensure that the laws meet the real needs of the people and contribute towards further development of the society.

## **C. Assessment of laws and practices for public participation in law making process in Macedonia<sup>69</sup>**

### **I. Introduction**

The following document entails an overview of the legal regulative and practices in the law making process and public participation, primarily the civil organizations in the law making.

The overview is based on analysis of the actual relevant laws and policies which determine the basic rules of inclusion of the public and the processes and procedures for adopting laws and policies. At the same time, mini researches were made through surveys and interviews with representatives of the civil organizations and bodies of state administration. Relevant internet sites were also analyzed. The analysis is made for the regulation and practices which exist in the period of January 2007 to August 2010.

Inclusion of citizens and consequently the civil organizations in the law making process and other strategic documents or generally in policy creation is mentioned but not clearly elaborated in more laws, bylaws and strategic documents. At the same time, even in the Constitution the importance of this issue is underlined. However, in absence of a clearly structured solution and un-consistent application of the envisaged phases and consultation steps, the value of the few successful examples cooperation and common achievements is diminished. This is why the impression remains that the civil organizations can not fully represent their interests, express their needs in front of relevant influence and decision making stakeholders.

### **II. Legal Framework**

#### **1. Constitution**

Speaking of inclusion of citizens and civil organizations in the decision making process in the Republic of Macedonia it is imminent to start with the Constitution. Namely in article 2 paragraph 2 of the Constitution it is envisaged that the citizens of Republic of Macedonia exercise the power through democratically elected representatives, through referendum and other forms of direct expression. Furthermore, the Constitution very clearly regulates that each citizen has the right to submit an appeal to state bodies and other public services and receive a reply from them, for which the citizen can not be called responsible nor suffer damaging consequences.

For the civil sector, article 20 is of importance, in which the freedom of association is guaranteed and can be exercised through civil organizations and political parties. Also, in function of free expressions of aptitudes and opinions of citizens is the right for peaceful assembly and public protesting without prior registration and special permit<sup>70</sup>.

The civil sector can initiate legislation through three different forms determined by the Constitution; through a member of parliament, through the Government or through initiative

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<sup>69</sup> This section was developed by Emina Nuredinoska, Acting Head of Civil Society Department Macedonian Center for International Cooperation (MCIC), [www.mcims.org.mk](http://www.mcims.org.mk)

<sup>70</sup> Official Gazette of Republic of Macedonia no. 52/91 Constitution of Republic of Macedonia article 21

signed by at least 10000 voters<sup>71</sup>. These are the three constitutionally determined opportunities which are available to the citizens and the civil sector in case of interest for lobbying and promotion of a certain law. The initiative for adoption of a law may be raised by any citizen, group of citizens, institutions and organizations to the authorized proposers.

Apart from the indirect ways of expression of the citizens, the constitution envisages the option for referendum. The referendum as an opportunity for expression regarding a certain law is activated when proposal is submitted by at least 150.000 voters. The decision reached by referendum is obligatory.

The Constitution, quite adequately positions the basic frame in which the citizens can express and implement their rights regarding the free expression of their opinions and stands but also their eventual transliteration into laws. The application of these constitutionally guaranteed rights depends on many factors among which: the motivation of the initiators, degree of urgency importance or priority of the issues in question, level of political culture of all actors, democratic capacity and transparency of the work of state institutions as well as the correct positioning (canalization) of the mechanisms for this participative articulation of interests<sup>72</sup>.

## **2. Law on referendum**

The Law on referendum and other forms of direct expressions of the citizens is adopted in September 2005 and it regulates the opportunity and mechanism for exercising civil initiatives whether it is for questions of national interest or for questions of local character and importance. According to the law, the referendum is defined as a form for direct expression of the citizens when deciding on certain issues from the competence of: the Assembly of Republic of Macedonia, the municipalities, the City of Skopje and the municipalities within as well as for other questions of local meaning<sup>73</sup>.

The voting on the referendum is direct and secret, and all citizens with electoral right and which are listed in the Election list have the right to vote. No citizen can be summoned as liable for voting or not voting on a referendum.

The referendum can be announced for deciding or consulting with the citizens. In the first case the decision which the citizens adopt is obligatory, but, if it is a consultative referendum it is not mandatory. State level referendum is called by the Assembly of Republic of Macedonia and the Assembly is obliged in 30 days from the submission of the proposal to reach a decision for referendum. State wide referendum can be called for: issues of competence of the Assembly, its decisions, expression of citizens for other questions that the Assembly decided (additional referendum) for issues that need to be regulated by law (prior/anticipatory referendum) and similar. There are certainly questions for which referendum can not be called such as: Budget of Republic of Macedonia and the final

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<sup>71</sup> Official Gazette of Republic of Macedonia no. 52/91 Constitution of Republic of Macedonia article 71

<sup>72</sup> Natasha Gaber-Damjanovska, Participation of civil sector in the process of legislation and decision making in Republic of Macedonia

<sup>73</sup> Official Gazette of Republic of Macedonia no.81/05 Law on referendum and other forms of direct expressions of the citizens, article 1

account of the Budget, the reserves of Republic of Macedonia, matters regarding elections, appointing and dismissing and amnesty, defense etc.

The law defines also citizen initiative as well as citizen gatherings. The citizen initiative is a form of direct expression of citizens in the decision making through starting an initiative in front of the Assembly of Republic of Macedonia, Municipal councils and the city of Skopje. The citizen initiative may be started for submitting of a proposal to change the Constitution, proposal for adoption of a law and calling for a nation wide referendum as well as for other regulative and local level referendum<sup>74</sup>. Article 4 regulates the citizen gatherings as a form for direct expression of citizens when deciding on matters of local importance for the municipalities, the city of Skopje and the municipalities within as well as for the neighbourhood governments for which the question is addressed.

### **3. Other laws and policies**

The need for adoption of new policies or changes in the current ones may originate from different sources. Formally, as mentioned above according to the Constitution of Republic of Macedonia, the right to propose bringing of a law has each Member of Parliament, the Government of the Republic of Macedonia and at least 10.000 voters.

However, in practice, the need for adoption of most of the policies and laws comes out from the Program of the Government especially from the process of European integration. The process of harmonizing the legislation in the Republic of Macedonia with the legislation of the European Union has and will have in future significant influence upon planning of policies and legislation which needs to be reviewed and determined or adopted by the Government.

This process is closely connected to the priorities and deadlines defined with the Decision for European partnership and the National program for adoption of the law of the European Union (NPAA). However, there are other issues which are not directly linked to the process of European integration but which should be resolved through proposing new policies or changes in the current policies or legislation. Regardless of the source, it is important to secure that in ministries and other bodies of state administration, the process for creating policies is adequately organized to create policies and legislation in accordance to the principles defined in the Methodology for analysis of policies and coordination<sup>75</sup>.

Apart from the basics in the Constitution, the legal frame through which the system for planning and policy creation is regulated and thus the manners of citizen inclusion in the initiation and preparation of these policies is made of the following laws inclusively: Law on the Government of Republic of Macedonia<sup>76</sup>, Law on organization and work of the bodies of state administration<sup>77</sup> and the Rules of procedure of the Government of Republic of

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<sup>74</sup> Official Gazette of Republic of Macedonia no.81/05 Law on referendum and other forms of direct expressions of the citizens, article 3

<sup>75</sup> General Secretariat of the Government of Republic of Macedonia, Guidebook for policy creation, 2007

<sup>76</sup> Official Gazette of Republic of Macedonia no. 59/00, 12/03, 55/05 and 37/06, Law on the Government of Republic of Macedonia

<sup>77</sup> Official Gazette of Republic of Macedonia no. 58/00, Law on organization and work of the bodies of state administration

Macedonia<sup>78</sup> in which among other is determined the legal grounds for adopting two three other important Governmental acts (the Methodology for strategic planning and preparation of the Annual working program of the Government, Methodology for analysis of policies and coordination and the Methodology for regulatory impact assessment). In these documents is the basis for the processes for strategic planning and policy analysis and coordination. These processes provide that the political priorities determined by the Government are linked to the annual process of determination of strategic priorities of the Government and with the budget and then incorporating specific policies and initiatives proposed in the annual program of the Government. At the same time, with these laws and bylaws, procedures are determined through which it is secured that all materials submitted to the Government for consideration or adoption are supported with relevant information. Through the inter-ministerial consultations it is maintained that the policies are coordinated and harmonized and that they reflect the interests of the concerned stakeholders<sup>79</sup>.

### **3.1. Law on the Government of Republic of Macedonia**

In article 22, paragraph 1 of this law it is stipulated that “on invitation by the President of the Government, for participation in the discussion and providing opinion and proposals upon questions for which the session of the Government is called, without the right to decide, present can be the directors that are managing other bodies of state administration and administration organizations as well as representatives from public enterprises, association of citizens and foundations, institutions and other legal entities“. This provision is a direct opportunity to represent the interests of the civil organizations in front of the executive power at the highest level. However, until now, there are no examples of participation of civil organizations on Governmental sessions. Also, another option is given with the articles 23 and 24 of this law, according to which the Government can form boards and commissions or expert councils as permanent consultative bodies to review and provide expert opinions for certain legal, economic and other questions.

