

Civil Participation in Decision Making in the Eastern Partnership Countries

Part Two: Practice and Implementation

Study

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Editor: **Jeff Lovitt**

Council of Europe project team: **Eteri Kamarauli, Gabriela Matei**

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Council of Europe

F – 67075 Strasbourg Cedex

France

www.coe.int

<http://partnership-governance-eu.coe.int>

I. INTRODUCTION

by Jeff Lovitt*

* Jeff Lovitt is Chair of New Diplomacy, www.newdiplomacy.net

Civil Society as a Policy Actor

The difference between laws and procedures as written and their realisation in practice is one that has both thwarted greater inclusion in democratic life, and also inspired civil society groups to call authorities to account, urging them to uphold the standards set out in laws and international commitments. A memorable example of the latter was that set out by the signatories of Charter 77, who called out the government of then communist Czechoslovakia for failing to implement the human rights provisions of the Helsinki Accords (as well as the Constitution of Czechoslovakia). More recently, we have seen examples where civil society has either launched protests against the perceived unaccountability of government, such as the Electric Yerevan movement in Armenia in 2015, or has taken the initiative in proposing policy reforms and drafting laws and amendments to existing legislation, most notably the Reanimation Package of Reforms (RPR) in Ukraine since 2014.

In all six Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, and Ukraine), as outlined in the study, ***Civil Participation in Political Decision-Making in the Eastern Partnership Countries – Part One: Laws and Policies***¹, there are "shortcomings in the clarity, effectiveness, and inclusiveness of their policy-drafting and evaluation procedures". The first publication in this project charted the laws and policies that provide the framework for civil participation in political decision-making.

In this second publication, ***Civil Participation in Political Decision-Making in the Eastern Partnership Countries – Part Two: Practice and Implementation***, analysts in the six countries examine the extent to which those laws and policies are indeed applied and implemented. The authors first assess to what extent the statutory procedures have been followed in the policy-making cycle in recent years, and then look at a set of case studies in each country to examine in detail how participatory policymaking is working in practice. For each country, two case studies examine participation in the law-making process, and another two case studies consider civil society initiatives in policy-making. Some of the latter category include engagement in law-making processes through civil society initiatives – sometimes working to unblock particular law-making processes

¹ *Civil Participation in Political Decision-Making in the Six Eastern Partnership Countries - Part One: Laws and Policies* (Editor: Jeff Lovitt), Council of Europe, May 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168065755a>

– while others involve more systemic initiatives to reform policies, and others amount to civil society protest movements in response to controversial decisions or unaccountable practices by public authorities.

Part One assessed the state of freedom of information in the Eastern Partnership countries, considered the enabling environment for civil society organisations (CSOs) and the capacities of public authorities to organise public consultations, and outlined the existence of laws and established procedures to ensure that participatory policymaking can take place. **Part Two** examines through case studies to what extent those procedures are followed in practice. Through the perspectives of the different stakeholders – from the side of government ministries and MPs, and also from the side of CSOs – another vital aspect of the consultation process is taken into consideration, namely the need for a strong culture of consultative communications. That culture of communications needs to be backed up by a commitment to transparency with clear, consistently applied timeframes that provide enough space for all interested parties to study policy concepts, for instance Green Papers, to review draft laws, and to be able to provide informed feedback and recommendations.

This study is published within the *Regional Project on Civil Participation in Decision Making in the Eastern Partnership Countries*, carried out as part of the **Partnership for Good Governance**², funded by the European Union (EU) and the Council of Europe, and implemented by the Council of Europe in Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus. The regional project has also generated **Measures for Strategic Development of Civil Participation in Decision Making in the Eastern Partnership Countries** (included as an Appendix to this publication).³ These measures, and the recommendations set out in them, are an important accompanying document to **Part One** and **Part Two**, and have been developed in the same time period as a separate initiative of the Council of Europe, the public consultation for drafting the **Guidelines on Civil Participation in Political Decision-Making**⁴.

International Standards

Participation features as one of the five principles of "good governance" highlighted by the European Commission in its 2001 **White Paper on European**

² <http://partnership-governance-eu.coe.int>

³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680709710>

⁴ http://www.coe.int/t/dgap/localdemocracy/CDDG/Guidelines-civil-society-consultation_en.pdf

Governance.⁵ Just as participation strengthens the legitimacy of policies – through inclusivity and wider ownership of the outcomes – it also makes the resulting laws and policies more robust and sustainable when carried out professionally and transparently, such that decision-making embraces stakeholder analysis and impact assessment as indispensable components of participatory consultations. It is likewise essential that the public, civil society and interested stakeholders are included at the different stages of drafting of policy concepts, impact assessment, draft legislation, the final law-making phases, and the subsequent stages of monitoring and evaluation of policy implementation. Participatory policy-making "has led governments to draw on the experience of NGOs to assist them in policy development and implementation", according to the Council of Europe's **Code of Good Practice for Civil Participation in the Decision-Making Process.**⁶

In the framework of the Council of Europe, it is worthwhile considering how public participation in policymaking works in other Council of Europe member countries. In Croatia, for example, Article 133 of the Constitution explicitly includes the right to public participation at the local level: "Citizens may directly participate in the administration of local affairs through meetings, referenda and other forms of direct decision-making in compliance with law and local ordinances."⁷

In Croatia, the **Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts**, adopted in 2009, applies to draft laws, regulations and other acts of state bodies at national, regional and local level. The Code applies to the *interested public*, comprising "citizens, civil society organisations (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"⁸ The code sets out criteria for the selection of members of expert working groups (expertise, previous public contributions and other qualifications relevant to the matter to be regulated), and stresses the importance of involving experts at the stage of drafting laws and regulations, and the monitoring of their implementation.

5 COM(2001) 428. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52001DC0428>

6 <http://www.coe.int/en/web/ingo/civil-participation>

7 <http://www.sabor.hr/fgs.axd?id=17074>

8 <http://int.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia.pdf>

The scope of participation in Croatia is supported by the Office for Co-operation with NGOs,⁹ which developed and implements the guidelines for implementation of the code, and runs trainings for civil servants at local and national level on co-operation with CSOs, and also by the Council for Civil Society Development,¹⁰ an advisory body to the Government to support development of co-operation between the Government and CSOs. The Council's 27 members include 12 representatives of non-governmental, non-profit organisations. The NGO representatives are democratically elected through a public call for proposals and transparent voting procedure.

Notably, the Council has the power to initiate statements on draft laws and national plans regarding civil society development.

The Policy Cycle

The example of Croatia is important for the current challenges facing civil society and the general public across all the Eastern Partnership countries, both in the processes and channels available for participation in the policymaking process, and also in the culture of communications. Participatory policymaking is not intended to challenge the democratic mandate of elected politicians to implement their campaign commitments, but to ensure that democracy is exercised in a more holistic way, where politicians are accountable for their actions throughout their tenure, and not only every four or five years at election time.

The illustration, *Model Policy Cycle - Key Steps in Participatory Law-Making Process* (see page 14), sets out the key stages in a participatory law-making cycle, and it is important to stress that clear timeframes should be provided for the different stages in the cycle, including adequate time for review of draft policy concepts, draft laws, and finalised laws, and advance notice of consultation hearings.

⁹ <https://udruga.gov.hr/>

¹⁰ <https://udruga.gov.hr/highlights/the-council-for-the-civil-society-development/163>

CROATIA: Minimum standards and measures for conducting consultations with the interested public according to the Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts

1. Timely information about the plan for enactment of laws and adoption of other regulations and acts

The interested public should be informed in good time about the plan to enact laws and adopt other regulations and acts through the publication of a single list of laws and other regulations which are being drafted and proposed for enactment and adoption in the calendar year, with a statement of the authorities competent for the drafting and the tentative time limit for the drafting and enactment of the law or adoption of other regulation or act.

