

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**CENTRE OF EXPERTISE FOR GOOD GOVERNANCE**

**Strasbourg, 05 July 2021  
CEGGPAD (2021)7**

## **Comparative Analysis of European Practices On Public Consultations**

The present Opinion was prepared by the Centre of Expertise for Good Governance, Department of Democracy and Governance of Directorate General II – Democracy

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## **1. Introduction**

The draft law “*On public consultations*” (No. 4254) is currently under consideration by the Parliament of Ukraine. It was recently approved in its first reading. It aims at establishing a comprehensive system of public consultation with citizens, businesses, professional associations, state authorities – all stakeholders in order “*to balance public and private interests, introduce modern standards of decisions' preparation at central and local levels*”. The second reading will benefit from the analysis of this report. This work is followed by a Parliamentary Committee, which addressed the experts of the Council of Europe with questions that have been the guiding line for the comparative assessment implemented.

This Comparative Analysis was requested by the Chair of the Parliamentary Committee on State Building, Local Self-Government, Regional and Urban Development of Ukraine. It was prepared by the Centre of Expertise for Good Governance of the Council of Europe in the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”, based on contributions from the expert Antonella VALMORBIDA.

The scope of the assignment included: I) a **legal opinion on the current draft version**; II) an **overview of the existing legal framework arrangement in European States** (the present Comparative Analysis) to have the possibility to compare and understand the experiences and laws as well as practices of other countries.

The questions addressed by the Parliamentary Committee to the experts were the guidelines assigned to further investigate legal provisions and practices in other countries in Europe. The expert studied the laws and their implementation in a more general context, such as the Council of Europe and the European Union legislation, and then looked at a wide number of Council of Europe member states to identify, as much as possible, trends and new possibilities useful for answering the questions.

The studies were performed on countries from Western Europe, Western Balkans and Eastern Europe. The variety of the countries selected could therefore give further information about the evolution of the legislation and the practices regarding public consultation. The countries selected are Albania, Armenia, Belgium, Finland, France, Georgia, Germany, Italy, Moldova, the Netherlands, North Macedonia, Norway, Poland, Serbia and Spain.

## **2. General summary and findings<sup>1</sup>**

The Parliamentary Committee requested specific information on the legal provisions and practices in other European countries. Ukraine therefore has an opportunity to develop its own new and innovative approach to multi-stakeholder consultation in policymaking, considering experiences of other Council of Europe member states.

The selected countries for the comparative analysis are all member states of the Council of Europe and they share the same values relating to citizens’ and multi-stakeholder consultation as a modern way of overcoming lack of trust in public institutions and improving effectiveness of public governance. In many Western European states, the legislative work on citizens’ participation and consultation was initiated over 30 years ago, because of historical progress

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<sup>1</sup> The summary and key findings are taken from the Legal Opinion [CoE Opinion CEGG/LEX\(2021\)1, Council of Europe Centre of expertise for good governance, 5 May 2021](#)

and transitions. However, good legislation is only the first step, and its implementation is not always guaranteed. Not all national consultations on policies or draft laws truly respect the provision of holding public consultations.

General laws on public consultation exist in most of the selected states, with a *different level of systemisation*:

- Some of them are more principle-based and leave the details of organisation to the various levels of governance (Finland, Germany, and the Netherlands). Such laws focus on the importance of the participatory approach: for example, in Finland, it is included in the overall law-making process; in Italy, there are Guidelines for Citizens' Participation.
- Some countries are addressing only certain topics: for example, the environmental issues require consultation with citizens in France<sup>2</sup> and in Belgium, whereas the Puglia Region in Italy has identified compulsory consultation for projects with budgets above 50 million Euros. In some cases, land use and broad territorial planning are subject to public consultation: for example, areas for petrol extraction in Norway; water and flooding management in the Netherlands.
- Other laws are more stringent and provide precise regulations for consultations: this is the case in Albania and Moldova, as well as with the current draft law in Ukraine.
- There are also legal systems which do not have any participation embedded - they rely more on practice and tradition of participation, and they prove to be quite efficient, for example, in Norway. Other systems are rather vague and consider the "importance" of the argument, as in Poland.