The General Secretariat of the Government, established with the Law on amendment and supplementing the Law on Government of Republic of Macedonia<sup>80</sup>, is the body through which the civil organizations can communicate with the Government and give their contribution in policy creation since with article 40 paragraph 2 it is said that “the General Secretariat provides coordination and expert support for the needs of the Government, ... provides efficient preparation and holding of the sessions of the Government and its working bodies, provides information for the public; coordinates activities...; with non-governmental institutions and other legal entities...”

### **3.2. Law on organization and work of the bodies of state administration**

According to the Law on organization and work of the bodies of state administration of 2000, the bodies of state administration when preparing the laws and other regulation from its competence have the obligation to secure consultations with the citizens through: public announcement of the kind, content and deadlines for adoption of the laws and other

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<sup>78</sup> Official Gazette of Republic of Macedonia no. 36/08, Rules of procedure of the Government of Republic of Macedonia

<sup>79</sup> General Secretariat of the Government of Republic of Macedonia, Guidebook for policy creation, 2007

<sup>80</sup> Official Gazette of Republic of Macedonia no. 55/2005

regulation; organizing public debates; and collecting opinions from interested citizen associations and other legal entities and similar.

### 3.3. Rules of procedure of the Government of Republic of Macedonia

The changes of the Rules of procedure of the Government of Republic of Macedonia of March 2008 regulate the issue of accessibility of the draft-laws on the websites of the ministries that prepare these proposals. Article 71, paragraph 1 of the rules of Procedure states: *the proposals for adoption of laws, draft laws and proposals of laws, the competent ministries publish on its internet site and in the Central Electronic Register of provisions*". In the same article, with paragraph 4 it is added that *"each interested party can deliver to the Central Electronic Register of provisions its opinions, commentaries and proposals regarding the published proposals for adoption of laws, draft laws and proposals of laws in 10 days from the day of its publication"*.

Also, as a novelty is the obligation of the competent ministries to prepare reports on the received opinions in which reasons for which the comments and suggestions have not been accepted and these need to be published on the internet site of the adequate ministry and in the Central Electronic Register of provisions<sup>81</sup>.

In the Rules of procedure it is also provided that representatives from the civil sector will participate in the work of the expert councils of the Government. However, this participation is still not secured since the economic council and the legal council envisaged in the Rules of procedure of the Government as permanent expert consultative bodies are not yet established.

From the other side, the bodies of state administration, primarily the ministries, in the past two years in several different situations included civil organizations in their working bodies (more on this in part III. Practice of inclusion and participation of civil organization in the lawmaking process)

### 3.4. Methodology for analysis of policies and coordination

As mentioned above, one of more important documents is the Methodology for analysis of policies and coordination<sup>82</sup> which determines the key concepts of the policy creation and procedures in each stage of the policy making process. Although the methodology is titled analysis of policies and coordination, naturally it is also applicable for laws since policies are prepared in the frames of the policy creating system and almost always is incorporated in the legal acts<sup>83</sup>. Thus, in the Methodology, the policy instruments are defined as mechanisms for achieving the goals which are expressed through: Regulatory instruments (laws and other rules); Materials (analysis, reports, reviews and information) which give oversight of the **policy for implementation of the regulatory instruments; Financial instruments (subsidies, taxes, tax exemptions, contributions, budgetary expenses);**

<sup>81</sup> Official Gazette of Republic of Macedonia no. 36/8, Rules of procedure of the Government of Republic of Macedonia (refined text), article 71, paragraph 5.

<sup>82</sup> Official Gazette of Republic of Macedonia no. 52/06, Methodology for analysis of policies and coordination

<sup>83</sup> General Secretariat of the Government of Republic of Macedonia, Guidebook for policy creation, 2007

**Informative instruments (publishing of informational materials, brochures, advertisements, propaganda and other materials, using means of public information and using of websites).**

According to the adopted Methodology, the options for constructive inclusion of civil organizations in the process of lawmaking and policy creation are numerous. In this methodology it is especially acknowledged the need for consultations and coordination, primarily of the state organs but the need for a collecting relevant information, opinions and ideas from the state organs indirectly includes the civil organizations. The document identifies six phases of analysis and coordination while the possibility for inclusion of civil organizations is especially declared in the first phase i.e. in the phase of the preparation of proposals for policies and proposals for policy instruments through which it will be conducted by the state bodies as well as in the sixth phase which entails the monitoring of policy implementation. In the first phase, the Government through the principles of policy creation is committed to follow its strategically determined priorities, to review the fiscal execution, harmonize its policies with EU legislation, acts and policies to be based on previous analysis and to implement them according to a plan. Especially important is the principle of transparency, with which it is obliged when determining the acts and policies of ministries and other bodies of state administration to perform transparent consultations with the competent and interested ministries and other bodies of state administration, units of local self government, interested civil organizations, other interested subjects as well as expert individuals. The next phases entail: inter-ministerial consultations, review of materials from the General collegium, from the working bodies of the Government, after which the acts or policies are forwarded to a session of the Government. Also important is the final phase, which is dedicated to practical monitoring of the implementation of acts and/or policies, which gives relevant information regarding their success or failure in practice.

**PRINCIPLES OF POLICY CREATION DEFINED IN THE METHODOLOGY FOR ANALYSIS OF POLICIES AND COORDINATION**

**• Compatibility of policies and acts with Governmental strategic priorities**

Policies and acts of ministries and other bodies of state administration need to be in accordance with the strategic priorities of the Government. Mechanisms for strategic planning of the ministries provide through the strategic plans and initiatives of the ministries, financed by the Budget of Republic of Macedonia, to realize strategic priorities of the Government.

**• Fiscal realization of the acts and policies**

Policies and acts need to be prepared according to the fiscal limitations and within the frames of the three-year cycles of budgetary planning and programming. When preparing the proposals of the policies, the ministries and other bodies of state administration conduct evaluation of the fiscal implications, taking in consideration those solutions which provide greatest effect in relation to the expenses.

**• Harmonization of acts and policies with European Union legislation**

The ministries and other bodies of state administration need to transfer the regulations, directives and other rules from the European Union in the acts and policies in order to harmonize the national legislature with the one in the EU and apply the best practices from its member states.

**• Basing acts and policies on previously conducted analysis**

The ministries and other bodies of state administration when determining the acts and policies start from a previously conducted situation analysis of the areas of their



competence, defining the problems and determining the vices. In the acts and policies which are proposed, clearly are determined the goals and solutions (options) which are reviewed, with justification for each individual solution.

• **Transparency in preparation of acts and policies**

The ministries and other bodies of state administration when determining the acts and policies conduct transparent consultations with the competent and interested ministries and other bodies of state administration, units of local self government (municipalities and the city of Skopje), interested citizen associations, other interested subjects as well as experts.

• **Planned implementation of acts and policies**

For implementation of acts and policies, the ministries and other organs of state administration prepare plans for their implementation with calculated expenses, thesis of bylaws for implementation of the laws, necessary capacities and human resources as well as a procedure for monitoring and evaluation.

### 3.5. Methodology for regulatory impact assessment

The RIA (Regulatory Impact Assessment) is a process which enables detailed assessment of possible economic and social influences upon the environment and other influences of the new regulative, as well as an evaluation whether the regulative will enable achievement of the positioned goals and resolve the problems<sup>84</sup>. Since the quality of legal regulation is subject of great interest in the developed democracies in the world and primarily in the European Union, the Government of Republic of Macedonia has accepted this process as a determinant regulated in the Rules of procedure of the Government and the Methodology for Regulatory Impact Assessment<sup>85</sup>. AS provided in the Methodology, the benefits of the introduction of this assessment should contribute towards: complete and in-depth analysis of the regulative and transparency and consultations as “internal” (among ministries) as well as “external” with other stakeholders. Trough the inter-ministerial consultations better laws will be adopted and the potential threat of duplicating activities or even contradictory activities will be prevented while the inclusion of the stakeholders will provide additional information necessary for the creation of new regulative.