2. Access to and clarity of the content of the consultation process

Bodies responsible for drafting laws, other regulations and acts make a public announcement of drafts on web sites or in another appropriate manner. Notifications of and invitations to consultations about publicised drafts must be clear and concise and contain all information necessary to facilitate collection of observations from the interested public.

3. The time limit for the implementation of Internet and other forms of consultations

Public announcements of invitations to conduct consultations about draft laws and other regulations and acts must contain a clearly defined time limit for observations from the interested public. It is desirable for this time limit to be not less than 15 days from the public announcement of the draft on the website of the body competent for the drafting, so that the interested public has sufficient time to study the draft in question and to form its opinion.

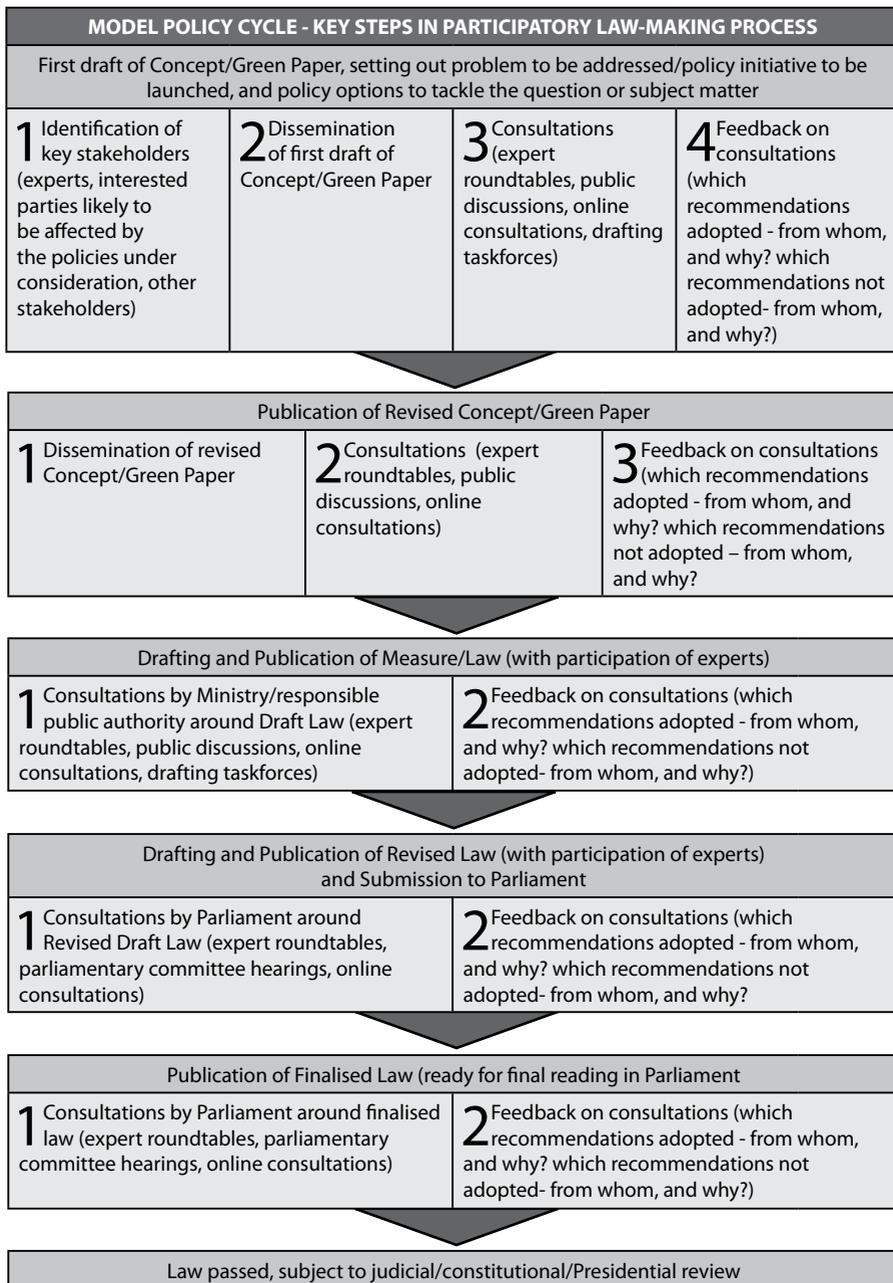
4. Feedback information about the effects of the consultations conducted

The observations by the interested public, as well as a summarized, unified explanation of the rejection of comments on certain provisions of the draft, shall be announced publicly on the website of the body competent for its drafting, or in another appropriate manner, so that the effect of conducting consultations in the procedure for the enactment of laws and adoption of other regulations and acts is visible.

5. Harmonisation of the application of standards and measures of conducting consultations in state bodies

In order to ensure the harmonised application of the above-mentioned standards and measures by state bodies, co-ordinators for conducting consultations shall be appointed as contact persons in all central bodies of state administration, or in the Government offices responsible for drafting laws, other regulations and acts, in order to consistently monitor and co-ordinate the procedures for conducting consultations with the interested public.

Source: Input to OHCHR based on resolution 27/24 of the UN Human Rights Council. Best practices in equal participation in political and public affairs, 12 March 2015, European Center for Not-for-Profit Law (ECNL), <http://www.ohchr.org/Documents/Issues/EqualParticipation/contributions/ECNL.pdf>



Green Papers

The first stage outlined in the preceding illustration is the drafting and publication of policy concepts or Green Papers. While applied on an ad hoc basis in some of the Eastern Partnership countries, the use of Green Papers is not mandatory in any of the six countries. (A Green Paper – an analytical study or policy concept circulated in the initial stages of the policymaking process – is designed to launch consultations among different stakeholders and to provide a set of choices and arguments in order to kick-start debate before a commitment is made to draft legislation.)

In **Armenia**, there is no mandatory practice of issuing Green Papers, although they are prepared on an ad hoc basis, and sometimes published on **www.justice.am**, but not always during the period of consultation. In 2014, for instance, there were seven green papers, all of which were published – six from the Ministry of Justice, and one from the Specialised Commission on Constitutional Reforms under the President. However, civil society was not involved at all in the process of shaping the constitutional reforms. There is no prescribed deadline for feedback and recommendations to a Green Paper, and the timeframe is determined by the initiating body, for instance a decision of the government or a presidential order.

In **Azerbaijan**, there is a non-binding recommendation to ministries to issue Green Papers before drafting legislation, but the majority of ministries do not follow this recommendation. Consultation around a Green Paper takes the form of engagement with government-selected expert working groups or taskforces. There is no process for gathering feedback and recommendations to a Green Paper. Feedback reports that set out which recommendations were accepted and which were not, and from whom, are not published. Green Papers themselves are rarely published.

Green Papers are published only in isolated cases in **Belarus** and **Georgia**.

In **Moldova**, provisions exist for the elaboration of Green Papers before legislation is drafted, but these are not mandatory and are rarely applied in practice, being left at the discretion of the authorities. When a Green Paper has been prepared, publication is not mandatory. A Government Decision adopted in August 2016 provides that the Green Paper has to be published only at the moment of public consultation on the existing draft law.

The following Green Papers have been recorded in Moldova in recent years:¹¹

	Green papers prepared in Moldova	Ministry	Green papers published (% of total prepared)	Ministry
2013	4	<ul style="list-style-type: none"> ▪ Ministry of Culture (1) ▪ Ministry of Education (1) ▪ Ministry of Youth and Sport (2) 	3 (75%)	<ul style="list-style-type: none"> ▪ Ministry of Education (1) ▪ Ministry of Youth and Sport (2)
2014	3	<ul style="list-style-type: none"> ▪ Ministry of Education (1) ▪ Ministry of Health (1) ▪ Ministry of Youth and Sport (1) 	2 (66.7%)	<ul style="list-style-type: none"> ▪ Ministry of Education (1) ▪ Ministry of Health (1)
2015	3	<ul style="list-style-type: none"> ▪ Ministry of Education (3) 	3 (100%)	<ul style="list-style-type: none"> ▪ Ministry of Education (3)

In **Ukraine**, the practice of publishing Green Papers is not mandatory, but the concepts or strategies on particular reforms and the concepts of laws are similar to Green Papers, and are often subject to public hearings.

