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PUBLIC CONSULTATION IN THE WESTERN BALKANS IN THE LIGHT OF THE EUROPEAN UNION INTEGRATION

The increasing emphasis on openness and transparency of policy making fits into the overall set of reforms stemming from the EU accession process of the Western Balkan countries. Such an approach is especially relevant in the context of the requirements related to the public administration reform, good governance, rule of law as well as civil society development. This paper will analyse the legal framework regarding the public consultation, as key to public participation, in the public policy process of the Western Balkan countries in the light to the EU accession and approximation of their legislation with the EU legal standards. The paper will explore if and how such a legal framework has contributed to better public policies in these countries, as well as to their EU integration progress. Even though all the Western Balkan countries are not in the same stage in the accession process, challenges remain similar. The methodology of monitoring and accountability mechanism of the public consultation process is of high relevance for fulfilling this specific requirement. The tools that will be explored through this paper are aimed to contribute into improving the process in the Western Balkan countries.

Keywords: public consultation, public policy, European integration, Western Balkan countries.

1. INTRODUCTION

The benefits of systematic collection, analysis, and presentation of relevant data through public consultations conducted by respective public institutions are multifold. The process of public consultations spreads the culture of evidence-based policy, strengthens the potential for effective central scrutiny of the quality of public policies, and promotes the active participation by bringing additional meaning and value to the citizen and

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stakeholders' participation in policymaking. They also contribute to strengthening trust in public institutions, rule of law and democracy. The public institutions are reinforced by the public consultation in the decision-making process and this directs towards sustainable policies which meet the needs of the society.¹⁶⁴ The public consultation process enables public authorities to ask for public opinion regarding a certain topic or policy at hand, through informing on current policy developments and progress reached within the competent government authorities, inviting the public to submit comments, opinions and replies, as well as informing on how the latter are assessed and valued by the public authorities.¹⁶⁵ Such a scheme not only empowers the public, but it also allows for better policies addressing public interests.¹⁶⁶ All the Western Balkan countries (WB countries) reflect a specific level of progress in harmonizing with the European Union (EU) standards on this issue. However, they also reflect loopholes to be further addressed on the long road to EU accession.

2. WESTERN BALKANS TOWARDS EUROPEAN UNION REGARDING PUBLIC CONSULTATION

As the WB countries strive to access the EU, the latter is identifying more conditions related to good governance, legal standards, and procedures, including standards of public consultation in policymaking. It is required that governments set appropriate timeframes for the public consultation processes, independent mechanisms not only responsible for the monitoring and implementation of the public consultation but also efficient in annulling and/or suspending the draft projects if public consultation standards are not held in compliance with the corresponsive legislation.¹⁶⁷ The EU considers policy-making public consultation a fundamental element of the rule of law and proper functioning of the democratic institutions for the countries that aspire to access EU.¹⁶⁸ It is the primary sources of EU legal acts that stipulate this principle. Article 11 of the Treaty of the European Union (TEU) requires that EU institutions to give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action, maintain an open, transparent and regular dialogue with representative associations and civil society, and carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent. This needs to be respect in the course of the legislative functioning the EU

¹⁶⁴ Rosenzweigova, I., Skoric, V., & Asipovich, H. 2016. Civil Participation in Decision-Making Processes: An Overview of Standards and Practices in Council of Europe Member States. Pieejams: <https://rm.coe.int/168068690f>.

¹⁶⁵ Divjak, T. & Forbici, G. 2014. *Public Participation in Decision-Making Process: International Analysis of the legal framework with a collection of good practices*, CNVOS.

¹⁶⁶ National Endowment for Democracy. 2017. *Commentary of the Law no. 146/2014 "On Notification and Public Consultation"*

¹⁶⁷ Divjak, T. & Forbici, G. 2014. *Public Participation in Decision-Making Process: International Analysis of the legal framework with a collection of good practices*, CNVOS.

¹⁶⁸ ReSPA. 2018, Recommendation on Public Participation in Policy-Making Process for the Western Balkans.

institutions.¹⁶⁹ On such basis, the European Union has paid a special attention on the stakeholders engagement into the policy-making process during legislative process.¹⁷⁰ The opinions of the citizens on the legal acts and other policy-making documents is heard through the 'Have Your Say' portal of the European Commission.¹⁷¹ This process, known as a 'better regulation' by requiring that policy-making process is an evidences-based and a transparent one, aims not only to ensure the application of the principles of subsidiarity and proportionality key for the EU functioning, but also that EU legal acts are in line with the UN Sustainable Development Agenda 2030.¹⁷²

In similar ground, EU requires that such standards be respect by the WB countries. The communication issued by the European Commission (EC) on "Enhancing the accession process - A credible EU perspective for the Western Balkans" in 2020 highlighted that there is a need for the WB countries to be better equipped with mechanisms dealing with the much-needed reforms in the area rule of law, and fundamental democratic and economic growth. In the aspect of the building a clear strategy on the functioning of the democratic institutions, there is a need in the reformation of the public administration functions in its entirety.¹⁷³ One of the most important aspects that has impact in the trust in the public institutions is the impartiality and the fairness of the institutions in the decision-making process which is needed to be made in consultation with the citizens.¹⁷⁴