The procedure for Regulatory Impact Assessment is the following:

1. *Planning*: in this phase are the activities of all ministries for preparation of plans regarding the scope of work and future laws. It starts with the Annual program of the Government of Republic of Macedonia or with the strategic plan. For all laws envisaged in the annual program, excluding the laws brought in an urgent procedure, it is necessary to prepare plan for Regulatory Impact Assessment. The first step is the Initial Regulatory Impact Assessment and planning of the work. Responsible institutions for preparation of the “Plan for implementation of the impact assessment” are the ministries. This information is published in the Central Electronic Register of provisions. With this step, the information is made accessible for the stakeholders can be introduced with the initiative of the ministries. Afterwards, the proposal for adoption of a law is brought and the plan for implementation of RIA for the adequate law. After this is the consultative process

<sup>84</sup> Government of Republic of Macedonia, Guidebook for Regulatory Impact Assessment, 2009

<sup>85</sup> Official Gazette of Republic of Macedonia no. 66/09, Methodology for Regulatory Impact Assessment

- with the General Secretariat. The out coming document from this phase is the Plan for RIA.
2. *Realization*: includes activities of all ministries in preparation of specific laws. This presumes internal inter-ministerial consultations, consultations with external stakeholders which need to serve to collect additional necessary information and suggestions. In this phase belong also the activities for public publication of information regarding the law in preparation. From this phase the following document are derived: Initial RIA and complete RIA (depending on the complexity of the problem and the level of detail of the analysis); Text of the regulative (draft law); Memorandum; Declaration for compatibility in the correspondent table.
  3. *Monitoring*: this phase entails the activities which are realized in the General Secretariat in function of coordination and unification of the proposed regulative and its deliverance for review on the session of the Government of Republic of Macedonia. Documents produced in this phase are: the Opinion of the General collegiums and proposed conclusions from the working bodies.
  4. *Improvement*: it contains of monitoring and analysis of the effects of the laws.

The process of RIA has several key steps which according to the Methodology are distributed in four phases. All of these steps are compatible with the European practices and include:

1. Preparation of plans for Regulatory Impact Assessment;
2. Close cooperation of the General Secretariat regarding the process of Regulatory Impact Assessment ;
3. Establishment of working group for implementation of the Regulatory Impact Assessment ;
4. Preparatory consultations with the stakeholders, gathering experiences, data and their adequate analysis;
5. Performing initial or complete Regulatory Impact Assessment, adequate to the needs and complexity of the problem;
6. Consultations with stakeholders on options and basic dilemmas from the Regulatory Impact Assessment ;
7. conducting inter-ministerial consultations;
8. consultations with stakeholders upon proposed solutions in the regulative;
9. Preparation for transferring the materials to the General Secretariat;
10. Review of the materials in the General Secretariat;
11. Review of materials on session of Government.

From these steps it is clear that the inclusion of the stakeholders need to be from the very beginning of the idea for establishing a certain regulative. Up to the phase of submitting the draft regulative for reviewing at a session of the Government, consultations need to be made with the initial impact assessment (when the idea is still in the frames of the competent ministry and shared with the General Secretariat), moreover consultations are necessary after the options and basic dilemmas from the RIA will be known and finally after the inter-ministerial consultations are finalized it is needed to consult with the stakeholders on the proposed solutions in the regulative. Only after all these steps, the draft regulative (laws) are submitted to the General Secretariat (review on the General collegium and working bodies) and at the end on a session of the Government.

### ***1. Purpose of the Methodology for Regulatory Impact Assessment***

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### **1.5. Participation of the public in the process of Regulatory Impact Assessment through consultations**

*The Methodology defines an obligation for inclusion of the stakeholders from the very start of the lawmaking process, namely from the adoption of the Annual working program of the Government of Republic of Macedonia.*

*The techniques for participation of stakeholders in the lawmaking process includes electronic consultations (informing, collecting opinions and suggestions) as well as focused public discussions and workshops.*

*All information relevant to the lawmaking process, as well as the draft laws will be available through the Central Electronic Register of provisions. (Excerpt from the introductory part of the Methodology for Regulatory Impact Assessment. Official Gazette no. 66/09)*

### **3.6. Strategy for cooperation of the Government with the civil sector**

The Strategy cooperation of the Government with the civil sector is adopted in January 2007 by the Government of the Republic of Macedonia and it is adopted in an exclusively participatory manner with the inclusion of great number of civil organizations. The basic goal of the Strategy is promotion of the cooperation of the Government and the line ministries with the civil sector. Also, the document is envisaged to serve as a leading frame for a conceptual state policy of cooperation and support to the civil sector which reflects the priorities, principles and proposed approaches within.

One of the basic principles of the Strategy is the principle of participation and consultation which points out that “The Government enables inclusion of the civil sector in creation of policies with the purpose to present the interests and proposals of the citizens in the decision making processes and implementation of policies and measures. The civil sector contributes with its capacities and resources towards adoption of more quality solutions for the benefit of the community. It represent the different values and interests of the citizens, through it the citizens receive information and express their opinion for the suggested measures of the Government. The Government will be open for dialogue with the public in order to improve the quality of the proposed policies and strengthen the legitimacy of governmental policy”.

The second of the seven goals determined with the Strategy is directed to the participation of the civil sector in policy creation. According to this goal, the Government should develop a system of basic principles for inclusion of citizens and civil organizations in decision making processes. With this system, the Government would guarantee that the opinions of the civil society will be considered and included in the processes of creation, implementation, monitoring of the public policies and that the needs and priorities of the citizens are reflected in these policies. The envisaged mechanisms include public discussions, written opinions, inter-sectoral working groups and Governmental advisory bodies. Apart from this, the Government acknowledges the access to information as basis for further inclusion of the civil society in creation of laws and policies thus envisages creation of portals (websites) on which the necessary information will be published in a timely manner and gather opinions upon these materials.

## 4. Rulebook of the Assembly of Republic of Macedonia<sup>86</sup>

### 4.1. Initiating the procedure

In the text above are stated legal grounds and procedures and processes of preparation of the laws when initiator for the law and politics is the Government of RM. However, as stated above besides the Government the right to propose adoption of laws has each MP in the Assembly and at least 10 000 voters (authorized law nominators), and the actual initiative for adoption of laws to the authorized nominators can be given by each citizen, group of citizens, institutions and associations. Regardless of who is the nominator of the law, the proposed law is submitted to the President of the Assembly which is followed by procedure for adoption of the laws. If nominators of the law are a group of parliamentarians, one MP is assigned as representative. The initiative that is sent to the Assembly, the President of the Assembly is submitting to the MPs and the Government. The proposed law shall contain: name of the law, introductory note, text of the provisions of the law and explanation.

The proposed law is submitted to the President of the Assembly. The President of the Assembly immediately or within three working days the latest submits the law in written or electronic form which is the commencement of the legislative procedure. The proposed law that was not submitted by the Government is submitted to the Government for an opinion by the President of the Assembly.

### 4.2. First reading

The laws can be reviewed in three phases, i.e. three readings. The first reading starts when at least 15 MPs within seven days since receiving the proposed law, are submitting to the Assembly a request for general debate. If such request is not placed, then immediately begins the second reading. If the first reading is held, in this case prior to scrutinize the proposed law on plenary session within the Assembly, the law is reviewed within the thematic working body and the Legislative – legal commission within three days prior to the day set for plenary session at the Assembly.

At the first reading the thematic working body reviews the proposed law only from a point of view that such law is needed, the principles that the law shall be based on, the basic relations that are determined with the law and the manner in which the regulations are proposed. The Legislative – legal commission reviews the proposed law considering the need of the law and its compatibility with the Constitution. At this stage there is no detailed scrutiny of the articles in the proposed law and therefore no amendments are submitted. Both Commissions are submitting report with opinion if the law is acceptable and shall the law be passed on for further reading. The session in the Assembly for the first reading of the proposed law is held within 10 days following the decision to call for a session. After the general debate the Assembly decides if the proposed law is going for its second reading.

*For a proposed law that is of common interest, following the general debate the Assembly can decide if that law shall be subject to public debate and to determine thematic working body that will organize the public discussion. (art. 145 of the Rulebook for the work of the Assembly)*

<sup>86</sup> Assembly of Republic of Macedonia, Rulebook of the Assembly of Republic of Macedonia, no. 07-2955/1

*The working body that will organize the public debate will:*

- *provide that the proposed law is published and accessible to the citizens, public establishments, institutions, association of citizens, political parties, syndicates and other concerned subjects;*
- *collect and arranges the opinions and proposals that were stated during the public debate and*
- *prepares a report for the outcomes of the public debate (art. 146 of the Rulebook for the work of the Assembly)*

### **4.3. Second reading**

The second reading begins in the thematic working body and in the Legislative – legal commission within seven working days after the plenary session in the Assembly. The thematic working body and the Legislative – legal commission scrutinize the provisions of the proposed law separately and the submitted amendments and then vote. Proposal for changes and amendments of the proposed law is submitted in a form of an amendment. An amendment can be submitted by any MP in the Assembly, parliamentarian caucus and working body. The entire procedure is fast, so therefore the attention shall be given to terms for submission of amendments. Each amendment is scrutinized and is voted separately. The submitter of the amendment, can change, compliment or withdraw the amendment until the closure of the scrutiny of the amendment of the article.

The thematic working body and the Legislative – legal commission within five days upon completion of the scrutiny are preparing text for the proposed law with the adopted amendments and explanation. It is important to notice that during the second reading at the plenary session are scrutinized only those articles of the proposed law which are changed with the amendments of the working bodies and only those articles can be subject to submission of amendments.