The subsequent stages of the policy cycle are addressed in the six country chapters that follow. From the publication of the first draft of a law to its passage at the final reading in Parliament, the chapters look at the overall implementation record in each respective country, and then in the case studies look in much more detail at how the procedures were followed in the case of particular draft laws.

Eastern Partnership Countries: the Highs and Lows of Participatory Policymaking

In **Armenia**, the closed process of drafting major constitutional changes from 2013-2015 is contrasted with the Law on Public Organisations (the law on CSOs), which evolved over seven years with a high level of civil society participation from the early concept stage right through to parliamentary review of the legislation. Co-operation between CSOs and the Ministry of Justice also took place over the draft Law on Equality, while the final case study focuses on the Electric Yerevan

11 The data on Green Papers is based on answers received by Sorina Macrinici from 10 (out of 16) Moldovan government ministries. The information on Green Papers is not reflected in mandatory annual transparency reports published by ministries.

protest movement against the Government's approval of electricity price rises, which brought together diverse civic groups, and did result in a decision by the Government to subsidise electricity consumers to the amount of the price increase.

The Constitution of **Azerbaijan** enshrines the right of 40,000 eligible voting citizens to initiate draft laws, but stipulates that the manner in which they can exercise this right shall be defined by law. The first case study examines the efforts of CSOs to promote such a law. The second study describes a case where CSOs initiated the Law on Public Participation, and it was adopted in 2014. The third study considers the role of the Civil Society Defence Committee in 2009-2013 in raising international support over key issues in the legislative framework for civil society's operations, and the final study focuses on the Open Government Partnership initiative and the fate of a series of recommendations submitted by CSOs.

In the case of **Belarus**, the first study looks at the process leading up to the Decree on Regulation of Entrepreneurial Activity in 2014. Following a six-year process and discussions held in public advisory councils, restrictions were lifted on self-employed entrepreneurs hiring employees. The second study into law-making processes also considered a sustained, long-term effort, namely a 10-year campaign by animal rights activists towards the enactment of a Draft Law on Treatment of Animals, currently under consideration by a parliamentary committee. An initiative by the International Educational non-governmental organisation ACT, examined in the third case study, has already contributed to the establishment of a legal mechanism enabling local authorities to commission the implementation of social services by CSOs. In the final study, the efforts of environmental CSOs to ensure public participation around the environmental impact assessment of construction of a nuclear plant in 2008 resulted in a campaign of outreach to both international organisations and the Ministry of Natural Resources, culminating in the extension of mandatory public consultations to include all environmentally significant decisions.

The text of unanticipated Amendments to the Law Concerning Constitutional Court in 2016 in **Georgia** were not made public before the parliamentary committee hearings, and the Parliament adopted the amendments through a hasty procedure. As set out in the first case study, however, the persistence of CSOs in challenging the law in the Constitutional Court resulted in declaring several articles of the law unconstitutional. The second study examines the "It Affects You Too" campaign, which was initiated by CSOs in response to electoral code amendments ahead of the 2013 parliamentary elections in Georgia. The

campaign resulted in some changes before the 2013 elections and, after the elections, the creation of a multi-party working group that initiated further reforms. The third study charts the establishment by CSOs of a working group to redress the shortfalls in the new Local Government Code, and their achievement of amendments to provide for the establishment of a new mechanism for citizens' participation in local government. The final case study considers the challenges in the long overdue reform of the Prosecutor's Office. While CSO participants were not included in the working group that prepared the draft law in 2015, they did have access to the draft law and strategy, and could therefore propose from a highly informed perspective recommendations at both the drafting phase and parliamentary review phase. On the other hand, the reforms failed to "depoliticise" the Prosecutor's Office.

The first case study on **Moldova** outlines how CSOs were engaged during 2012-2015 in an inclusive law-making process, the Amendments to Law on Tobacco and Tobacco Products, from the drafting phase to the parliamentary review phase. The second study looks at a non-consultative case where the Amendment of the Electoral Code was pushed through Parliament in an (unannounced) urgent procedure in 2016. The third case outlines the process whereby a public policy paper was elaborated by a CSO, resulting through consultation with state authorities and other CSOs in the adoption by Parliament in 2015-2016 of a draft law to amend the so-called "2% Law" and an accompanying 2% Regulation subsequently adopted by the Government, giving the right to individuals to re-direct 2% of their income tax to CSOs. The final case study concerns the campaign, launched by CSOs in 2013, for a law on social entrepreneurship. The law, still pending parliamentary review in early 2017, emerged from a process where CSOs produced a series of studies into the shortfalls of existing legislation, conducted roundtables, and launched a CSO platform, resulting in an inclusive working group to draft a new law.

In **Ukraine**, the first case study, on the Law on Civil Service, charts how – due to political will for reform – the process included all the necessary stages with the maximum involvement of civil society in an expert advisory group to draft the law and in the working group attached to the parliamentary committee reviewing the law in 2015. The second study focuses on a law-making process with limited success in terms of inclusivity, despite the positive use by the Ministry of Finance of an open platform and an industry platform to deliberate on models of tax reform. The Amendments to the Tax Code, 2014-2015, involved two competing draft laws, and the final compromise law managed to introduce only a fraction of the much-needed reforms. The third study assesses the Draft

Law on Public Consultations, which is intended to regulate at the legislative level the procedure for holding public consultations during the preparation of draft laws, government decisions, and draft regulatory acts. The use of roundtables and regional meetings has made it an inclusive process, but political will is needed to finalise the law's passage in Parliament. The concluding case study examines a single CSO coalition, the Reanimation Package of Reforms (RPR), which dates from the beginning of 2014. The RPR brought independent expertise to the policymaking table, turned regular meetings with civil activists and independent experts into standard practice for both the Government and the Parliament, and facilitated the adoption of more than 60 laws.

Each country chapter includes a set of country-focused recommendations, and **Part Two** concludes with the formulation of a set of **Lessons Learned** from the case studies, drawing some examples of where civil participation models can be improved or further developed, or where key components – not least a regulatory framework for public participation and a culture of transparency and accountability, and engagement with civil society stakeholders – are needed to ensure that public consultations are a regular feature of policymaking, not just an ad hoc element introduced upon the whim of one or more public agencies.

BELARUS

by Tatiana Kouzina*

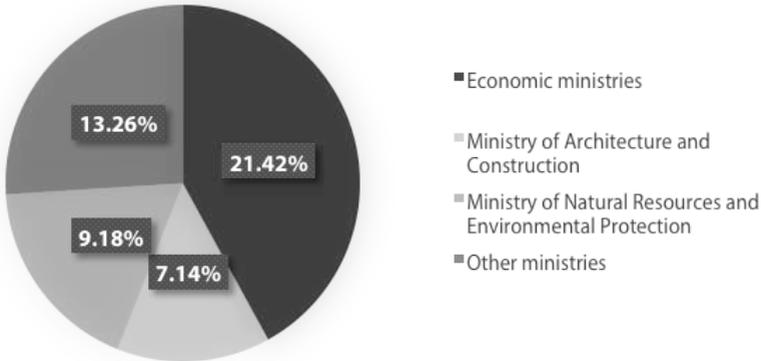
* Tatiana Kouzina is a member of the Board of SYMPA/BIPART (School of Young Managers in Public Administration – www.sympa-by.eu), and an expert of the Belarusian Independent Bologna Committee.