All WB countries have embedded the public participation in their internal legislation (See Table 1). Albania adopted the Law on Notification and Public Consultation in 2014¹⁷⁵, while that matter was regulated in Montenegro by the Law on State Administration and by the Decree on the Selection of the Representatives of NGOs in the Working Committees of Public Administration Bodies and Implementing Consultation in Preparing Laws and Strategies.¹⁷⁶ In 2019, the Serbian government adopted the Regulation on the Methodology

¹⁶⁹ See the Consolidated Version of the Treaty on European Union at: http://data.europa.eu/eli/treaty/teu_2012/oj. This needs to be respected in cases of legislative process of the EU institutions as per article 289 of the Treaty on the Functioning of the European Union (http://data.europa.eu/eli/treaty/tfeu_2012/oj)

¹⁷⁰ European Commission. (2002). '*Communication from the Commission: Towards a Reinforced Culture of Consultation and Dialogue—General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*'. See at: https://ec.europa.eu/governance/docs/comm_standards_en.pdf

¹⁷¹ https://ec.europa.eu/info/law/better-regulation/have-your-say_en

¹⁷² European Union: White Paper on European Governance (http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l10109_en.htm)

¹⁷³ EC. 2020, Enhancing the accession process - A credible EU perspective for the Western Balkans & OECD (2020), Government at a Glance: Western Balkans, OECD Publishing, Paris, <https://doi.org/10.1787/a8c72f1b-en>

¹⁷⁴ OECD, 2020, Government at a Glance: Western Balkans, OECD Publishing, Paris, <https://doi.org/10.1787/a8c72f1b-en>.

¹⁷⁵ Law no. 146/2014, date 30 October 2014 'On Notification and Public Consultation.' https://www.legislationline.org/download/id/8099/file/Albania_law_notification_public_consultation_2014_en.pdf In addition, the Decision of the Council of Ministers No. 584, dated 28 August 2003, "The Rules of Procedures of the Council of Ministers", as amended, stipulate this principle in the drafting process of normative acts by the Council of Ministers. The General Secretary of the Council of Ministers adopted in 2021 a Guide which serves as a manual of the public consultation processes to the state administration institutions. See the manual in Albanian, at <https://www.adisa.gov.al/wp-content/uploads/2021/03/URDHER-Nr.-3-Dt.-29.01.2021-compressed.pdf>.

¹⁷⁶ Decree No. 01-332/2 on Proclamation of Law on State Administration, (as amended) Republic of Montenegro. https://www.gov.me/en/search?page=1&sort=published_at&q=LAW%20ON%20STATE%20Administration%20

of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents which is relevant for the given issue.¹⁷⁷ In a similar vein, North Macedonia also does not have a specific law but regulates it with governmental rules and provides details on the process in the Guide which was adopted in 2013.¹⁷⁸ Bosnia and Herzegovina adopted the Council of Ministers Decision which contains rules on consultation in legislative drafting” in 2016 (Council of Ministers Decision No. 314/2016: Rules on Consultation in Drafting Legal Provisions)¹⁷⁹, while Kosovo*¹⁸⁰ adopted the Regulation on minimum standards for public consultation process addressing the given matter (Regulation No. 05/2016 on Minimum Standards for Public Consultation Process).¹⁸¹ The existing legal frameworks in the WB countries governing public consultation prove the need for a well-constructed legislation that would guarantee a better protection of public consultation through the highest legal norms in the country. In addition, the applicable legislation should be upgraded with secondary normative acts and clear strategic documents. As an example, Albania has adopted the Guide on Public Consultation which addresses only selected state administration institutions. Those state administration institutions include only the centre of governance, while not other institutions which might be involved in policy-making processes. Serbia and North Macedonia regulate this process through secondary legislation, although the statutory provisions could provide better guarantees for the successful application of public consultations.

Table no. 1: Regulation of the Public Consultation in the Legal Frameworks of the WB countries

WB Country	Special Law	Normative Act/s (sublegal)	Other Law/s
Albania	X	X	X
Kosovo*		X	
North Macedonia		X	X
Serbia		X	X
Montenegro		X	X
Bosnia and Herzegovina		X	

In addition, the implementation of such legislation needs to be improved. A regional study conducted in 2018 by the ReSPA indicated that shortcomings were present in both public consultation legislation and its applicability. The ReSPA finds that a careful planning

¹⁷⁷ The regulation was published in the ‘Official Gazette of the RS’ No. 8/19 of 8 February and will enter into force on 16 February 2019. See at: <https://rsjp.gov.rs/wp-content/uploads/Regulation-on-the-methodology-of-public-policy-management-with-Annex.pdf>

¹⁷⁸ See at: https://mioa.gov.mk/sites/default/files/pbl_files/documents/Vodic_za_povratna%20informacija_do_javnosta_pri_podgotovka_zakoni.pdf

¹⁷⁹ Republic of Bosnia and Herzegovina, Council of Ministers Rules on Consultation in Drafting Legal Provisions („Official Gazette of BiH” No. 5/17). http://www.mpr.gov.ba/web_dokumenti/default.aspx?id=11087&dangTag=en-US

¹⁸⁰ * This designation is without prejudice to positions on status, and is in line with the UNSCR 1244(1999) and the International Court of Justice (ICJ) Opinion on the Kosovo declaration of independence.