It can be concluded that overall, **the stricter and more complex the legislation, the less it is used or fully implemented**. This is the case of Moldova, which has a law very similar to what is now proposed in Ukraine. When the focus is more on principle and building opportunities of participation through various means, the principle is usually better implemented, as it is the case in Finland, Norway, or Germany. Certainly, the starting point is also the level of democratic experience, of trust and capacity of citizens and authorities to work together. It should be noted that Germany, lacking a strong regulation on the matter, has been invited to further regulate its process of consultation by the OECD. Interestingly, it is also the global approach of the European Union, with the Lisbon Treaty on the importance of consultations in Article 11: "the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent". Protocol No. 2 on the application of the principles of subsidiarity and proportionality annexed to the Treaty strengthens this also by stating that "before proposing legislative acts, the Commission shall consult widely" and publish consultation documents whenever appropriate.<sup>3</sup>

In all the selected case studies, the practice of **multi-stakeholder approach and participation in the decision-making is growing**. This practice is an efficient way of making the voice of citizens heard, through interest groups and civil society organisations, such as the Advisory Groups in Belgium, or Working Groups in Serbia, or Scientific Advisory Councils in Georgia. In North Macedonia, the Government can also invite various stakeholders for discussing points on the agenda. Sometimes there is a confusion in terminology: for example, in Armenia, the processes of consultation and discussion are mixed as the same concepts. Other issues include the potential inequality: for example, *who* is able to participate, i.e., *not everyone might be enabled to participate*, as it has recently been raised in North Macedonia. There is also a

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<sup>2</sup> The law of 2 February 1995 or Barnier law strengthened the use of public consultations in specific fields.

<sup>3</sup> *EU public consultations in the digital age: Enhancing the role of the EESC and civil society organisations* (2017), European Economic and Social Committee, Published by: "Visits and Publications" Unit EESC-2017-110-EN.

discriminatory dimension, which is less often perceived in institutional policymaking: in Germany, “high-level commissions” are foreseen, and they must take care of having relevant representation. Some countries have foreseen more institutional and organised structures, such as the National Participation Council in Moldova, which is however no longer operational and stopped its activities in 2016. In Poland, the Parliament can organise “public hearings”. In Spain, consultations should take place even prior to the drafting of the laws, which is indeed a stronger approach to stakeholders’ consultation.

In all case studies, **the degree of participation and consultation in decision-making is stronger and more efficiently articulated at local level**,<sup>4</sup> using websites, direct consultations, pools and innovative ways of consultation (for example, consultations on “windmills in town” in Amsterdam introduced an advanced participatory process with electronic means in times of pandemic). The regulations can also be more stringent and compulsory, for example in case of local regulations in Finland. In Poland there are several interesting initiatives on the citizens’ budgets at local level. Regions have also developed strong policies on citizens’ participation and consultations.

**Digitalisation and the role of e-consultation for accessing information and interacting with the decision-making process are also a general growing trend.** Nevertheless, those instruments have not yet led to real substantial increase in quantity and quality of participation. The digitalisation also raises issues of equal access and digital gaps.

The focus on public consultation with stringent rules is often put on **information and transparency**. In those cases, there is a general understanding that laws must be made public, but there are no clear mechanisms for commenting and participating.

Several countries, e.g., Moldova, have **centralised electronic platforms for public consultations on all legal acts**. The centralised platforms need time for testing before being fully operational, and they need to be accompanied by *enabling support measures* for citizens and various stakeholders to participate. In some countries, e.g., in France, websites for consultations offer alternatives such as public committees. The references of public consultations on the *vie-publique.fr* website in France are compulsory only for open consultations “replacing” the consultation of an advisory committee. In other cases of consultations, this referencing is optional. The real functioning of these governmental platforms is often questionable because of the lack of participation or their use, as in Serbia. In the context of the European Union,<sup>5</sup> procedures for consultation online are very frequently used and allow for citizens’ engagement. However, results of these consultations are often not as meaningful as expected, demonstrating the limitations of this instrument.

**Basic rules of citizens’ participation** are sometimes clearly expressed in rules and legislation, including information, summary and feedback. For example, in France, there is a Code of relationship between the public and the administration,<sup>6</sup> and the organic law No. 2009-403 of 15 April 2009<sup>7</sup>.

In most countries, consultations are proposed within the **websites of ministries or institutions that are at the origin of the legislation**.

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<sup>4</sup> *Participative democracy and citizens’ engagement, solving local problems at the local level, in Moldova and Ukraine* (2020), Antonella Valmorbidia, published in English and Russian by Susil Edizioni, October 2020, ISDN, 978-88-5550-155-5.

<sup>5</sup> *EU public consultations in the digital age: Enhancing the role of the EESC and civil society organisations* (2017), European Economic and Social Committee, Published by: “Visits and Publications” Unit EESC-2017-110-EN.