Introduction

Although the degree of the engagement of citizens in policy decision-making in Belarus is rather low, and most regulatory legal acts, including those concerning socially significant issues, are developed without the involvement of a broad range of stakeholders, some positive changes took place in 2016:

- There was an increase in the number of public discussions of regulatory legal acts and better availability of information. In 2016, 50 draft regulatory legal acts were published on the websites of ministries for broad public consultation. Some ministries introduced a section “Discussing Draft Laws” on their websites, where they post draft regulatory legal acts proposed for discussion, along with deadlines for making proposals, and contact details. Most of the draft laws opened up for public discussions (37 out of 50) pertained to the spheres where public consultations are mandatory (entrepreneurship, urban planning, environmentally significant issues).

Belarus: Public Consultations on Draft Regulations, 2016



Source: Author's calculations based on data of Belarusian ministries' official websites.

- Legislation on environmentally significant issues was included into the list of areas where public discussions are mandatory following the adoption of Resolution No. 458 of the Council of Ministers¹, dated 14 June 2016. The provision on the procedure for the organisation and holding of public discussions was developed with the involvement of civil society organisations.
- The Ministry of Economy developed the draft Decree of the President “On regulatory impact assessment of draft regulatory legal acts (individual provisions thereof) that influence the conditions for carrying out entrepreneurial activities”². The preparation of the draft included both expert consultations and the collection of proposals from the wider public. However, as of February 2017, the decree had still not been issued.
- Whereas insufficient awareness and lack of mutual trust between the public sector and civil society persist on the whole, more open relationships – with the potential to transform into partnerships – are beginning to emerge in areas where public participation has a legal framework and has taken institutional forms.

The draft Law on Regulatory Legal Acts, adopted by the lower chamber of parliament by resolution No. 799-П15/IX³, dated 28 June 2016, contains:

- Provisions on public consultations and impact assessments for adopted regulatory legal acts, regulatory environmental impact assessment for entrepreneurial activities, and explanatory notes accompanying regulatory legal acts;
- The expansion of public discussions over not only laws, but also to other regulatory acts;
- The inclusion of information about the results of a completed public discussion and consideration of remarks and proposals as a requirement for the adoption of a legal act;
- The introduction of a minimum timeframe for holding public consultations (15 days);
- The assignment of a single on-line platform – the website *Legal Forum of Belarus*⁴ – for the organisation of online public discussions of regulatory legal

1 <http://www.government.by/ru/solutions/2522>

2 http://www.economy.gov.by/nfiles/001708_705996_Proekt.pdf

3 <http://pravo.by/document/?guid=3941&p0=2016004024>

4 <http://forumpravo.by/>

acts. Information about public discussions also has to be published on the National Legal Internet Portal (pravo.by), in the media, and on the official websites of state authorities.

However, the practice of public discussions of regulatory legal acts will remain selective, and, if the law is adopted, the procedure for public consultations will be determined by the Council of Ministers. There are no plans for publication and open public discussion of the envisaged concept papers to precede the development of draft laws, and there are no provisions for mandatory publication of the substantiation for the need to adopt a regulatory act and information about the results of a completed public discussion and consideration of remarks and proposals.

BELARUS: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Mandatory</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? Ad hoc</p> <p>Were all draft laws indeed published? Yes, in 2013-2015.</p> <p>Draft Laws published in 2013-2015</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts
<p>In Belarus the publication of draft laws is mandatory, but the process of the publication is a very centralised. Draft laws are mostly published after internal discussion within the state institutions involved on the National Legal Internet Portal pravo.by around the date of its submission for parliamentary review. The practice of public participation in parliamentary committee meetings is very rare. Once a draft becomes law, the text is no longer available at pravo.by or on ministries' websites.</p>	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
<p>In 2016 the situation changed and on many ministries' websites there is a special area where draft laws, as well as the invitation to submit proposals, are published.</p> <p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? No</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>	<p>Online consultations inviting input</p>	<ul style="list-style-type: none"> ▪ General public
	<p>Public hearings</p>	<ul style="list-style-type: none"> ▪ General public

<i>Parliamentary review of legislation</i>	Forms of consultation	Participants invited to consultation
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? No</p> <p>Is a timeframe provided to announce the review meeting with advance notice? No</p> <p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>		
<i>Review of parliamentary committee amendments</i>	Forms of consultation	Participants invited to consultation
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee's proposed amendments is: Non-existent.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>		

Recommendations

To state authorities:

- To enshrine in the legislation mandatory public consultations during the development of regulatory legal acts with the engagement of stakeholders at the earliest development phases, and to identify a narrow list of areas that constitute an exception to the general procedure.
- To ensure that established deadlines provide sufficient timeframe for the development of a regulatory legal act, necessary state expertise, and public consultations.
- To ensure the full-fledged informed participation of non-state stakeholders and organise public consultations during the development of regulations that determine the procedure for holding public consultations, and assessing the impact of the adoption of regulatory legal acts, etc.
- To study best practices and develop a procedure for compiling registers of stakeholders for holding public consultations based upon thematic priorities on a declarative basis. The practice for drawing up a special list of stakeholders for the development of each regulatory legal act results in excessive administrative burden on state authorities and hampers timely and effective engagement of non-governmental stakeholders in the process of the preparation of regulatory legal acts.
- To improve the availability of information and transparency of decision-making at all phases of the development of draft laws, including mandatory publication by public authorities of concepts of draft regulatory legal acts at the initial phase of the work on a draft law, of reports on the consideration of proposals received in the course of public discussions, regulatory impact assessment reports, the results of preliminary research, and reports on the monitoring of the implementation of regulatory legal acts.
- To carry out monitoring and analysis of the work of public advisory councils under state authorities with the involvement of all stakeholders and develop measures to increase the transparency of their work.
- To grant proposals made in the course of public consultations (prior to the introduction of the practice of the publication of reports on consideration of public proposals) the status of “citizens’ initiatives”, which – subject to proper execution – would envisage a mandatory response to an application within a specified period of time.
- To assess the need for professional development of civil servants in terms of competences related to public participation in decision-making, namely

the development of a culture of dialogue between the state authorities and society, best practices regarding the role and place of civil society in these processes, and the practice of organising public consultations.

To civil society:

- To build up core expert potential in respective areas, and include international experts in advocacy programmes.
- To initiate new coalitions, and be involved in the work of existent coalitions, associations, and partnerships with strong advocacy capacity, study best international practices, and make use of international advocacy mechanisms.
- To study the work of the system of state administration, and available engagement mechanisms, and establish direct contacts with state authorities.
- In parallel with the advocacy of systemic changes, it is important to ensure the study and systemic use of the available mechanisms of interaction and pressure with state authorities – citizens' initiatives, requests, and media campaigns. Even if a campaign or initiative does not achieve direct results, it is important because the citizens' inputs are analysed by the state authorities and can have an influence at least at the level of state-affiliated analytical groups, and then indirectly on the executive level in the adoption of regulatory legal acts.

To international institutions:

- To include the broadest possible range of local stakeholders in framework programmes to support the development in Belarus of public participation and implementation of good governance principles, including incorporation in programmes of stakeholder analysis.

With a view to improving mutual awareness and establishing intersectoral co-operation, programmes to improve competences of intersectoral dialogue and arrangements to build trust between sectors are necessary (including on the basis of best practices): for civil society – advocacy, public administration; for state authorities – organisation of public consultations, engagement with civil society. All actors need to comprehend the mutual focus and mutual influence of the processes.