¹⁸¹ Republic of Kosovo, Regulation no. 05/2016 of the Government of the Republic of Kosovo on the Minimum Standards for Public Consultation process. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=15036>

of consultation is needed,¹⁸² and that consultation methods should be made available to the public within a defined time. Short time (less than 20 days) and consultations in latter stages do not fulfil the minimum standards as provided in the ReSPA's recommendations.¹⁸³ As per these recommendations, it is important that the administration not only makes available the document in process of consultation, but also takes all the measures in providing necessary tools for the stakeholders not to encounter difficulties during the process and to be proactively involved through permanent communication channels. Stakeholders' feedbacks should be taken into consideration, while the state institutions should provide feedbacks as well.¹⁸⁴ It is the duty of public organs to efficiently inform all the interested parties on the consultation processes, in a tailor-made methodology as well as to share with the public all the documents. Only by ensuring these standards, the institutions are conducting an inclusive process starting from the drafting through the adoption.¹⁸⁵

The EC country reports for all the WB countries highlight shortcomings regarding public consultation, including low level implementation in local government decision-making bodies, limited scope of the legislation, or poor consultation process with civil society. While most of the WB countries have adopted the legislation that is well in line with EU standards, there are cases, such as the law of Bosnia and Hercegovina, which was assessed as preventing public scrutiny over government work.¹⁸⁶ A summary of these assessments is shown in table no. 2.

¹⁸² Kasements. L., 2021. Policy co-ordination in the Western Balkans, ReSPA, pp. 34.

¹⁸³ ReSPA. 2018, Recommendation on Public Participation in Policy-Making Process for the Western Balkans, pp. 5.

¹⁸⁴ *ibid*, pp. 3.

¹⁸⁵ ReSPA. 2018, Recommendation on Public Participation in Policy-Making Process for the Western Balkans; EC. 2020, Enhancing the accession process - A credible EU perspective for the Western Balkans & OECD (2020).

¹⁸⁶ See at:

https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/bosnia_and_herzegovina_report_2020.pdf

Table 2: EC country reports 2020 for WB countries public-consultation highlights

WB Country	Shortcomings
Albania ¹⁸⁷	<ul style="list-style-type: none"> - scope of law to be extended to government decisions - little evidence of the use and effectiveness of the feedback mechanisms - administration to strengthen capacity in terms of inclusive and evidence-based policy and legislative development - electronic web-portal for public consultations is operational, but its use by the public remains limited - quality control function on public consultation remains weak and focuses mostly on the process rather than on the content - local-level implementation unsatisfactory
Kosovo ^{*188}	<ul style="list-style-type: none"> - public consultations to be further improved with easier access to data and more regular feedback from public authorities - awareness and promotion of consultation platforms is crucial to broaden public engagement - minimum standards for public consultations not being followed consistently
North Macedonia ¹⁸⁹	<ul style="list-style-type: none"> - efforts are needed to ensure a more meaningful and timely consultation process - evidence-based policy and legislative development continue to be partially ensured - inclusive participation in public consultations continued to be encouraged through the national electronic consultation system - quality control of the public consultation process needs to improve - a significant number of laws adopted under shortened procedures, not undergoing a proper public consultation process
Serbia ¹⁹⁰	<ul style="list-style-type: none"> - inclusiveness and transparency of the reform process, of the EU accession related process, to be improved as a matter of priority - public consultations on policies and legislation need to be more substantive - use of the urgent procedure for law adoption reduced, but a few civil society organizations (CSOs) reported that the time given for public consultations was still too short, or that their comments were not given sufficient consideration and follow-up - improve central and local level administrative capacities to give adequate time for legislative consultations and qualitative public consultations (particularly at local level)
Montenegro ¹⁹¹	<ul style="list-style-type: none"> - still lack the genuine and systematic inclusion of relevant stakeholders
Bosnia and Herzegovina ¹⁹²	<ul style="list-style-type: none"> - meaningful and systematic consultations with civil society to be ensured - legislation on public consultations is uneven across the country - no strategic framework for cooperation with civil society - legal framework on public consultations to be improved and applied consistently; it does not fully establish standards for monitoring and reporting on key government planning documents at each level of government - efforts are needed to raise awareness on various forms of consultation with the public - need to strengthen technical capacities at all levels of government on regular use of public consultations as a tool of policymaking

¹⁸⁷ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/albania_report_2020.pdf

¹⁸⁸ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/kosovo_report_2020.pdf

¹⁸⁹ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/north_macedonia_report_2020.pdf