### **4.4. Third reading**

If at the second reading at the Assembly sessions are adopted amendments of less then one third of the articles of the changed proposed law, the Assembly can decide to have the third reading at the same plenary session.

If more then one third of the articles in the amended proposed law are adopted, after the completion of the second reading the proposed law is legally-technically prepared for the third reading. The third reading of the proposed law by rule is at the next session following the second reading session at the Assembly. Within this phase the working bodies do not debate. During the third reading of the proposed law, amendments can be proposed only for articles that were adopted during the second reading at the Parliamentary session.

*The laws are enacted by the majority of votes of the MP determined in the Constitution of RM (Art. 166 Rulebook for the work of the Assembly)*

### **4.5. Urgent procedure**

In certain situations the law can be enacted by urgent procedure. Upon urgent procedure the law can be enacted when that is necessary in order to prevent and eliminate larger

damages in the economy or when that is required by the security and defence of the country or in cases of natural elementary disasters, epidemic or other extraordinary conditions and imperative needs. With the proposal that the law shall be enacted by urgent procedure is also accompanied with the proposed law. In such situation there is no general scrutiny. The second and the third reading are at the same session and also the time limitations of this Rulebook do not apply. The Assembly can request from the thematic working body and the Legislative – legal commission to uphold upon the submitted amendments after the completion of their sessions.

#### **4.6. Short procedure**

Beside the regular procedure for adoption of the laws there is an opportunity to convey laws with abridged procedure and that is when: it is not a matter of complex and volumes law; cessation of validity of certain law or certain provisions in the law; or when not in question complex or volumes approximations of the law with the law in the EU. Also in this case there is no general scrutiny, and the second and third reading is held at the same session.

### **5. Possibilities for inclusion of citizens in the process of adoption of laws in the Assembly**

According to article 2 of the Rulebook for the work of the Assembly: *"The sessions of the Assembly and the working bodies are public..."* and according to article 226 of the Rulebook of the Assembly: *"interested citizens can participate at the sessions of the Assembly, in accordance to the regulations for the internal order in the Assembly"*.

In the process for adoption of laws, the citizens can be included by:

- Giving initiative for adoption of certain law;
- According to article 122 of the Rulebook for the work of the Assembly, "The working body can invite scientific, expert and public workers and representatives of the municipalities, of the city of Skopje, public enterprises, syndicates and other organisations, institutions and associations with aim to state their opinion upon matters that are reviewed at the session of the body";
- According to article 124 of the rulebook "Initiatives for debate upon certain matters of the working body can be given by other working bodies of the Assembly, state administration bodies, municipalities, the city of Skopje, institutions, associations of citizens";
- The concerned citizens associations can articulate their postures and opinions and during the second reading when there is review of the proposed laws within the working bodies and that is via preparation of the proposed amendments that can be submitted to the MPs in the Assembly who are the official proposers of the amendments, as well as to seek participation at session in the thematic commission and the Legislative – legal commission;
- Participation in the public debates organized by the Assembly or the Government upon the draft or proposal for certain law.

The citizens associations and the citizens shall not limit themselves only on the proscribed methods for inclusion in the process of conveying decisions, enshrined in the rulebook.



Their stands and questions in regard to certain problems, the citizens can address them to the Standing Enquiry Committee for Protection of Freedom and Rights of the Citizens, whose scope of work includes reviewing the reports from the citizens and decides upon them.

## **6. Information for the consultancy for the concerned sides in the proposed laws submitted to the Government**

The proposed laws that are submitted by the Government to the Assembly for adoption, beside other matters it is necessary that in special templates to give information for the adjustment with the regulation of the legislation of the EU. In this template there is special part that refers to the inclusion of the public or given expertise assistance and opinion while preparing the law. For the needs of these analyses there was research of all proposed laws and amendments of laws that were submitted by MSLP, MoJ, MoH, MoES and MoI in the period of January 2007 until August 2010. General impression is that even beside the obligation, the proposed laws or amendments of the laws not always contain the template for compatibility with the European legislation. Even less, whereas the template is attached not always is stated if the consultancies with the concerned parties were performed. Even for the laws for which the citizens associations had stated their involvement in the preparation of the laws or at least were consulted that is not clearly stated in this template. In large number of cases where there is a support, it is within the frame of some projects with external technical support (EU, OSCE, USAID, UNDP) and the inclusion is often by experts i.e. university professors. The situation for each separately analyzed ministry is:

- Ministry of Internal Affairs had submitted 37 law proposal or proposal for amendment of laws out of which for five (14%) have filled template and three of them comprise the information for the consultancies i.e. who provided the experts assistance.
- Ministry of Health had submitted 24 law proposal or proposal for amendment of laws out of which for seven (29%) have filled template and two of them comprise the information for the consultancies i.e. who provided the experts assistance.
- Ministry of Education had submitted 28 law proposal or proposal for amendment of laws out of which for three (10%) have filled template and one of them comprise the information for the consultancies i.e. who provided the experts assistance.
- Ministry of Justice had submitted 85 law proposal or proposal for amendment of laws out of which for seven (8%) have filled template and five of them comprise the information for the consultancies i.e. who provided the experts assistance.
- Ministry of Labour and Social Policy had submitted 51 law proposal or proposal for amendment of laws out of which for seven (13%) have filled template and two of them comprise the information for the consultancies i.e. who provided the experts assistance.

### **III. Practice of inclusion and participation of citizens associations in the processes of adoption of the laws**

#### **1. Experience and activities for inclusion of the public by the ministries**



This part will present the findings from the interviews with: Ministry of Labour and Social Policy, Ministry of Education, Ministry of Justice, Ministry of Health and Ministry of Interior. Furthermore, the data is also based on the analyses of the websites of these institutions.

### **Ministry of Labour and Social Policy**

Ministry of Labour and Social Policy (MLSP) is one of the most open for cooperation with the civil sector in the preparation of regulative that is under the competences of MLSP. Number of laws in the sphere of human rights were proposed and enacted in the period from 2007 till 2010 with inclusion of various citizens associations. As more significant laws are:

- Law on labour relations with amendments in several attempts;
- Law on volunteerism;
- Law on employment and insurance in case of unemployment;
- Law on salaries;
- Law for agencies for temporary employment;
- Law on equal opportunities for men and women;
- Law on prevention and protection from discrimination;
- Law on child protection;
- Law on protection;
- Law on social protection in the part for protection of victims of trafficking;
- Changes and amendments in the Family Law (trafficking in children part);
- Collective agreement for child protection.

During the analyzed period the MLSP has received directly initiatives from citizens associations in the preparation of the law. That was the proposed Law for prevention and protection from discrimination. Furthermore, the initiative for Law on volunteerism is from the citizens associations, however that was submitted in 2006 but the process of preparation and adoption was in 2007. Considering the civic society in its broader term to the MSLP were submitted initiatives by syndicates and employers for amendments in the Law on labour relations.

*“The Law on volunteerism text was mutually created with the NGOs. The smaller working group that worked on the law (for example requested that the volunteers receive compensation, that the employer shall have an obligation to employ the person that had volunteered and similar proposals, which is against the principles of volunteerism. Such proposals were rejected. However, the actual context of the law was prepared on basis of their ideas, consultation that were stated and various tribunes and workshops that we organised. In that way we gave the concept law that affects all and is not in favour of certain person or group. (“Fragment from the interview of MSLP”)*

MLSP has a practice of inclusion of citizens associations and other relevant and concerned parties almost at any stage of the process in the preparation of the laws. Therefore, during the preparation of the law for prevention and protection from discrimination members of the civic sector were members of the working group and also the organisations and the experts were consulted in the follow up consultations and adjustments.

Another example is the Law on labour relations for which first was drafted a working version of the law that was later on submitted to the syndicates and the employers and it was discussed at various meetings and workshops. Furthermore, it is necessary to separate the amendments of this law that were referring to adjusting the legislation with EU directives. It is a matter of special TWINING project which purpose was to make evaluation of the compatibility of our legislation with the EU legislation. In this process were included the syndicates and the employers. Following the first initial evaluation and preparation of the correspondence tables, also there were proposals to define the provisions of the Law on Labour Relations, Law on Employment and the Law for agencies for temporary employment. The syndicates and the employers (all that are active on national level) were part of this process since the very beginning until the end. Some of them had their representatives in the Managerial board of the project. Furthermore, foreign experts were also included.

Other example is the Law on Volunteerism in which the civil society organisations were included in the concept phase of structuring the text.

*“Inclusion of the public is beneficial because good ideas and proposals arouse of them and sooner they get into the process it is better for both of us. We can hear the problems they are facing and in the early stage we are trying to meet them as much as possible and to include them in the laws. Of course, from our side not always the proposals and ideas can be accepted”*  
(Fragment of the interview with MLSP representative)

For MLSP the inclusion of consultations is important although requires more time. Therefore, the MLSP in cases when sharing the information with smaller group of organizations, often requests that this info is spread wider among larger circle of concerned parties and at the same time incites them on wider consultations and submission of mutual opinions from more organizations.