III. LESSONS LEARNED

High-level engagement can reap results even when participatory policymaking is not the norm

When the National Assembly of **Armenia** approved the draft Law on Public Organisations in September 2016, the final text included more than 80% of the CSOs' recommendations, providing CSOs with opportunities to engage in entrepreneurial activities, involve volunteers in their work, ensure the transparency of public funding of CSOs, and provide access to justice in environmental affairs. The result followed the invitation to CSOs to join a Ministry of Justice working group on the draft law. This was consolidated by the close engagement of CSOs during the legislative processes in the National Assembly and advocacy efforts to ensure that the final text maintained their recommendations. This model of co-operation can serve as a positive template for a sustained partnership between the public authorities and civil society, and should be codified into the law and guidelines on public participation in policymaking to ensure all laws undergo stakeholder analysis, impact assessment, and wide public consultation.

Likewise, although only selected CSOs and experts were invited to participate, public-civil society co-operation on the Law on Public Participation was one of the first participatory initiatives with a positive outcome in **Azerbaijan**. The role of civil society was taken into consideration both by government and international organisations. In contrast, the lack of progress in **Azerbaijan** on the Draft Law on the Right to Legislative Initiative of 40,000 Voting Citizens points to the need for a clear plan of engagement with Parliament on the part of CSOs to ensure that draft laws are adopted.

In **Ukraine**, the RPR civic initiative became a principal driver of reforms, combining public events, media campaigns, street actions and flash mobs with expert engagement in working groups and advisory councils to ministries and public agencies, as well as regular participation in parliamentary committee hearings. The public recognition of RPR, combined with its proactive provision of expert advice, made it a voice that the Government has to heed. Moreover, the large number of experts involved in the RPR, and their engagement in so many legislative processes, has deepened and broadened its knowledge base and experience in the law-making process. RPR's exemplary blend of expertise and public campaigning, so that it draws support from the wider public and the expert public, while also adding value to the agenda and knowledge base of law-drafters and parliamentarians, is a model that can be adapted to, and replicated in, other Eastern Partnership countries.

Civil society needs to act quickly to avert laws that curtail freedoms, and to enlist international support

When in June 2009, the Law on NGOs was submitted to Parliament without any prior public debate, its likely consequences – restrictions on the freedom of assembly and expression, and harsh restrictions on, and complications for, the work of CSOs – prompted reactions from civil society in **Azerbaijan**, as well as from the Council of Europe and other international organisations. CSOs immediately organised a public debate and, on 30 June 2009, the proposed amendments were withdrawn by the Parliamentary Committee on Legal Affairs and State-Building. This timely response averted a threat to the legal environment facing CSOs for a period of time.

After the hasty adoption of Amendments to the Law Concerning Constitutional Court in **Georgia** in 2016, a coalition of CSOs submitted a lawsuit to the Constitutional Court, which on 29 December 2016 ruled unconstitutional some articles of the law. The effectiveness of the CSOs' approach, in promptly making a substantiated legal challenge, provides an important marker for responding to future situations where standard law-making procedures and constitutional provisions are bypassed by the Parliament.

Sustained coalitions and campaigns to change policies and legislation build up expertise and strengthen arguments for reform

Efforts to bring about the removal of the ban on hiring workers by self-employed entrepreneurs in **Belarus** lasted six years, and provide an example of sustained and diverse engagement between the state and CSOs. Legislation regulating entrepreneurship marked a first step in the introduction of public consultation during the preparation of draft regulatory legal acts, and the fostering of dialogue between business organisations and government authorities.

In **Georgia**, the CSO working group on citizens' participation in local government was set up in order to present the recommendations of CSOs to the Government, but it also enabled the CSOs to consult with local government representatives and citizens in the regions and to reflect their feedback in the resulting recommendations. In this case, the CSOs were given the opportunity to comment on the draft law before the Government submitted it to the Parliament, and later to attend, and express their opinions at, parliamentary committee hearings –

approaching the model of public participation in the law-making cycle, where consultation and feedback mechanisms are in place at each stage of the process.

The amendment of the “2% Law” in **Moldova** was necessary as a result of flaws in the law adopted in 2014. Both the amendments to the “2% Law” and the draft 2% Regulation subsequently adopted by the Government were made possible due to pressure from a civil society coalition that brought to the table legal expertise throughout the entire law-making process. The efforts of the CSOs used tools of awareness-raising – roundtables, meetings, debates, and online consultation – but their efforts were differentiated by the fact that civil society acted in a coordinated manner, applied law-drafting expertise, and set the agenda. This approach – combining legal expertise and advocacy campaigning – enabled the CSOs to add value to the policy- and law-making process for all stakeholders involved around the table.

CSOs in **Moldova** produced analytical studies into the shortfalls of existing legislation and on comparative international practice on the issue of social entrepreneurship. CSOs took the lead, establishing a CSO platform, and organising roundtables with state authorities, resulting in the establishment of an inclusive working group to draft a new law. The process of elaboration of the draft law was open, with a working group including CSOs, and included the publication of the draft law and the organisation of online public consultations, but it required the initiative of the CSOs to give the process momentum.

Adequate timeframes for review should be available for all stakeholders

Time for debate and review of draft laws is essential but, without political will, it will require a huge effort from the side of civil society to ensure that a meaningful period of consultations takes place and genuinely has an impact on policy outcomes. For instance, the constitutional amendments passed by a referendum in **Armenia** in December 2015 were preceded by two years of drafting of the amendments, yet almost no time was devoted to public consultations and debate around key amendments that will lead to a transformational shift from presidential to parliamentary government. The amendments were rushed through the National Assembly without amendments, and followed by a referendum marred by irregularities and a lack of time for debate.

The draft Law amending the Electoral Code in **Moldova** was adopted at the first reading in an urgent procedure on 14 April 2016. The Parliament did not announce

that the draft was to be adopted in an urgent procedure and did not publish a deadline for submitting comments. When authorities seek to bypass the rules on public participation in law-making, it is important that civil society acts and insists on observance of the rules. In this particular case, the CSOs co-ordinated together and publicly called for public debates, which were then organised by the responsible parliamentary committee as a result of the pressure from the side of the CSOs. Not all the CSOs' comments were taken into account, but it is essential that civil society takes a public stance to call the authorities to account when rules on public participation have not been respected.

Clear regulation providing for public participation in decision-making empowers civil society to become valued partners in inclusive policy-making

At the stage of draft elaboration of the Draft Law on Treatment of Animals in **Belarus**, CSOs could influence the text in the frame of interagency working group discussions, but the application of participatory mechanisms was on an ad hoc basis, contributing to the current situation, whereby the law has still not been adopted and the main stakeholders have not reached agreement on the content of concrete norms. The absence of clear regulation hindered the process despite intensive, pro-active campaigning by CSOs, including wide-ranging co-operation between the CSOs and state authorities. Resolution No. 458, which came into effect in **Belarus** in July 2016, expands the list of areas where public consultations are mandatory to include all environmentally significant decisions. Furthermore, the procedure is spelt out in detail and has contributed to a situation where the Ministry of Natural Resources regularly invites environmental CSOs to consultations.

In **Moldova**, CSOs were actively involved over more than three years in the drafting of amendments to the Law on Tobacco and Tobacco Products. The working group that elaborated the draft law included representatives of several ministries and civil society. The Ministry of Health held consultations on the draft law and the regulatory impact assessment. The draft law was published, and civil society was invited to public meetings and roundtables. The Parliament published a summary of accepted and rejected comments and the final draft law before adoption. During the whole period, CSOs used press conferences, public events and other tools to press the authorities to adopt the draft law, showing that the procedures for public participation need to be embraced, and combined with a proactive determination to promote debate with the wider public and with lawmakers.