¹⁹⁰ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf

¹⁹¹ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/montenegro_report_2020.pdf

¹⁹² https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/bosnia_and_herzegovina_report_2020.pdf

2.1. Public Consultation in Albania

The Government of Albania has invested in increasing capacities on public consultation by the adoption of the Law on Notification and Public Consultation in 2014, RIA Guidelines in 2018,¹⁹³ and Public Consultation Guideline in 2021.¹⁹⁴ The aspects on strengthening the public participation in the policy making process are embedded in the Public Administration Strategy 2015-2020¹⁹⁵ as extended till 2022. As Albania is making the efforts to strengthen the good governance principle, one of the attentive areas is that the government should clearly design a roadmap on public consultation legislative acts, in the way to provide more trustworthy policy-making processes.¹⁹⁶

For the first time, Albania adopted the Law on Notification and Public Consultation in 2014 (Law 164/2014). It provides for the principles, rules and procedures for public participation in policy-making processes. It serves the purpose of informing the public on aimed policies, consulting in the preparatory phases, allowing for the participation of the public in the preparation of policies. The law is further detailed by the Decision of the Council of Ministers¹⁹⁷ Establishing the Rules on the Register for Notifications and Public Consultations (Decision of the Council of Ministers No. 828, dated 10. 07. 2015 on Approval of the Rules for the Creation and Administration of the Electronic Register on Notifications and Public Consultations),¹⁹⁸ serving as an open access platform to publish draft policies and provide comments and suggestions on such policies.

Article 1 of the Law on Notification and Public Consultation defines the acts which are subject to notification and consultation process,¹⁹⁹ while Article 4 prescribes exceptions.²⁰⁰ The notification and consultation process starts from the publication of the draft act with all the consolidated documents, its notification through the electronic register. That process also includes public meetings with interested parties. The public body initiating the draft policy is required to publish an annual report on the consultation

¹⁹³ OECD (2019), Better Regulation Practices across the European Union, OECD Publishing, Paris, <https://doi.org/10.1787/9789264311732-en>.

¹⁹⁴ Law no. 146/2014, date 30 October 2014 'On Notification and Public Consultation', Republic of Albania, OJ no. 178. act. no. 146, date 30/01/2014, <https://www.idp.al/legislation-on-notification-and-public-consultation/?lang=en>

¹⁹⁵ http://dap.gov.al/images/DokumentaStrategjik/PAR_Strategy_2015-2020_English.pdf

¹⁹⁶ Regional Cooperation Council, 2019, *Report on the Preparation of Post-2020 Strategy in Albania*. Available at: <https://www.rcc.int/pubs/106/report-on-preparation-of-post-2020-strategy-in-albania>

¹⁹⁷ Council of Ministers of the Republic of Albania Decision no. 828, date 10.07.2015 on "Approval of the rules for the creation and administration of the Electronic Register on Notifications and Public Consultations".

¹⁹⁸ <https://konsultimipublik.gov.al/>

¹⁹⁹ Article 1/1 of the Law 146/2014 reads:

This law regulates the process of notification and public consultation of the draft-laws, national and local strategic draft-documents, and policies of high interest for the public.

²⁰⁰ See Article 4 of the Law 146/2014:

The provisions of this law shall not be applied during the decision-making processes related to: a) the national security issues, as long as they constitute a state secret, pursuant to the law on information classified "sate secrete"; b) international agreements, bilateral and multilateral agreements; c) individual administrative acts and normative administrative acts, except when with a specific law is foreseen differently; ç) normative acts, with the power of law approved by the Council of Ministers; d) civil emergency; dh) other exemption cases foreseen by the law.

processes.²⁰¹ Similarly, the Rules of Procedures of the Council of Ministers²⁰² require the drafting body to prepare an explanatory note that contains information on stakeholders and institutions who can contribute to the completion of the draft, as well as, other documents reflecting the process itself, including participating stakeholders, duration of the process, issues discussed and comments provided, as well as if comments were included or if not, what was the reason for this.²⁰³

Overall, the legal framework on public consultation is well-designed and in general in line with EU standards. However, its scope needs to widen. Public institutions remain to be criticized for not publishing all draft acts in the Electronic Register for Notification and Public Consultation.²⁰⁴ Access to consultation in the websites/channels of the public bodies is still low,²⁰⁵ making the law to be considered not fully implemented²⁰⁶ and the need for training to be high. Institutions consider this process as merely formalistic and not a content-based one. Evidences on how the inputs from the stakeholders are taken into consideration in the process of consultation are limited.²⁰⁷ Partners Albania for Change and Development in the report of 2020, assesses that out of 129 laws approved by the Albanian Parliament, only 60 were submitted to public consultation.²⁰⁸ In the local level, the EU recommends to further strengthening the policies and actions for effective and inclusive participation, as not all of the municipalities disclose information for the public.²⁰⁹

The platform of public consultation is a centralized channel where the stakeholders can access draft acts and submit their comments. This platform is not yet known and used widely. Also, documents submitted to clarify the public consultation process have until recently lacked clear information. In addition, they only provided a limited timeline for submission of comments, or information that did not feed in qualitative feedback.