<sup>6</sup> [Titre III : L’association du public aux décisions prises par l’administration \(Articles L131-1 à L135-2\)](#) du Code des relations entre le public et l’administration

<sup>7</sup> LOI organique n° 2009-403 du 15 avril 2009 relative à l’application des articles 34-1, 39 et 44 de la Constitution (1)

The **liability for not respecting the law on public consultation** often occurs only when it comes to the need for information and transparency. In some countries, the liability of the public institutions is less obvious (e.g., Moldova). At the European Union level, the Article 11 of the Lisbon Treaty indicates that the consultation with citizens needs to be applied to the adoption of policies and strategies. The control of the process of consultation is implemented and then endorsed by an Inter-service group, which verifies whether it is in line with relevant requirements. Liability on non-information is easier to prove. A local and regional case in Spain was identified with also *personal* responsibility for the non-implementation of public consultation. Stricter rules are applied at the regional level in Poland. In some cases, as in Albania, even though all laws should be presented to the public, the requests for information on behalf of citizens are not always met.

Globally, the public consultation is considered in fact “**consultative**”, while the decision always remains in the hands of the democratically elected bodies.

In terms of *who needs to be consulted*, the general approach is usually “**those who are impacted**”, which is broader than an active or passive right of vote. It confirms the point that public consultation is open more to citizens/stakeholders, than to those who have the right to vote (which excludes foreigners or temporary residents). In the Andalusian region of Spain, the law mentions citizens above 16 years old, introducing an interesting and quite unique age restriction for public consultation. This approach opens the possibilities to collect feedback from citizens who do not possess passive and/or active electoral rights: for example, the laws in some Italian Regions mention resident citizens, foreigners and stateless persons regularly residing in the territory which is concerned by the participatory processes; persons who work, study or reside on the territory or who have an interest in the territory itself or in the subject of the participatory process; companies, associations, organisations and other social groups that have their headquarters in the territory affected by participatory processes or that have an interest in the participatory process.

A **pragmatic approach to consultation** exists in the regions of Spain. In terms of capacity of management of public consultations, the Autonomous Community of Andalusia requires no more than three consultations per year at regional level, and no less than two years apart between consultations on the same topic. In the Autonomous Community of Valencia, the law provides for involving citizens living abroad and giving compensation for participation costs.

In general terms, consultations have a precise **timing** identified in advance (except for situations such as in Germany where it is decided by the Ministry).

In Belgium, at the federal level, citizens’ participation is expressly considered as a problem solving mechanism to address conflicts. “Consultation of users is a non-expensive and efficient solution to contribute to identifying issues, assess the necessity for governmental action and define the best way to act.”<sup>8</sup>

There is a general agreement that **limitations to consultations** are linked to emergency (in North Macedonia among others) even though the notion of “emergency” is not always well defined and is subject to questioning. There is also the notion of “public interest” to justify limiting the consultations. In some cases, such as in Spain at the regional level, another reason for avoiding consultation due to “*non significance*” can be found. “Non significance” is explained as “not having significant impact on the economic activity or not imposing relevant

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<sup>8</sup> *Réglementation – Guide de simplification*, Collection guides pratiques, 2<sup>e</sup> édition, Janvier 2007, EASI-WAL (2007), Commissariat wallon E-Administration et Simplification, Namur.

obligations on stakeholders or regulating partial aspects of a subject matter<sup>9</sup>.” In some cases, in literature, it is possible to find arguments that the limitation of consultation can be not only formal (addressed by the provisions of the law) but also substantial, i.e. due to the “impossibility of participation” linked to a pragmatic element of ways and means (working hours, facilities, etc.).

**Direct forms of democracy** can also be referendums, petitions, and citizens’ initiatives, as mentioned in the example of Italy below.

### 3. Questions for comparative analysis

**3.1. Which legislation regulates the issue of public consultation (general or special)? Which are the aspects usually regulated by law? What are the topics submitted for consultation?**

#### Albania<sup>10</sup>:

In Albania, the Law on Notification and Public Consultations **obliges public institutions to make public and accessible all drafts, projects of laws and adopted policies**. According to this law, citizens have 20 days from the announcement to express their opinions and comments on the draft.

Through the Law no. 114/2014 on Right to Information, the public authorities are obliged to **publish information on their website**, in the most transparent way possible. It is understood that the government can also set up **working groups**, including ones with CSOs – to get expertise on a specific topic. However, ultimately, the implementation of consultation and transparency is not entirely successful<sup>11</sup>.

Following the Decision of the Council of Ministers no. 828 of 07.10.2015 on “Approval of Rules on Creation and Administration of Electronic Register for Notification and Public Consultation”, citizens dispose of an electronic platform, in which they need to register so they can have access to draft and projects of laws. The name of this **platform** is *Konsultimipublik* and it can be reached at the following link: <http://www.konsultimipublik.gov.al>.