In **Ukraine**, the legislation on public participation in law-making lacks detailed guidelines and procedures concerning the stages prior to the introduction of a bill to the Parliament, thus leaving a lot of discretion to the authorities. The Law on Civil Service benefited from political will on the part of some representatives of the public authorities and the Parliament to enable the establishment of the expert advisory council under the National Agency and the holding of regional events, which are not required by legislation. CSO representatives were able to make a significant contribution to the drafting of the text of the bill in the working groups created by the Government. Since such open dialogue is still not customary in Ukraine, legislation should be enacted to enshrine in law this model approach as mandatory, so that it does not take place only on an ad hoc basis at the whim of a particular public agency or political actor. The same conclusion can be drawn from the experience of adopting the Amendments to the Tax Code in **Ukraine**. Different authorities and civil society representatives acted in parallel, often conflicting ways, in the absence of a clear legal framework for the law-making process prior to the parliamentary stage.

The current momentum, generated after the Revolution of Dignity in **Ukraine**, has been evident in the level of public participation that has contributed to the development of a high-quality Draft Law on Public Participation. If passed in the form it had taken by early 2017, it will serve as an essential tool in ensuring quality standards and inclusivity in law-making and decision-making. The final form of the law should include sanctions that come into force in the event that mandatory consultations are not held.

APPENDIX: MEASURES FOR STRATEGIC DEVELOPMENT OF CIVIL PARTICIPATION IN DECISION MAKING IN THE EASTERN PARTNERSHIP COUNTRIES

by Goran Forbici and Tina Divjak

Recommendations are based on the findings of the study *Civil Participation in Decision Making in the Eastern Partnership Countries: Laws and Policies* and on several group discussions with stakeholders from both governmental and civil society organisations from the six countries.

Background

Public consultations and cooperation with stakeholders lead the path to good regulations and efficient political decisions, which are all high quality in content, but also people-friendly and understandable. As a result, they make citizens' everyday lives easier, and don't require frequent amendments. Regulations should reflect the needs of the society and the dynamics of life. That is the only way for people to be willing to accept them and base their lives on them.

Various decisions can impact individuals and communities in various ways, interfering with their rights and influencing the quality of life. Understandably, this also leads to contradiction, resistance and rejection. Cooperation with the public in the early phase of drafting regulations can prevent possible conflicts at a later stage in practice. However, it is particularly sensible to do so in order to gain additional arguments, standpoints, opinions, information, as well as critical reflection, which undoubtedly contributes to better quality of the regulation.

Involvement of the public is therefore not a process to be run parallel to or independent of other steps in drafting regulations, such as assessment of situation in the regulatory field, identification of reasons for adopting the regulation, setting targets and seeking solutions, as well as pondering their alternatives based on in-depth judgement of their environmental, economic and social consequences, etc. Consultation with the public is tightly interwoven with all other steps. The share not only the target, i.e. to acquire a well-considered regulation that enjoys broad public support and can be implemented effectively, but more: consultation with the public is also seen as one of the basic tools to achieve the targets. Current efforts towards open and inclusive drafting of regulations are thus only a portion of the general efforts towards evidence-based policy making, which are run under the motto that governments have to produce policies dealing with problems, are forward-looking and shaped by evidence rather than a response to short-term pressures, and tackle causes - not symptoms.

Experience shows that successful development of civil participation demands action along these tree lines:

- Standardise consultation processes by developing a simple, yet comprehensive regulatory framework;

- Work consistently on strengthening the participatory culture among regulation devisers and decision-makers (public administration and elected officials);
- Empower civil society and key stakeholders.

Only a combination of all these three leads to efficient results. Standardisation is an essential part, assisting the devisers of laws and policies in planning and implementing processes most appropriately and efficiently. While leading the way, it also makes their work considerably easier, and shorter. On the other hand, it is also essential as it informs the stakeholders and general public about what can and should be expected. This helps them better prepare for the processes, which in turn contribute to the quality of final results.

However, standards and rules only make sense when followed and observed. Strengthening the participatory culture is therefore at least as important as standardisation. After all, strong commitment to open and inclusive policy making can help make up for the possible shortcomings of standards and rules, and, most importantly, paves the path to innovation. It is therefore of major importance for governments to promote civil participation systematically, as well as supporting the administration by strengthening its related capacities and providing it with sufficient resources. And to make public acknowledgement of good practices and those responsible, which means major encouragement to proactive approaches and explorations of new ways to reach out.

However, dialogue will be the most successful when also the other party is suitably qualified and prepared as well. Only then can it lead to the best solutions. Not only should participation of the civil society and other stakeholders therefore not be hindered, it should also be systematically encouraged and supported. This includes planned and sustained investments into strengthening their policy and advocacy capacities.

Current Developments in the Eastern Partnership Countries

Systematic open policy making has only been a trend for the past fifteen to twenty years. Countries of the region have taken several important steps in this field as well.¹ In recent years, all of them have ensured (passive) access to information

1 Cf. Lovitt, Jeff (ed.): *Civil Participation in Decision Making in the Eastern Partnership Countries. Part one: Laws and Policies*, Council of Europe, Strasbourg, 2016

related to adopting regulations and decisions, and also worked increasingly towards having it published proactively. Some of them have already established single governmental websites enabling consultations with stakeholders, which makes searching for and access to information considerably easier. The majority of them have also regulated the so-called traditional participation mechanisms, such as citizens' and civic petitions, and legislative initiatives. They are also developing various tools to make their use easier and bring them closer to people. However, their development has not been uniform, some countries having reached further than others.

Things look similar with regard to the development of consultation processes in drawing up and adopting legislation and other decisions. In all countries of the region, at least the first steps have been made towards framing and standardising consultations. In some of them, regulation is highly progressive and principles are unified, whereas in others the rules are only being made and are currently covering neither all policy areas nor all levels of decision-making and power. The majority of countries have also begun strengthening public administration capacities, and launched the related training programmes. In some countries, such programmes are highly systematised, and in others they have only just begun to appear.

In recent years, participatory activities of the civil society and other stakeholders have intensified in all countries, yet they are not always obstacle free. Certain restrictions still exist in the region regarding the funding of policy and advocacy civil society programmes, particularly from foreign resources. They should be withdrawn in all countries to ensure free (advocacy) operation and funding for the civil society. It would also be sensible for all countries to support actively the strengthening and empowerment of civil society in the future. Although this is a very progressive concept, it still remains subject to their own initiative and support of donors coming from abroad rather than own country.

These recommendations support measures along all tree described lines, originating in existing good practices in countries of the region and other, particularly transition countries. The recommendations are addressed to countries, international institutions, the civil society and donors. We all wish to have good regulations and decisions, and should therefore all make every effort to strengthen civil participation.

Recommendations

1. Recommendations for Civil Participation Regulation

Timely and sufficient information is essential for stakeholders to make informed choices and to provide professional, evidence-based recommendations for new laws and policies. Besides passive access to information - where information is provided on demand, authorities need to encourage and ensure proactive disclosure and publication of information related to the on-going decision-making processes. Information should be timely published on public authorities' websites and/or a special website designated for publishing information on draft regulations. It is also advisable to *form lists or databases of interested stakeholders*. Such a database should include the list of interested stakeholders by policy areas and their contact information. Stakeholders should be able to sign in the database by themselves while also marking their preferred areas of interest. Such databases are useful for more than one reason: being included in the database, stakeholders receive information from their preferred areas automatically, thus not having to waste their time searching for information. Due to automated information delivery, there is also less administrative work. Furthermore, databases support the authorities in identifying the stakeholders: when a certain regulation is being drafted, the authority will no longer have to waste time on identifying the potentially interested stakeholders but merely have to contact those included in the database.

The right to petition should be guaranteed at all levels of government: local, regional and national. For citizens, the actual application has to be as simple as possible. Particular focus should be on encouraging the development of official electronic petition tools, and the established system has to ensure for competent authorities to be required to process such petitions. The most transparent method is an uniform webpage for publishing petitions and other proposals addressing authorities, as well as relevant responses. Any interested party would thus be given the opportunity to follow the petition development, and petitions and proposals would not be repeated.