²⁰¹ See Articles 6-20 of the Law 146/2014.

²⁰² The Rules of Procedures were approved by the Decision of the Council of Ministers No. 584, dated 28 August 2003, and later amended several times (Decision of the Council of Ministers No. 201, dated 29 March 2006; Decision of the Council of Ministers No. 4, dated 7 January 2009; Decision of the Council of Ministers No. 233, dated 18 March 2015; Decision of the Council of Ministers No. 653, dated 14 September 2016, Decision of the Council of Ministers No. 197, dated 11 April 2018).

²⁰³ See art.18/b and 19/ë of the Rules of Procedures adopted by the Council of Ministers Decision No. 584, dated 28 August 2003.

²⁰⁴ <https://www.konsultimipublik.gov.al/>

²⁰⁵ Partners Albania for Change and Development. *Annual Report 2020*. Available at: <http://partnersalbania.org/publication/annual-report-2020/> & National Endowment for Democracy, 2017, *Commentary of the Law no. 146/2014 "On Notification and Public Consultation"*.

²⁰⁶ European Commission, Albania 2020 Report, pp. 15. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/albania_report_2020.pdf

²⁰⁷ Ibid, pp. 13 & Partners Albania for Change and Development, *Annual Report 2020*. Available at: <http://partnersalbania.org/publication/annual-report-2020/>

²⁰⁸ Partners Albania for Change and Development. *Annual Report 2020*. Available at: <http://partnersalbania.org/publication/annual-report-2020/>

²⁰⁹ European Commission, Albania 2020 Report, pp. 12. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/albania_report_2020.pdf

Moreover, there were pieces of laws that were not submitted to consultation at all.²¹⁰

An important example is the consultation procedure which followed the amendments of the constitutions. The Venice Commission Opinion and Report 2021 stated that the procedure was very hasty, and the stakeholders of the public consultation had only few days to assess the draft amendments of the constitution.²¹¹ It should be highlighted that in such important draft acts there is a need for more than a platform-based consultation process, due to the need to have comprehensive and not only procedural based inputs. When it comes to the mechanism and strategy of public consultation, there is a need for having an efficient and effective participation of the experts through ensuring reasonable timelines and based assessment of draft acts to feed into a reasoned contribution by the public.

2.2. Public Consultation in Kosovo*

The standardized public consultation procedure in Kosovo* is regulated by the regulation on minimum standards for public consultation process through the online platform of public consultation.²¹² It is the first binding mechanism serving as a gate for consultation in the policy-making process in the country²¹³ which defines the standards during public consultation process of policies and legal acts. It imposes the obligation to the public bodies to plan and implement the whole consultation process in an effective way.²¹⁴ It set a standardized consultation timeline of 21 calendar days (15 working days) and for complex processes a time-limit of 60 calendar days from the notification date for written consultations. It clearly stipulates the institutional obligation to publish the consultation documents that include public feedbacks.²¹⁵

There is a need to increase the number of implemented consultation processes for acts at national and local level, regardless of the fact that attempts are being made to increase the awareness including the active support of the EU through different instruments such as the EU Contract for the Public Administration Reform. One of the most important objectives of Kosovo in the light of EU accession, is that it should fulfil the recommendation of the EC and establish mechanisms based on RIA standards, data collection and efficient

²¹⁰ Partners Albania for Change and Development mentions the law on the central register of the bank accounts, law on the beneficial owners, etc. See: Partners Albania for Change and Development. Annual Report 2020, pp. 12 & European Commission. Albania 2020 Report, pp. 13.

²¹¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence. European Commission for Democracy through Law (Venice Commission). 2021. Compilation of Venice Commission Opinions and Reports on Law-Making Procedures and the Quality of the Law. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)003-e)

²¹² Regulation No.05/2016 on minimum standards for public consultation process, approved by the Government of Kosovo on 29 April 2016 and entered into force on 1 January 2017 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=15036>) & <https://konsultimet.rks-gov.net/index.php>

²¹³ Article 32, 39 and 69 of the Rules of Procedure of the Government of the Republic of Kosovo no 09/201, https://kryeministri.rks-gov.net/repository/docs/RREGULLORE_E_PUNES_SE_QEVERISE_SE_REPUBLIKES_SE_KOSOVES_NR_09_2011.pdf

²¹⁴ See Article 5 of the Regulation No.05/2016 on minimum standards for public consultation process, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=15036>

²¹⁵ Akse, E. et.al, 2020. Better Regulation Strategy: Case Studies Report, pp. 87-90.

consultation process with all the parties and take all the appropriate efforts to increase public awareness.²¹⁶