Other limitation for inclusion according to the representative from the MLSP is the fact that there are no profiled organizations for certain areas and certain problematic. The point is that it's not sufficient to include the people from the civil society that are not governing the given problematic. For certain topics (for example in the area of social expertise or women rights, especially the volunteerism etc) there is sufficient expertise among the civil society for which there is a registry at the ministry. However, in regard to other areas (labor relations, employment, the rights of the employees etc) there is less knowledge.

*“If the public is included in an earlier phase, it is easier for them to perceive the goal and intention and our abilities and expectations. This approach is best for both sides, but on the other hand it requires much more time. Sometimes that is the reason for not including them in the process, because we now that the adjusting our legislation with the EU is with such dynamics that sometimes we do not have the time, nor space no method so we could include the wider public in the law preparation”* (Fragment of the interview with MLSP representative)

The MLSP uses various methods for inclusion of the public and civil society organizations in the preparation of laws. Namely, the ministry has its own registry of organizations in the sphere of the social protection, then a data base for other aspects of the human rights and

registry of syndicates and employers that according to the law are registered in the MLSP. Besides the existing registries and data base the MLSP also uses information at the possession of the Unit for cooperation with NGOs at the general Secretariat of the Government. In other cases, such as the preparation of the Law on Volunteerism, the actual civil society organizations had selected their own representatives that participated in this working group.

“In regard to the methods of inclusion of the public, usually, we either approach the groups or individuals in writing or we organize debates and workshops public debates or the people that are aware that the law is in a preparatory phase and they call themselves. However, I do consider that this matter shall be dealt with differently, the idea to place the info on the website (or the first draft version), so electronically to collect opinions and postures which is very good for the preparation of one quality law. Currently, the time factor is the reason for not doing this” (Fragment of the interview with MLSP employee).

The MLSP considers that quality of the input given by the organisations is satisfactory, especially in regard to Law on Volunteerism and the Law for Prevention and Protection form Discrimination. For much better quality input the MLSP considers that is necessary to have more regular inclusion of the organisations in the earlier phases of the initiation of the laws.

***Case (example) in which the civil society organizations were included in all phases of law making process of some law and the experience of the cooperation with the included organizations:***

In the Law on Volunteerism the civil society organizations were included in all phases, even in the preparatory of the bylaw regulative. The experience of the cooperation with the organizations was very positive. The law truly is not voluminous but the problematic was not legally covered at all. Therefore it was very crucial to make an analysis, to gather comparative experience, so the writing of the law the last, much easier phase and the inclusion of the civil society in the entire process was vital. The organizations were the ones that were facing most of the problem because the volunteerism is highest among the civil society.

The MLSP does not have a regular practice to announce law proposals on their website their early stage. However, the law proposal is made available to the concerned parties on other ways (example, via direct delivery or email). The laws are available to the public prior to their submission form opinion to the ministries i.e., prior to their elaboration within the working bodies and the general collegiums at the General Secretariat.

Considering that with the Bylaws are defined many concrete matters and solutions that are crucial for the conduct of the laws, the MLSP have a practice and believe that the civil society organizations shall be included in the preparation of the Bylaws as well as in the preparation of the laws. In practice that is an example of preparation of the three laws that were an obligation determined with the Law on Volunteerism.

**Ministry of education and science**

As laws that are more important enacted in 2007 within the Ministry of Education and Science (MES) are the following:

- Law on Primary Education;
- Law on Secondary Education;
- Law on Education for adults.

CSOs also had submitted several initiatives for new laws or for amendments in other laws and documents. Hence, the Craftwork Chamber requested to make analyses and compatibility of the Law on Carrying Craftwork with the Laws for Primary and Secondary Education, the Law for Education of Adults and the Law for Professional Education. Furthermore, Polio Plus submitted an initiative to apply the Convention for the rights of people with disability, whilst DVV International initiates the Law for education of adults. The initiatives from Polio Plus and DVV International were accepted and the initiative from the Craftwork Chamber is under review.

In the MES in the analyzed period, there is no project proposal by some organization.

The MES at their website had announced the working version of the Law for primary education with aim to get the public opinion and comments, whilst the Law for education of adults for reviewed on several public events and working groups comprised of experts and other concerned parties (Craftwork Chamber, workers university etc).

The concerned parties are included in the preparation of these two laws since its early stage of formulation of the documents. According to representatives from MES the reason for inclusion was the practical experience, expertise, financial support and international cooperation.

The need from the public and consultations in the preparation of the laws takes time of the everyday work of the responsible ones. Namely, it takes time to organize the events in terms of making invitations, additional explanations, and coordination of the concerned parties. Due to the everyday working obligations, there is a need of additional engagement and efforts, extra working hours and financial resources with aim to organize and coordinate the concerned parties.

The MES uses the following methods for inclusion of the public: requests for nomination of representatives from relevant institutions and establishments and civil society organizations for participation in the working groups, meetings, seminars and electronic communication.

Official database does not exist at the MES but they have internal lists in certain unit of the ministry with civil society organizations that they cooperate with.

With aim to ease the selection of the members of the working group according to the MES they should: create a list of experts; have official database of civil society organizations that cooperate with the MES as well as summaries of current projects as well as implemented; then to allow access to reports for the achieved results and implemented projects via internal portals, that will provide insight in the comments, suggestions and remarks of the civil society sector as well as informing and public announcement for the selection.

According to their experience the MES is satisfied with the quality of the input of the civil society organizations. They consider that some of the organizations are developed and with strong capacities and expertise to be included, but also there are organization that are in need of additional growth and networking with aim to have larger specialization.

The following are examples of adopted laws and other acts with inclusion of organizations at all phases in the preparation: Law for education of adults, Law on Primary Education; Law on Secondary Education; and the Matrix for adoption of national level of qualification.

The MES does not publish the proposed laws at their website, but of course the same ones are submitted to the Unique National Electronic Registry (UNER) which is mandatory with the RIA templates.

In the working groups for preparation of the by-laws are included people from the educational - learning system, public opinion and suggestion are gathered via the website, organized public debates and forums.

There is a need to follow several steps when preparing the Bylaws: consultations, placing the laws on the website, conferences and other public events.

### **Ministry of Health**

Considering that the interview was with the manager of the Unit for protection of consumers at the Directorate of food at the Ministry of Health (MoH), the answers are based mainly on the experience in this area. As laws that are more significant prepared in the period from 2007 until now, are the amendments in the Law for Food Safety and Products and Materials that are in contact with food, as well as currently is in the procedure the Law on Food and Veterinary that shall replace the existing Law on Food Safety and Products and Materials that are in contact with food.

There are no received initiatives for law or amendments of the law. However, there is a continuous cooperation with the Organization for Consumers Rights in Macedonia (OCRM) in the part of the implementation of the laws, more that in the preparation and their adoption. OCRM had an initiative to participate in the working group for preparation of the Law on Food and Veterinary, but they did not take part in the working group because their initiative came too late (the proposed law was almost complete). Other example of cooperation with civil society organizations is with the association "Eco Mission" that showed initiative for preparation of Rulebook for Products and Materials that are in contact with food (Official Gazette 2010). Often the initiatives from the civil society organizations are for matters that concern them and that is mainly in the part of implementation of the laws, preparation of Bylaws and rulebooks.

The MoH did not receive already prepared proposed law by some civil society organization. The MoH in the preparation of the laws does not often consult the civil society organizations and the public. Namely, the civil society organizations often cooperate with the OCRM and in the working groups participate experts from the Institute of Public Health and Directorate for Food. Inclusion of foreign experts is via project from various donors (EU, Sida etc). From the directly concerned parties the cooperation is with the manufacturers and merchants, as well as here are included ELS in which there should be a Council for Consumers Protection. Their inclusion is mainly in the preparatory phase of the rulebooks. Although the ministry has experience when prior to adopt the rulebooks consults with the civil society organizations (quite often with OCRM), hence there is no systematically established practice for inclusion and consultancy of the public.

The MoH have not received already prepared proposed law by some civil society organizations.

Concerning the timed engagement and financial expenses, the answer is that consultation of course takes time, but larger problem represent the financial means.

*“We do not have financial means to pay at least the travel expenses the civil society organizations, and we are aware that the financial power of the civil society organizations currently is weak. Within these organizations are activist that are unemployed and are engaged on voluntary basis (at least this is the case of Organisation of consumers registered in the cities in Macedonia). For us make visits to other cities (to held public debates that would be organized by the civil society organizations), besides our travel expenses that is also difficult to provide, these organizations do not have official telephone lines for contact, nor premises to held public debates and meetings, and we as Directorate for Food (as well as within the MoH) currently do not have financial means to rent conference rooms. Those are the main limitations why the public inclusion truly difficult and it reduces us to cooperate with OCRM as their umbrella organization. OCRM is a member of the European and World Organisation of Consumers.”*  
(Fragment of the interview with the representative of MoH).