The state should enable citizens' legislative initiative at all levels of government: local, regional and national. It has to be based on reasonable and proportionate quorums and quotas. People should be actively informed on the possibilities and procedure of citizens' legislative initiative. It is particularly

important that citizens are aware of the demands related to the contents of the initiative. The initiatives submitted will thus be better prepared, which will make them easier and quicker to process.

Consultation processes must be mandatory, framed and standardised. The rules have to apply both to the executive as well as legislative power at all levels of decision-making (local, regional and national), to all kinds of documents and decisions, and to all areas of decision-making. Any exceptions have to be defined narrowly and explicitly in advance. There are several possibilities to frame the rules: one of them is to use a regulation, but there are also softer methods, such as official guidelines, recommendations, handbooks, collections of good practices, or combinations of both methods. The approach depends on the local tradition and past practices. Where previously processes have not been regulated, it is sensible to introduce soft approaches and only adopt legally binding rules if the first method fails to bring success. For cases where there has been partial regulation, which, however, was dispersed across various rules, and was regulated differently across various areas, or not at all in some areas, it is recommended to supplement the valid rules with additional rules, particularly for the areas that might have been left out, and to sum up all the rules in a single informative/reference document. Both the administration and the public will thus be given an opportunity to learn about the rules from a single source. The latter is also important from the point of view that knowing the rules well is a prerequisite for high-quality collaboration.

Consultations should also be ensured in case of laws that were initiated by the parliament and/or its members and had not previously been subject to consultations within the governmental procedure. It is advisable that implementation of such consultations is determined as a prerequisite for further consideration of the draft law by the parliament.

Regulation and standardisation of public participation in decision-making should be developed and introduced in a participatory manner, in cooperation with all the interested stakeholders. Although the basic principles and main mechanisms of public participation are similar across various countries, it is of high importance to emphasise that their formation also reflects the specific local nature (i.e. the size of the country – the bigger the country, the longer it takes for information to reach the local level and for comments to be prepared; internet coverage – if low, mandatory discussions have to be prescribed alongside electronic consultations in case of major regulations).

The following recommendations should be followed sensibly when standardising the consultation practices:

Decision-making processes must be inclusive from the earliest phase.

Consultations on policies and development plans have to be initiated in the developing phase rather than later, when a final view on the issue has been formed, i.e. have to be initiated while analysing the problem to be solved rather than later, when draft decisions and regulations have already been prepared. Development of propositions for the planned regulation, as well as their publication and related consultations, have to be encouraged to this end. The outline of issues and aims of the regulation, possible solutions and alternatives, as well as causes, serve as the basis for further discussions and as a topic of consideration of all stakeholders. Governments should also publish their annual regulatory programmes: not only to make early inclusion possible but also to enable stakeholders to make advance preparations for consultations. This would ensure a better dialogue and lead to improved eventual solutions. Normative programmes also have a beneficial effect on the self-regulation of authorities that are politically committed to conceiving the regulations they publically promised.

Public consultations should include online consultations, expert working groups, and public hearings as a standard practice.

Various consultation methods are required due to their different features and the targeted stakeholders. Electronic consultations are wide, open to everybody, allowing people to join at any time of day. These enable integration of a wide range of people, and provide a high possibility for new, yet general arguments. Public hearings, on the other hand, give an opportunity to those who prefer to express themselves live and those without Internet access. In public hearings, the circle of stakeholders is normally more restricted, the discussion is more specific, only the most interested stakeholders take part. The most targeted method - the expert working group - only integrates experts, and results in highly specific comments and arguments. However, as this circle of people is extremely limited, an expert working group should never be used as the only consultation method.

All draft legislation and policy documents should be accompanied by explanatory notes justifying the need for the law or amendments, and the objectives and outcomes of the proposed legislation.

Sufficient information is required to ensure that those consulted understand the issues and are able to give informed responses. The information provided should also include validated

assessments of the costs and benefits of the options being considered. It is also helpful to provide for each regulation a contact person, responsible for providing additional information to interested stakeholders.

Consultations should be clear and concise, thus demanding the use of simple language, avoiding abbreviations. It is recommended to voice the questions with the most sought-after answers to maximise the efficiency of the consultations and provide true answers to the decision-maker's dilemmas. Questions have to be easy to understand and easy to answer, yet not proving to be too limiting to the discussion; sufficient space has to be left for actual changes of the draft regulation. The question method is the most helpful when consulting initial regulatory propositions, as solutions are quite open at this stage.

All public consultations should allow sufficient time for responses. The timelines have to be adapted to the needs of stakeholders to be consulted, some of them requiring more time than others (due to lack of appropriate or professionalised staff). Time limits, therefore, depend on who is consulted, as well as the importance and complexity of the consultation substance. More complex topics and documents demand more time than simpler and shorter ones. Holiday seasons and breaks also have to be taken into account, and consultation periods prolonged if required.

Consultations should be targeted. When being devised, the authorities should consider the full range of people, businesses and voluntary bodies affected by the policy, and whether representative groups exist. Stakeholders should be consulted in a way that suits them best. Consultations should also be tailored to the needs and preferences of particular groups, such as older people, younger people or people with disabilities, who may not respond to traditional consultation methods.

Feedback should be provided after each consultation, stating which recommendations were made and by whom, which recommendations were accepted, and which were not, and why. A report should be devised and published together with the document being submitted to the next stage in the decision-making procedure. It should be published at the same place as the consultation documents.

Appeal mechanisms and bodies must be envisaged for cases of infringement, and mechanisms of judicial and legal control should also be established. In the event that mechanisms of judicial and legal control have not been defined, an

institution has to be indicated for following the regulations prepared in the light of the public discussions held (the so-called gate-keeper). If the public discussion regarding a certain regulation failed to be implemented in accordance with the rules, the indicated institution should be able and obliged to return the proposed regulation back to the submitting party.

Places where the draft regulations, policy documents and other consultation documents are published, have to be predetermined and publicly known.

For consultations at the Government level, it is recommended to have a single website/online platform for all public authorities. While allowing the publication of documents, it should also enable submitting comments and remarks. To maximise the transparency, such a website should show the timeline and entire evolution of the regulation: the original version and the comments received, the second version and the comments received, all the way to the final version.

Periodical and systematic evaluation of consultation practices as well as compliance with the rules established has to be envisaged. As well as ensuring periodical and systematic evaluation, findings also have to be introduced into practice and distributed among various authorities. This is the way to improve processes and unify the practice among authorities.

2. Recommendations for Strengthening the Participatory Culture Within the Public Administration and Elected Officials

a. Promoting inclusive and open decision-making

Authorities should be determined to promote continually the civil participation rules and standards at all levels of decision-making. It is important for lawmakers to know that the authorities firmly support the established rules and expect them to be taken into account. To this end, it is recommended to make use of circulars upon the formation of a new government, parliamentary recommendations to the government upon beginning a new parliamentary term, etc. It is also very helpful to emphasise the importance and role of the gate-keeper. Authorities should also organise various events to promote and spread good practices, joint evaluations and training.

The standards for public consultation should be promoted by intergovernmental organisations active in the region, such as the European Union and the Council of Europe. If these standards are not complied with, such organisations should respond quickly and clearly by issuing warnings as well as recommendations.

Competent authorities should examine and evaluate compliance with the rules on a regular basis. In case of infringements, corrective measures have to be imposed. The approaches and processes have to be improved continuously. It is sensible for the entire administration to use a unified evaluation system, thus enabling mutual comparison and learning.

Governments should acknowledge and promote good consultation practices, as well as the persons responsible for the work well done within their administration. This practice will serve as example to others, while also encouraging those responsible to continue drafting the regulations in an inclusive manner. It is also helpful to use innovative approaches for such acknowledgement (i.e. presenting the award for “the most inclusively devised regulation of the year”), as such approaches, quite un-typical for the administration, make a special contribution to an active response among the officials.