2.3. Public Consultation in North Macedonia

The Rules of Procedure of the Government of the Republic of North Macedonia are relevant since they set the obligatory standards on public participation in the policy-making process in North Macedonia.²¹⁷ They stipulate that consultations are to be conducted in cases of draft policies. The obligation to involve stakeholders into the policy making process is also stipulated in specific sectoral legislation. In addition, the Strategy of the Republic of North Macedonia 2017-2020 includes among its main objectives the promotion and collaboration with the civil society in the strengthening of the democratic institutions and decision-making processes.²¹⁸

The process is facilitated by the ENER platform (Single Electronic Register of Regulation).²¹⁹ The Ministry for Information Society and Administration (MISA) is responsible for the consultation platform. All draft acts are published for 10 days, and the public is invited to provide feedback through this platform. At the end of this process, a report shall be issued with feedbacks and outcomes of the involved stakeholders. It is observed that the platform is not offered in the Albanian language although it is the second official language of the country. Several activities related to the public consultation such as conferences, forums, workshops, etc. have taken place in the country. However, state institutions should do more especially in the rule of law area.²²⁰ The adoption of the Transparency Strategy 2019-2021 can be considered as a key step for the public consultation process in North Macedonia. That Strategy improved the public consultation processes *inter alia* through the increasing number of the civil society organization involved as well as through feedbacks provided from the public. Despite those serious North Macedonian attempts directed towards the Public Administration Reform²²¹, the EC requires more attention to be paid to evidence-based policy, promulgation of the

²¹⁶ European Commission, Kosovo* 2020 Report, pg. 13. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/kosovo_report_2020.pdf

²¹⁷ Rules of Procedure of the Government of the Republic of North Macedonia & Government Rulebook for Organization of public consultations when initiating a legislation process, <https://vlada.mk/node/18913?ln=en-gb>

²¹⁸ Strategic Priorities | Vlada na Republika Severna Makedonija (vlada.mk)

²¹⁹ <https://ener.gov.mk/>

²²⁰ Ognenovska, S, 2020. Monitoring Matrix on Enabling Environment for Civil Society Development Country Report for North Macedonia 2019 Available at: http://www.balkancsd.net/novo/wp-content/uploads/2020/09/Monitoring-Matrix-Report-2019_North-Macedonia.pdf & Council of Europe. Steering Committee for Human Rights (CDDH). 2018. Overview document on the protection and promotion of the civil-society space, based on the compilation of measures and practices in place in the Council of Europe member States and Compilation of measures and practices in place in the Council of Europe member States.

²²¹ European Commission. 2020. Digital Public Administration Factsheets – Republic of North Macedonia, pp. 13, 30. Available at: https://joinup.ec.europa.eu/sites/default/files/inline-files/Digital_Public_Administration_Factsheets_North_Macedonia_vFINAL.pdf

acts containing qualitative impact assessments and mandatory consultation processes.²²² The public consultation timeline is considerably short, and the public does not have a practical opportunity to address all the stages of the consultation process. There are cases when consultations have been made regarding the formalistic aspect with a few considerations of the substantiality of the process, such as in the areas of infrastructure, hydropower, mining, environment, and elections where, or even when there was a lack of well-defined timeframes such as the case of the amendments of the Electoral Code of 2020.²²³

2.4. Public Consultation in the Republic of Serbia

The Republic of Serbia regulates public consultation through different acts. The two most important legal acts are the Law on Free Access to Information of Public Importance²²⁴ and the Governmental Rules of Procedure.²²⁵ The first legal instrument does not impose the obligation to submit draft acts to public consultation, while the later defines the standards for that process. Another important non-binding document which defines standards for public participation of the CSO's is the 'Guidelines for Involvement of Civil Society Organizations in the Adoption of Regulations' approved in 2014. Similar to North Macedonia, sectorial laws impose the obligation to involve stakeholders into the policy-making process.

The legal framework does not require publishing announcements in the beginning of the policy drafting. However, the government rules define the mechanisms, the timeline, activities to be followed, methods of consultations, and background of the working group for the public consultation process. All the institutions are obliged to publish the draft acts on the online official platform of the Republic of Serbia (e-administration portal) and on the official website of the institution.²²⁶ Public consultation deadline is set to be minimum 20 days, but the respective body has the opportunity to extend the date for receiving public feedbacks. The public body is required to submit a document to the central portal which includes details from the process within 15 days after the consultation process has terminated.

Disregarding such efforts, Serbia is criticized for using urgent legislative procedure quite frequently. The need for reducing the frequent recourse to urgent legislative procedure is strongly highlighted by international organizations, CSOs and the EC. There are important cases, such as the amendments to the Electoral Code in 2020, which were adopted without public consultation and by not following relevant standards of the Venice Commission

²²² European Commission, North Macedonia 2020 Report, October 2020, pg. 13. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/north_macedonia_report_2020.pdf

²²³ Ibid, pp. 8.