As methods of inclusion of organizations in the adoption of laws are the use of electronic communication prior to all with organizations that have been cooperating and possess basic database for them, but also when that is financially possible via public tribunes and debates. Often the consultations are limited to by-laws. With aim to improve the public inclusion, there is a need of larger financial means.

Although from the civil society organizations and the concerned parties they receive good ideas, hence there is a need of improvement. The quality of the inputs received by the organisation is limited because the civil society organizations (at least the ones in the area of consumer’s rights) are with modest human recourses in both the number of people and their expertise.

As positive example of inclusion of the public in the preparation of the law or other Bylaws or document is the proposed programme for consumer’s protection (and the previous 2009 – 2010 and the last for the period 2011 – 2012) that was adopted by the Government upon proposal from the Ministry of Economy.

The experience of the cooperation with included civil society organizations, manufacturers, merchants and councils for consumers’ protection within ELS, is very positive. The laws that are in proposed form are not published. They are placed at the website upon their adoption. Reason for this is that the websites of the ministries are in their initial phases that are in need of improvement, technically and contest wise.

### **Ministry of Justice**

The Ministry of Justice (MoJ) has initiated more laws in the assessed time period, from which most relevant were as follows:

- Law on associations and foundations;
- Law on free legal aid;
- Law on changes and amendments of the Law on conflicts of interests;
- Law on changes and amendments of the Criminal Code;

- Law on changes and amendments of the Electoral Code;
- Law on changes and amendments of the Law on access to information of public character; and others.

Draft working texts for particular Laws prepared by the civil society organizations and other interested stakeholders were presented to the MoJ in the past period. The Ministry frequently presents its opinion on the proposed Laws as well as opinion for approximation of these proposed texts with the systematic solutions.

The Ministry is trying to include the public and the stakeholders in the process of preparing of some of the laws. Namely, for the Law on associations and foundations the MCIC and FOSIM were directly involved as representatives of a network encompassing 36 organisations, MOST was included in the process of changes of the Electoral Code, the Macedonian Young Lawyers Associations in drafting of the Law on free legal aid etc. Additionally, the Ministry organized extensive presentations of some laws (for example: for the Law on associations and foundations on two occasions were organized consultative meetings with civil society organisations), as well as representatives from the Ministry participated on discussions for particular laws organized by other parties (for ex: public discussion organized by FOSIM for the Law on associations and foundations).

Main reasons for including civil society organisations in preparing of Laws is their expertise for the specific area that they have through which we acquire knowledge about the problems, and because of the implementation of international experiences and standards.

Involving stakeholders is not delaying the law making process, on a contrary, the experience that the stakeholders are having especially when they are members of working groups are beneficial and are rapidly implemented, and that is in fact shortening the time period that the staff of the Ministry would have spend for a additional, for example, comparative analysis which the stakeholders already possessed.

The Ministry is selecting the organisations that will be part of the working groups for drafting of Laws on the basis of achieved results of the organisations in specific area, as well as on the basis of interest and shown willingness for cooperation of these organisations with the Ministry. Comprehensive data base does not exist, but enough information and contact details from sufficient number of organisations appropriate to the area of action exists. To ease the selection of organisations by the Ministry as part of the law making process, there is needed to acquire information for as much as possible number of organisations for the Ministry to make a more objective selection.

The Ministry is satisfied with the quality of the inputs received by the civil society organisations.

Examples of involving civil society organisations in all phases of adoption of laws or changes of particular laws as follows: Law on Associations and Foundations, changes and amendments of the Electoral Code etc. The experience in cooperation with CSOs involved in all phases of drafting laws or changes of particular laws (examples from above) is evaluated as more than beneficial.

Law proposals or changes of laws are placed on the web page of the Ministry in the phase i.e. version that is sent to the Government for deliberation.



The answer for including organizations in the preparation of the by-laws is confirmed with addition that the organisations are included in all phases of preparing the by-laws.

*“The by-laws should be prepared in parallel with the determination of the proposed laws and with participation of the civil society organisations from the appropriate area.” (Fragment from the interview with the representative from the MoJ)*

### ***Ministry of Internal Affairs***

In the assessed period, from the laws proposed by the Ministry of Internal Affairs (MoIA) which regulates specific aspects of protection of human rights, the following laws could be singled out:

- Law on internal affairs;
- Law on changes and amendments of the Law on overseeing the state border;
- Law on changes and amendments of the Law on asylum and temporary protection.

The other laws in competences of the Ministry of Internal Affairs are regulating different types of rights of citizens, which are not belonging to the core human rights, but their recognition is significantly influencing the overall status of the human being and citizen in different areas of their life. In the same time, the initiative for all laws proposed by the Ministry of Internal Affairs is in continuity enhancing the principle of rule of law.

Initiative for starting with law making process in the relevant time period, especially by the civil sector and in the human rights area was not received. However, initiatives for starting adequate changes and amendments, i.e. revision of some legal acts, encompassing all laws in competences of the Ministry of Internal Affairs were received. The modality is different, directly (with concrete requests from particular organisations and NGOs, international factors etc.), and indirectly (with public debates and workshops, on which the possibility for opening some disputable issues whose improvement is necessary is assessed additionally by the Ministry of Internal Affairs and opens the process of appropriate changes of these laws). In this case, according to the interviewed from the MoIA, the role of the civil sector is significant, especially in the process of improvement or adequately regulating separate rights of citizens.

In the assessing period, the MoIA did not receive proposed Law prepared by some civil society organizations.

Starting from 2009, the MoIA is frequently informing the public for the Laws that is proposing (on the official web page of the Ministry and on the ENER, that enables every interested party to comment the proposal, suggest concrete positions, suggestions etc., as well as participation of representatives from the civil sector in preparing the act). Specific participation and consultations with the public in the assessed period are characteristic for the process of preparing the Law on internal affairs, Law on Changes and Amendments of the Law on Weapons, Law on Changes and Amendments of the Law on Asylum and Temporary Protection, Law on Traffic Safety on Roads, Law on National Criminal-Intelligence Database, and Law on Changes and Amendments to the Law on Overseeing the State Border.

In the most cases, experts from relevant areas, representatives of international organizations in the Republic of Macedonia (UNHCR, OSCE, ICITAP, CIVIPOL) and civil

society organizations participated. Main motive for using the help and consultations is, above all, improvement of the state of practical implementation of the laws, after, using the comparative experience from the particular area i.e. approximation of the legal norms with the norms provided within the legislation of the European Union.

Involving of stakeholders is, among others, a question of adequate will, appropriate capacity on expert level, as well as availability of financial means in function of using these expertises.

From the experience, the MoIA in principle is satisfied with the input from the stakeholders. Aiming to improve this input, continuative improvement of the participation of the civil sector in the law making processes is needed through active monitoring of the situations in concrete areas on national level, including the obligations in particular areas that are deriving from the European legislation and stating bigger interest, as well as establishing and practicing of interactive approach with responsible state bodies – as proposers of concrete acts.

Examples of including civil society organisations in all phases of drafting laws as follows: Law on Weapons (with participation of the National association of weapons and City's rifle club); Law on internal affairs and Law on Police (with participation of representatives from international organisations and domestic experts), Law on Asylum and Temporary Protection (with participation of international organization).

Law proposals are placed on the web page of the Ministry in the phase of prepared proposed law, in parallel with its submission for opinion do responsible ministries and institutions, and before official submission of the proposed law in governmental procedure.

The MoIA has practice in including organizations in the preparation of the by-laws, even though due to the subject matter of regulation, the content of the by-laws regularly cusses lower interest with the stakeholders in the concrete area.

## **2. The experience of the civil organizations in the law making process**

The survey about the participation of the civil organizations in the law making process was answered by 15 organizations (Annex 1: Survey Questionnaire). Although the sample is not large, still the organizations have significant experience and involvement in these processes (Annex 2 Organizations that answered to the survey).

All of the organizations answered that they have goal to influence the public policies, especially the law making process. 73.3% from the organizations are aware with the procedure of law adoption, and 26.67% answered that they are partly aware. Regarding the clearness of that procedure 26.67% think that the procedure is clear, while 73.33% that it is partly clear. No answers were given that they are not familiar with the procedure nor that the procedure is not clear.

With the possibilities for the inclusion of the organizations in the legislation process, 40% of the queried organizations were familiar, while 60% were partly familiar.

There were more than ten laws listed that were initiated by the civil organizations with the ministries. Mostly (nine) answers are for the Law on Associations and Foundations (most of the organizations said that were involved as a part of the Civic platform of Macedonia), six organizations were involved in the initiative for adoption of the Law on prevention and

protection from discrimination (over the alliance Macedonia without discrimination). Law on Volunteering and the Law on sponsorships and donations from the public services were part of the activities of three organizations. By one organizations initiated the following laws: Law on protection of redundant workers; Law on amendment and supplementing the Law on health protection; Law on social protection; Law on public gathering; Amendment and supplementation of the Law on free access to information of public character; Law on criminal procedure; Law on free legal aid; Labour law (in the part of volunteering) – just begun initiative. Two organizations didn't participate in initiating of certain law or law amendments.