Public authorities are encouraged to appoint coordinators for promoting public participation. Their tasks should include monitoring of consultation processes and provision of expert support to their colleagues who plan and implement such processes. Such coordinators should be trained in facilitation and use of various involvement methods and techniques, in order to be able to advise their colleagues about what specific approaches to use in each case.

At the executive level, it is recommended to set up a coordination body for trans-ministerial implementation of consultation processes, having as task to promote inclusive decision-making across ministries, monitor consultation processes, further develop the existing frameworks, consultative tools and mechanisms. There are various options to do so: a dedicated task force would perform a multi-dimensional role, monitoring the process (it can also act as a gate-keeper), and possibly evaluate trans-ministerial processes and other analyses (e.g. development of consultation processes abroad, use of new methods and techniques), preparing various reports, and subsequently framing further governmental plans for strengthening the processes, for training development, etc.

Public administration should envisage sufficient human resources and adequate time for consultation in all phases of policy development.

Disproportionally short time limits for drafting the regulations (imposed by the parliament to the government or by the government to the public institutions) should be avoided, as public consultations could thus be prevented.

b. Capacity building

Knowledge e-hubs, comprising collections of good practices, information and advice on how to plan, implement and evaluate participation processes, are to be developed and established. An e-hub can also include various interactive tools to assist the authorities in implementing individual consultation methods. Such knowledge base have to be supplemented and upgraded on a regular basis.

Public administration can be supported with access to handbooks on planning, implementation and evaluation of consultation processes. Such handbooks have to be promoted and used frequently by public servants.

When organising consultations, public employees responsible for drawing up regulations should be encouraged to use specialised assistance and have access to existing public participation tools to facilitate their work.

All levels of public administration should be trained regularly on planning methods and consultation processes. Training programmes have to be systematic and continuous, part of regular training programmes for public administration implemented by state institutions responsible for public administration capacity building (public service academies, HR administrations, etc.). Such programmes are to be organised by levels – a beginner training programme offering basic knowledge to all public employees, an advanced training programme offering public involvement methods and techniques to public employees directly responsible for devising regulations, and *the most comprehensive programmes* for public consultation promoters and coordinators. The training programmes should be based on practice as much as possible, and should rely on inclusive methods such as role play, simulations, and alike. Participation in trainings should not be limited to public servants but include other stakeholders, thus strengthening the knowledge of law-making processes among participants. This would lead to improved involvement, improved quality of the consultation process, thus facilitating the work of the administration and

improving the quality of the drafted regulation. Mixed participation also promotes dialogue, improves mutual trust among stakeholders, fundamental prerequisites for a high-quality civil dialogue.

c. Development of easy-to-use consultative e-tools

E-tools for consultations and petitions should be set up and upgraded continuously. Such tools must be user-friendly both to stakeholders as well as to consultation implementers, have to be designed in order to assist regulation devisers and shorten their work, rather than prolong it and make it more difficult. As many processes as possible should be automated (e.g. generic design to form feedback reports based on the comments published).

3. RECOMMENDATIONS ON FURTHER EMPOWERMENT OF CIVIL SOCIETY AND STAKEHOLDERS AT LARGE

a. Enabling environment for CSOs and other stakeholders participation in decision-making

There should be no unreasonable barriers and conditions for CSOs registration and operation. All individuals and legal entities should be able to freely establish and participate in informal and registered organisations. Registration should not be mandatory, and in cases when organisations decide to register, the registration rules should be clear, allowing for easy, timely and inexpensive registration and appeal process. CSOs should be able to operate freely without unwarranted state interference in their internal governance and activities. Financial reporting (including money laundering regulations) and accounting rules should take into account the specific nature of CSOs and be proportionate to the size of the organisation and its type and scope of activities.

There should be no restrictions on CSOs policy and advocacy activities and they should be allowed to freely seek and secure financial resources from various domestic and foreign sources.

International donors supporting civil society advocacy programmes and participation of CSOs have to be ensured the appropriate supportive environment. There should be no unreasonable barriers interrupting their operations and financial programmes. Even more, their presence and activity in

countries of the region should be actively encouraged. State support is helpful for coordination and collaboration with donors, this could encourage target financing and reduce duplication.

Transparency has to be encouraged in CSOs and other stakeholders, representing a fundamental tool of strengthening the mutual trust. This is why the civil society and other stakeholders should do as much as possible to increase their own transparency. States and international donors should assist them actively by supporting the development of various sectoral codes, recommendations, good training exchange projects, promotional events, etc.

Participation in consultation processes should be constantly promoted among stakeholders and encouraged through the use of established e-tools/platforms. Advocacy activities and participation in consultation processes need to be publically promoted, and public acknowledgement to be given to those getting engaged.

International donors should continue their support to CSO policy work and active engagement in decision making. While doing so, donors keep realistic expectations, taking into account the given circumstances and potential barriers that the civil society and other stakeholders in countries of the region are faced with.

International donors should proactively collaborate and coordinate their support and funding programmes to address existing needs, avoid duplication (of activities and projects), and avoid leaving certain areas and initiatives without support. It would also be sensible to structure donor collaboration and coordination, potentially by developing periodical donor forums for the region or specific countries, establishing joint trusts, publishing joint tenders, etc. Mutual donor coordination should also be encouraged by the countries and by the international organisations active in the region.

Governments and donors should focus on those civil society programmes promoting participative democracy and citizens active engagement. It is such programmes that bring long-term effects on increased public participation and thereby on improved regulations.

Special attention should be paid to multi-stakeholder cooperation projects and activities (cooperation among CSOs, business sector, trade unions, religious communities, etc.). Not only does multi-stakeholder cooperation highlight the

issue from several angles, each of the stakeholders being based on different premises, it also brings a potential harmonisation of standpoints and partners, which facilitates the dialogue for the state. Furthermore, through the exchange of opinions and increased awareness of different perspectives, such projects also strengthen the capacities of individual stakeholders.

The governments at all levels should reconsider financial and other types of support to CSOs policy work. When financial support is granted, it should be based on open, transparent and inclusive procedures. The most productive way is a dialogue with stakeholders possessing knowledge and expertise. However, CSOs being non-profit-making entities by nature, often lack sufficient resources to analyse policies and seek best professional solutions. In order for the civil society to collaborate to the best of its ability with governments in finding the best political solutions, it would, therefore, be sensible to introduce and strengthen state support to its policy activities, including financial, knowledge and information sharing. It would be helpful to encourage CSOs involvement as consultants to develop certain policy proposals, outsource the preparation of various analyses, ex-ante evaluations and draft documents.

Regional cooperation projects for civil participation have to be encouraged by the international community, governments and civil-society. Multi-stakeholder regional projects with representatives of the government, public administration, civil society and the other stakeholders are particularly welcomed. Such projects bring an exceptional opportunity for exchanging experience and good practices, and for seeking solutions for common or similar problems.

Existing institutionalised regional cooperation mechanisms and structures should also be encouraged and further developed.

Public authorities and the civil society should actively encourage mass media to place civil participation on its agenda, and ensure wide promotion within the society at large.

b. Capacity building

Existing training programmes, other forms of strengthening civil society capacities for policy and advocacy (consultancy, mentorship programmes, exchange of good practices) should be developed and supported (including financial support). Development of new programmes should be encouraged.

This will improve the quality of civil society initiatives and the quality of the dialogue, making key contributions to the quality of the adopted political solutions.

The development and further reinforcement of non-governmental resource centres focusing on policy development and advocacy should be encouraged. These represent “institutionalised”, essential and sustainable know-how hubs, providing civil society systematically with information, counselling and tutoring support in its advocacy initiatives. These hubs have to be geographically dispersed in order to offer accessible support to everyone, regardless of their operation - at local or national level, and regardless of their current location.