²²⁴ Law on Free Access to information of Public Importance, The Official Gazette of the Republic of Serbia, number 120/04 and 54/07, <https://www.poverenik.rs/en/o-nama/authority.html>

²²⁵ Article 41 of the Government of the Republic of Serbia Rules of Procedure, OJ of Republic of Serbia No. 36/2010, <http://www.gs.gov.rs/doc/podzak/Poslovnik%20Vlade.pdf>

²²⁶ <https://euprava.gov.rs/?>

in that respect.²²⁷ The EU in its country reports identifies several shortcomings of that process in Serbia.²²⁸

2.5 Public Consultation in Montenegro

The Law on the State Administration and the Decree on the Selection of the Representatives of NGOs in the working committees of public administration bodies and implementing consultation in preparing laws and strategies both regulate public consultation in Montenegro.²²⁹ The Law on the States Administration establishes the standards to conduct public consultation in draft acts, except for specific cases as provided by law.²³⁰ Such legislation was part of the national Strategy on Public Administration following the priorities identified by the EU since 2010 in the country's EU accession process.²³¹ The Public Administration Strategy 2016-2020 was drafted in full collaboration with the CSOs where a well-structured consultation process took place. Among the objectives set was: *'...better quality of consultation among stakeholders when drafting policies.'*²³²

Montenegro follows the example of Serbia by decentralizing the organization of public consultation processes through websites of the public institutions, besides their publication in the e-government portal (e-participation platform) which was launched in 2019.²³³ Public institutions initiating legal act/s are required to conduct the public consultation process, otherwise the Council of Ministers returns the draft act requiring that the process takes pace.²³⁴ The government has taken specific steps to raise the awareness of the public in participating in the consultation processes and increase the quality of the stakeholders' feedback. Still, the EC country report of 2020 for Montenegro observes that there is a number of laws passed without even a formalistic public consultation process, requiring that the government takes actions in guaranteeing an inclusive and participatory process where all actors are consulted.²³⁵ On the other hand, the well-designed legislation on the participation of the CSOs in the decision-making process, and on the inclusion and access of the later in designing public-policies is not sufficiently fulfilled and often remains formalistic.

²²⁷ European Commission, Serbia 2020 Report, pg. 10. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf

²²⁸ See table no. 2 above.

²²⁹ Official Gazette 41/2018 & Government Strategy for improving enabling environment for NGOs 2018-2020 (Action Plan Measure 2.4). Available at: <https://www.gov.me/en/documents/1110c53f-e21b-417b-9d36-57474ab05275>

²³⁰ Decree No. 01-332/2 On Proclamation of Law on State Administration, (as amended) Republic of Montenegro. https://www.gov.me/en/search?page=1&sort=published_at&q=LAW%20ON%20STATE%20Administration%20

²³¹ Republic of Montenegro. Public Administration Reform Strategy, 2016-2020. Available at: <https://www.gov.me/dokumenta/1a107a62-5961-4c9e-b8ce-8c8c652549e2>

²³² *ibid*, pp. 52.

²³³ https://www.euprava.me/en/Individuals/law_and_order/

²³⁴ Article 35, Rule of Procedure of the Government of Montenegro & Akse, E. et.al, 2020. Better Regulation Strategy: Case Studies Report, pp. 96.

²³⁵ European Commission, Montenegro 2020 Report, pg. 14. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/montenegro_report_2020.pdf

2.6 Public Consultation in Bosnia and Herzegovina

The obligation to conduct the consultation process in Bosnia and Herzegovina is stipulated by the Regulation on Consultation in Legislative Drafting.²³⁶ It was amended in 2016 with the aim to harmonize the legal standards with the Union *acquis* and introduce the portal (*eKonsultacije*),²³⁷ and by doing so increase the number of the interested stakeholders in that process.²³⁸ The regulation defines in Article 5 the obligation of the public institutions to publish the annual plan for the legislative drafting in their portals.

The government attempts to make inclusive processes regarding the public consultation, and the participation of the stakeholders. However, that process remains weak and, as in most of the WB countries, merely formalistic. The Action Plan 2019-2021 identified the need for the adoption of a strategy with a clear roadmap aimed at increasing the awareness of the public to actively participate in different public consultation processes (Action Plan of the Council of Ministers of Bosnia and Herzegovina for the Implementation of the Initiative “Open Government Partnership “ 2019 – 2021).²³⁹ The consultative platform is user-friendly and available in four languages, in contrast with the complexity of issues which are reflected in other WB countries consultative portals.²⁴⁰ The platform shows the number of the registered users who expressed interest in cooperation with a particular institution: averagely this figure reaches to 53.85%.²⁴¹

Disregarding these efforts, according to the EC country report 2020 for Bosnia and Herzegovina, no progress is made in guaranteeing an inclusive environment for the CSOs.²⁴² The government is required to draft a comprehensive roadmap to clearly make sure the applicability of the public consultation as a mandatory mechanism. Also, the Council of Ministers and CSOs cooperation charter signed in 2017 still need to enter into force in order to increase the fruitful cooperation in-between them.²⁴³ In the case of Bosnia and Herzegovina, the public consultation legislation needs to be amended to fulfil proper monitoring and reporting standards.²⁴⁴