The organizations mostly cooperated with the Ministry of Labor and Social Policy and with the Ministry of Justice, because most of the law initiatives were given to these two state bodies. Individually these are the answers:

- Ministry of Labour and Social Policy (10)
- Ministry of Justice (7)
- Directly to the Parliament of Republic of Macedonia (5)
- Directly to the Government (3)
- Ministry of Finance (2)
- Ministry of Health
- Group of MPs
- Commission of Culture

The manners how the organizations found about the beginning of the process of law adoption or amendment of certain proposed law are different. Only in few cases the information can be received through the Central Electronic Registry of legal acts or through formal correspondence with the adequate proposer of the law.

The organizations have the opinion that even thou the Methodology of Regulatory Impact Assessment, brought by the Government of Republic of Macedonia, contains an article, by which the drafters of the law are obliged to include the concerned parties from the very beginning of the law drafting and at the same time to provide accessibility to information about the preparation of the law, as well as to provide accessibility to the draft laws through the Central Electronic Registry of Legal Acts. This registry contains uncompleted information; the information is not timely uploaded, there is ambiguity of the phase of the law preparation, and in many cases, the law adoption or the amendment of a certain laws is not even mentioned in the registry.

Part of the organizations stated that in general the information is received because of their membership in certain networks/alliances (mentioned are Civic Platform and Macedonia without discrimination) or through partner organizations; after that through direct invitation from the ministries (MLSP is mentioned three times); part of the organizations get the information from the members of parliament, or from the web page of the Parliament. Two organizations think that the information is received through the media or after the initiatives in form of a draft law are posted on the web page of the Parliament. According to this organization, this manner of informing, tells that the information is received in the later stages.

On the question, in which of the four phases (informing, consultations, active dialog and partnership) were the organizations involved in the preparation of some of the laws, in summary the results are the following.

- The Law on associations and foundations, Law on prevention and protection from discrimination and Law on Volunteering for most of the organizations are laws in which the organizations were involved in all phases, including the highest level of cooperation i.e. partnership;
- For all of the mentioned laws, the organizations were the least informed that there is an initiative for the law;
- In most of the cases the organizations were involved in the second and third phase (ex. It was asked from the organizations to comment certain draft law; they were participating in working groups for drafting certain law; there were organized bilateral working meetings between the organizations and representatives of relevant ministries etc.)

Besides the requests for involvement in the preparation of draft laws and law amendments, the organizations are finding other methods, with their own initiative, to contribute in these processes. There are number of cases where the civil organizations are organizing debates, thematic forums, informing their members in certain networks and alliances. Also they are contributing with preparation of analysis (ex. situation with Roma; comparative analysis of the legislation for protection from discrimination; comparative analysis of the legal framework for associations and foundations). Part of the organizations are preparing opinions for certain draft law that they submit to the relevant counterparts, and also through the means of media are informing the public with the issues; part of them are practicing to hold direct meetings with state officials.

There are many ways that are being used of communication with the Parliament of Republic of Macedonia in the processes of law adoption. Only one organization answered that it didn't had direct activities and cooperation with the Parliament. The approaches in summary are the following:

- Participation in comities deliberations (4);
- Submitting amendments of draft Law on Associations and Foundations;
- Participation in the work of the Standing Inquiry Committee on Human Rights, direct meetings with members of Parliament, briefing materials for groups of MPs;
- Direct meetings with members of Parliament (5);
- Participation in the Parliament Committee for labour and social policy (for the Law on Volunteering), meetings with members of Parliament, mobile parliament;
- Initiating an oversight hearing in cooperation with Committee for Culture;
- Written opinions on the laws;
- Regular participation on sessions of the Standing Inquiry Committee on freedoms and rights of citizens in the Parliament of Republic of Macedonia, on which sessions is participating in discussion of the laws relevant for the role of the civil organizations in Republic of Macedonia, as well as laws relevant for the improvement of the system for protection of human rights in Macedonia;

The organizations have a practice to submit to the members of Parliament their own opinions, and even draft amendments to the laws. Great part of the submitted amendments

is supported by some of the MPs and they are submitted for review in the relevant committees. There are three laws mentioned: Law on Associations and Foundations, Law on prevention and protection from discrimination and the Law for amendment and supplementation of the Law on free access to information of public character.

In percents of adopted amendments the answers are as following:

- Law on Associations and Foundations (up to 50% adopted)
- Law on prevention and protection from discrimination (up to 50% adopted)
- Law for amendment and supplementation of the Law on free access to information of public character (over 50% adopted).

The processes of law adoption, according to the polled organizations, are not transparent enough, and the public debates, if they are organized, are in general as a formality.

There is a notion that the laws are available after they are published on the web site of the Parliament. The consultation is mostly missing in the phase of preparation of the laws and in the phase of gathering opinions from concerned parties before some draft law is adopted by the Government. The non-transparency of the process is ascertained by disregarding the Methodology for regulatory impact assessment. Also, often the cooperation and the transparency depend on the openness and recognizing the need for consultations by the responsible in the ministries, and sometimes by personal acquaintance with these persons. The organizations think that some of the state bodies are more open for cooperation from the others, but no concrete example is provided.

The organizations have many suggestions for improvement of the system of their involvement in preparation of the laws. The suggestions in summary are:

- To establish a structured systematic process for inclusion of CSOs in the process of initiation, adoption and following of the implementation of the laws. At the same time, there is a need of developing a system which will enable inclusion of all interested organizations for certain problematic area instead of discretionary inclusion of small number of organizations by the institutions (registries of interested civil organizations in certain areas etc.).
- To open public debate for crucial directions of the laws in their early stage of preparation, with participation of the civil organizations (i.e. that should be the general approach of the Government). To have public debates after adoption of the proposed-law on the session of the Government, and before submitting it to the Parliament. To organize public debates outside Skopje also; (4)
- More inclusion or more influence of objective and relevant experts from the civil sector, but also independent (university professors) in the preparation of the laws; (2)
- The state institutions should respect the existing solutions which binds them to provide consultative process and at the same time to evaluate the efficiency of the established system. The consultative process should be enhanced not only on the level of law adoption, but also on the level of preparation of by-laws.
- The Parliament to establish mechanisms of more transparent and more available draft documents and texts of the laws, and to provide possibility for submitting texts of amendments to the MPs on more simple way;

- To enable that the citizens can give motion about laws or about amendments and supplementation of laws. For instance that suggestion to be set as a point of discussion first in front of the Legislative Committee of the Parliament (that should be obliged to give argumentative opinion on the motion), and after that, the motion (along with the opinion of the Committee, regardless if it is positive or negative) to go on discussion in front of the Parliament. The existing solution is that your motion should be submitted to the MPs, and after that, them to ask the motion to be set in the agenda for discussion. This should not stay like this;
- Informative portal for initiatives for law adoption. Campaign for existence of such portal.
- To improve the joint appearance of the civil organizations towards the institutions about questions of general or sector interest (the experience shows that initiatives of individual organizations hardly pass);
- To strengthen the capacity of the civil organizations in understanding and participation in the process of adoption of laws and public policies.

Half of the polled organizations think that the civil organizations have the capacity and the knowledge for initiating and participation in the process for law adoption. The other half thinks that small part of the organizations has this capacity. In general it is needed to increase the knowledge, skill and techniques for inclusion in all phases in law adoption.

#### **IV. Conclusions**

In Republic of Macedonia there are several documents which give the basics for public inclusion in the processes of law adoption, starting with the Constitution of Republic of Macedonia, through several laws, like Law on referendum, up to the Rulebook of the Government, the Strategy for cooperation with civil society of the Government.

The main provisions defined in acts mentioned in the previous conclusion, in addition, are specified in two relevant documents, i.e. in: Methodology for policy analysis and coordination and in Methodology of regulatory impact assessment.

The Government determination to follow the rules for regulatory impact assessment is of fundamental importance which needs to contribute to the transparency of the processes of law adoption. Because this approach to the preparation of the laws is a novelty, brought in 2008, not all projected steps are being completely observed. Regular and consistent use of “external” consultations with involved parties is missing as well as timely publishing of the information about the draft laws on the web sites of the ministries and in the Central Electronic Registry of legal acts. This deficiency is also identified during the analysis of the templates for approximation of the regulations with European Union Law (which form is filled by the institution that is proposing the law), which major part of the laws and law amendments doesn't contain information about included consulted parties or for given competent support.

The public, involved parties, including the civil organizations have the possibility to be included in the process of law adoption in the Parliament of Republic of Macedonia also. The Rulebook of the Parliament gives several possibilities for action to the public and to the civil organizations in the process of law adoption while they are in parliament procedure.

The ministries have a practice of inclusion of the civil organizations and other involved parties in the preparation of laws, but the experience is different, i.e. the amendments of the laws prepared in transparent manner are minority compared to other laws.