²³⁶ Council of Ministers Decision no 314/2016 Rules on Consultation in Drafting Legal Provisions, Republic of Bosnia and Herzegovina, OJ of BiH, No. 5/17. Available at: http://www.mpr.gov.ba/web_dokumenti/rules_for_consultations.pdf

²³⁷ <https://ekonsultacije.gov.ba/>

²³⁸ Delegation of the European Union to Bosnia and Herzegovina. 2015. Guidelines for EU support to civil society in enlargement countries, https://ec.europa.eu/neighbourhood-enlargement/conditions-membership/check-current-status-old/bosnia-and-herzegovina-old_en

²³⁹ Action Plan of the Council of Ministers of Bosnia and Herzegovina for the Implementation of the Initiative „Open Government Partnership „ for the Period 2019 – 2021, pp.13 <https://www.opengovpartnership.org/documents/bosnia-and-herzegovina-action-plan-2019-2021/>

²⁴⁰ http://europa.ba/?page_id=676

²⁴¹ <https://ekonsultacije.gov.ba/statistic>

²⁴² European Commission, Bosnia and Herzegovina 2020 Report, pg. 4 & 10. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/bosnia_and_herzegovina_report_2020.pdf

²⁴³ Charter on Cooperation between the Council of Ministers of Bosnia and Herzegovina and CSOs. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/ipa_ii_2018-040-646.03_2019-040-647.03-csfmedia-bosnia_and_herzegovina.pdf

²⁴⁴ European Commission, Bosnia and Herzegovina 2020 Report, p. 13. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/bosnia_and_herzegovina_report_2020.pdf

3. CONCLUSION

In the light of the EU accession of the WB countries, the six countries have adopted reforms and strategies which seems to be ‘never-ending’. Although, out of the six countries only Serbia and Montenegro have moved forward to conduct negotiations in several sectors with the EU, the EC country reports still indicate that Albania, North Macedonia, Montenegro, and Serbia are moderately prepared in public administration reform. It is noteworthy that the public administration reform also includes public consultation among its objectives in all these countries, while Kosovo* has some level of preparation and Bosnia and Hercegovina is at an early stage. Similarly, the ability to accept membership obligations seems to be on the same level. See table 3.

Table 3. EC Western Balkans’ country reports 2020

Political criteria	Albania 2020	North Macedonia 2020	Montenegro 2020	Serbia 2020	Kosovo* 2020	Bosnia & Herceg. 2020
Public administration reform	moderately prepared / some progress	moderately prepared / some progress	moderately prepared / some progress	moderately prepared / no progress	some level of preparation/ limited progress	early stage / limited progress
Ability to accept membership obligations	moderately prepared in many areas	moderately prepared in most areas	moderately prepared in many chapters	good progress in economic areas/ limited progress on public procurement.	some level of preparation	early stage/ some level of preparation

In a general assessment, the reforms on implementation of the national legal frameworks on public consultation comply with the EU standards/acquis. The ‘left-out’ have tried the ‘ins’ and ‘outs’ reforms in making all stakeholders part of the decision-making process and improving institutions by attempting to share the burden with the public in the law-making process. An increased emphasis on openness and transparency of policymaking noticed in these countries fits into the overall set of reforms stemming from the EU accession process, especially in the context of the Public Administration Principles confirmed by the EC in 2014. Those principles pertain to requirements of public administration reform, good governance, rule of law and civil society enabling environment.²⁴⁵ The WB countries not only have adopted legislation regulating public consultation, but are pursuing its implementation thoroughly.²⁴⁶ Still, the legislation needs to improve, especially in the

²⁴⁵ <http://sigmaweb.org/publications/principles-public-administration.htm><http://sigmaweb.org/publications/principles-public-administration.htm>

²⁴⁶ European Union: White Paper on European Governance (http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/110109_en.htm); General principles and minimum standards for consultation of interested parties by the Commission (<http://ec.europa.eu/>

countries that do regulate public consultation neither through the dedicated law, nor through adopting sublegal rules or manuals explaining the public consultation process.²⁴⁷ Disregarding support and incentives from the EU, the public consultation and participation in policymaking needs to become an inherent feature of public administration in the WB countries. In this regard, there is an obvious need for installing a public administration culture in becoming more transparent and overall inclusive in policymaking, as well as for increasing the public trust into public consultation processes in these countries.

governance/docs/comm_standards_en.pdf); OECD: Open Government – Fostering dialogue with civil society (http://www.oecd-ilibrary.org/governance/open-government_9789264019959-en); Citizens as Partners: OECD Guide to Information, Consultation and Public Participation in Policy-Making (<http://internationalbudget.org/wp-content/uploads/Citizens-as-PartnersOECD-Handbook.pdf>).

²⁴⁷ While this paper is finalized and presented, it is to be noted that the EC will issue the 2021 Communication on EU Enlargements, which needs to be carefully scrutinized by the WB countries with regard to public consultation and try to further improve this approach in their policy-making processes.

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