Inclusion of the civil organizations, for the ministries is very important, because they are at disposal with expertise in relevant fields, and very often are partners in organization of public debates. MLSP is one of the ministries which has very well developed cooperation with the civil sector, is including of the relevant parties in the preparation of the regulative, accepts initiatives from the civil sector and aims toward inclusion of the organizations in preparation of the by-laws.

In their attempts to include the public and the civil organizations, the ministries are facing the problems of time constraints and insufficient financial means.

The civil organizations think that the processes of law preparation are not enough transparent. According to them, the Government (and the ministries) although they have on disposal the RIA instrument, it is not yet fully applied. The Methodology for regulatory impact assessment contains a provision which binds the drafters of the law to include the concerned parties from the very beginning of the law drafting, and to provide availability through the Central Electronic Registry of Legal Acts. However this registry contains incomplete information, untimely publishing of the information, ambiguities about the phase of the preparation of the law, and in many cases, the law adoption or amendment of certain law is not even mentioned in the Registry.

The participation in networks or coalitions of the civil organizations is easing the informing and the inclusion in the processes of preparation of the laws.

On the other side, most of the civil organizations don't have adequate capacities to be actively included in the processes of law adoption. In particular there is an absence of strong expert preparation and expertise on certain questions. Also, besides the often mentioned importance of inclusion of the organizations in the preparation of the laws, there are no concrete lobbying steps for improvement and establishing of clear, applicable, general and full-scale mechanism.

## **V. Recommendations**

Having in mind the experience and best practices from the analyzed countries in the comparative overview and the current legal framework in Macedonia, as well as the practices and experience of Macedonian CSOs and state institutions, the following recommendations can be drawn:

There is a need for adoption of one, legally binding document, e.g., a rulebook for inclusion of the public in the law adoption process, or alternatively a code of good practices for inclusion of the public in law adoption process. Republic of Macedonia has a general framework which provides for the main guarantees for inclusion of the public and CSOs in law making processes (envisaged in several laws, the Rulebook of the Government, Methodology for regulatory impact assessment). However, there is a need for further elaborating and strengthening those guarantees in order to ensure compliance and effective implementation. In addition there is a need for those rules to be presented in more clear,



simple and concise way so that they can be followed by the responsible bodies, the general public and CSOs.

The same rules concerning participation in law making should be applied in the preparation of the by-laws or other implementing documents.

The timeframe for solicited public comments and opinions in a consultation process should be made longer.

It is recommended that every ministry, with the annual plan for preparation and amendment of the laws, to foresee minimal financial means necessary to conduct a solid and more wide-ranging consultative process.

There is a need of standard mechanism for the manner of selection of CSO representatives in the bodies that will draft the laws. Some examples from Europe (public competition for selection; clear criteria based on experience and expertise; selection made with voting by the interested organizations; open registry, maintained by the ministries, of concerned parties etc.) can be reviewed and adapted according to Macedonian legal system and the general context.

There is a need to strengthen CSO capacities for inclusion in creating policies, especially in the processes of law adoption, through trainings and direct consultations with the interested organizations.

There is a need to build the capacities of the bigger national alliances/networks, which serve as platforms for timely exchange of information and organized contribution in the course of law preparation. The strengthening of the capacities and the knowledge needs to be focused to the processes of law adoption that are happening in the Government (the ministries), but also in the Parliament level.

There is a need to raise the awareness of public officials about the benefits of consultation and participation and the contribution that CSOs and other interested parties can make in the process.

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**ANNEX 1:**  
**LIST OF CSOs WHICH ANSWERED THE QUESTIONNAIRE**

1. Center for Human Rights and Conflict Resolutions, Skopje
2. Center for Sustainable Development, Debar
3. Eko-misija, Skopje
4. Foundation Fokus, Veles
5. Foundation Open Society Institute Macedonia (FOSIM), Skopje
6. Habitat for Humanity, Skopje
7. Initiative for Social Change - INSOC, Skopje
8. Konekt, Skopje
9. Macedonian Center for International Cooperation – MCIC, Skopje
10. Mesecina, Gostivar, Skopje
11. Open the windows , Skopje
12. ROZM “Daja”, Kumanovo
13. National Council of the Women in Macedonia (SOZM), Skopje
14. Youth Cultural Center (YCC), Bitola
15. Faculty for political science, Law faculty “Justinian 1”, Skopje

**ANNEX 2:**  
**QUESTIONNAIRE FOR CSOs**

Name of the Organisation:

Position:

Field of interest / activity:

1. Does your organization aim to influence policy-making processes, specifically law making processes?

- yes
- no

2. Are you familiar with the **procedure** for enacting laws in Republic of Macedonia and do you think it is sufficiently clear? Please circle:

We are familiar with the procedure:

The procedure is clear and easily

understandable:

- yes
- no
- partly

- yes
- no
- partly

3. Are you aware of your **possibilities** for involvement in the law making processes?

- Yes
- No
- Partly

4. Please list the **laws** in which you have actively participated by **initiating** their adoption from 2007 till today?

- 1.
- 2.
- 3.
- .....

5. To which **state institution** did you filed the proposal for adoption of a law, mentioned in the previous question?

- 1 Government
- 2 Ministry ....
- 3 Parliament
- 4 Other .....

Please add, if you have initiated several laws in different ministries:

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6. In **which way** are you informed that the process of adoption or amendment of a law has begun?

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7. Please list the laws, from 2007 till today, in which you have **participated in the process** of their adoption. For every law, please indicate whether there were and what was your involvement in the four stages listed in the table below:

Law	(I) On an <b>informative</b> basis (you have only been informed that the law is being adopted)	(II) Through a <b>consultation</b> (you are asked by the respective ministry for your opinion on the draft law)	(III) Ongoing <b>dialogue</b> (exchange of opinions and direct and indirect involvement in the preparation of the law (ex. working groups))	(IV) <b>Partnership</b> (joint preparation of the law from the initial phase - from the initiative to the implementation)
1.				
2.				
3.				
4.				
....				

8. Have you used other **approaches (models)** of participation in the law making processes on the **Governmental level** in order to influence the adoption of law? (E.g., you have made an analysis of the issues and you have offered it to the appropriate department; you have organized debates, written a draft law or amendments to the law, etc...)

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9. Which **approach (model)** of participation have you used to influence the adoption of the law on a **Parliament level** (ex. you have submitted amendments to the draft law, you have participated in the work of the committee, you met directly the members of the \_\_\_\_\_ Parliament \_\_\_\_\_ others?)

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10. If you have submitted amendments to draft laws in the Parliament, how many of them, in percentage, have been **adopted**?

Law	Not at all	Up to 20%	Up to 50%	Over 50%


11. Is the process of making laws sufficiently transparent (for example: in which stage of the adoption of legislative initiatives you are being informed that the drafting is launched, are you able to get working versions of legislative initiatives for consideration, etc..)?

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12. Do you have any suggestions for systematic changes needed to be done in order to provide greater and more direct participation of the civil society organizations?

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13. Do you think, in general, that the civil society organizations have the capacity and knowledge to initiate and to be involved the processes of making laws?

- Yes
- No
- Other\_\_\_\_\_

**ANNEX 3:  
GUIDING QUESTIONS FOR STRUCTURED INTERVIEWS WITH THE  
INTERLOCUTORS IN THE RESPECTIVE MINISTRIES**

1. How many laws have been initiated by the ministry since 2007 in the field of human rights and rule of law?
2. How many CSOs initiatives for launching a law drafting procedure have you received?
  - a. Of those, how many of them have you accepted and which ones?
  - b. What were the reasons to reject the others?
3. Has the Ministry received already prepared draft law by the CSOs or other members of the public? How has the ministry been involved in those types of initiatives?
4. In how many laws proposed by the Ministry since 2007 has the public been consulted?
  - a. Who is involved (CSOs, experts, people who are directly affected by the law, etc.)
  - b. If so at what stage of the drafting process?
  - c. What are the main reasons (benefits) for involving them?
  - d. What are the main reasons to not involving them?
5. Is involvement of stakeholders time-consuming and does it have financial implications, or other types of limitations?
6. What methods do you use to involve the public?
  - a. How do you select those who are involved?
  - b. Do you have a database or list of organizations that you consult on regular basis?
  - c. What needs to be improved to help you select members of the public in the different stages and methods you use?
7. Are you satisfied with the quality of input that you receive from the CSO?
  - a. What needs to improve?
8. Can you describe a case where CSOs were involved in all stages of the drafting process? What was your experience of cooperating with those CSOs in the process?
9. Do you publish the draft laws on the Ministry web-site or do you make them publicly available in any other way?
  - a. If yes, at what stage of the process?
  - b. If no, why not?
10. Do you involve the public in the process of adoption of secondary legislation?
  - a. If yes, in what form?

- b. If no, why not?
- c. What steps need to be followed when drafting secondary legislation?