#### Armenia:

Public consultation to legislative acts refers to the Decision of the Armenian government on Public Discussion of Normative Legal Acts, no. 296, from 2010 and the subsequent amendment: “*According to this Governmental decision of 25 March 2010, No. 296, **Public discussion** of Normative legal acts is a procedure to raise awareness of the individual or legal entity, as well as to select the opinions referring to a certain legal act. Openness, accessibility*”

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<sup>9</sup> Law 50/1997, after modified by the Law n. 40/2015 about the legal regime of the Spanish public sector and published on the Boletín Oficial del Estado (BOE) n. 236/2015, art 26, clause 2.

<sup>10</sup> In light of following the EU democratic guidelines while incorporating a shared policy-decision making system, Albania is facing a crucial issue that would need to embrace cooperation between the civil society and the government in order to become a more democratic state. “*Hence, while CSOs at local level have stronger ties with the communities, they have considerable limitations in terms of adequate structures, resources, and competences to interact in a sustainable and meaningful manner with decision makers.*” *Civil Society Participation in Decision Making in Albania*, (2020), prepared for the Westminster Foundation for Democracy by the Institute for Democracy and Mediation in Albania (IDM).

<sup>11</sup> Conversation with the office of ALDA in Skopje.

*and transparency are defined as principles of public discussions.*” In order to clarify some elements of the principle adopted above, a further norm was adopted with a decision of the 10th of October 2018 No.1146.

Important highlights of the Decision mentioned above:

1. Public discussion envisaged by Chapter 2 of the Law on Normative Legal Acts is a process of receiving remarks, suggestions, revealing public opinion on the draft legal acts, ensuring public participation, transparency and accountability and information dissemination.
2. Draft legislative acts are subject to public discussion, except for the draft law on ratification (accession) of an international treaty.
3. Public discussions are conducted in accordance with the principles of publicity, accessibility, transparency and public accountability and can be organised by the body authorised to adopt the normative legal act or a member of the Government of the Republic of Armenia.
4. Public discussions in accordance with this procedure shall also be conducted **through public hearings or public inquiries.**
5. Any natural or legal person can participate in public discussions. **The public discussion must be carried out by publishing it on the official website of the body conducting the discussion or on the joint website for publishing draft legal acts administered by the Ministry of Justice of the Republic of Armenia (e-draft.am).**

The website contains the draft laws that are initiated by the state bodies and tracks the number of draft laws according to each state body. In principle, it should strengthen the possibility to participate in public discussions online as well as to get acquainted with the passed draft laws and justification for their adoption. However, the website lacks in the presentation on the statistics of the adopted laws and the results of the public discussion. It was noticed that the figures at the official participation panel and voting and the feedback of participants completely differ<sup>12</sup>. The results and percentage of the official participation panel and voting are very often in favour of the draft law while the comments confirm the opposite, pointing out the shortcomings and omissions on behalf of the citizens. In addition, during the comparative analysis the results are contradicting and non-persisting.

### **Belgium:**

The federal authorities apply the “Participation in decision-making”<sup>13</sup> pillar of the **Aarhus Convention** by granting citizens’ participation in the preparation of: a) plans and programmes<sup>14</sup> relating to the environment; b) specific projects and activities<sup>15</sup> that have an influence on the environment. A recent innovation has been introduced at the House Committee on Rules of Procedure and the Reform of Parliamentary Work by approving an amendment to the Rules of

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<sup>12</sup> Interview with the Delegate of the Local Democracy Agency of the network of ALDA, in Armenia, based in Gyumri.

<sup>13</sup> The second pillar of the Aarhus Convention bases the concept of participation on Principle 10 of the Rio Declaration: "Environmental issues are best dealt with by ensuring the participation of all citizens at the appropriate level". This principle is an essential part of democracy. On the one hand, through the possibility of having one's voice heard; on the other hand, through the transparency it confers on the decisions of public authorities. The active participation of citizens in the decision-making process thus strengthens the foundations of these choices, on any issue relating to the environment and its repercussions on the living environment or health. MORE INFORMATION here:

<https://www.health.belgium.be/fr/environnement/aarhusbe/la-participation-du-citoyen-aux-processus-de-decisions>

<sup>14</sup> <https://www.health.belgium.be/fr/participationaux-plans-et-programmes-lies-lenvironnement>

<sup>15</sup> <https://www.health.belgium.be/fr/participation-aux-projets-ou-activites-specifiques-avant-un-impact-sur-lenvironnement>



Procedures tabled in February 2020 by green parties to improve the right of petition. Anyone who collects 25,000 signatures will be able to put a bill on the agenda of the Federal Parliament. In May 2019, the House voted on a law transforming the right of petition into a full-fledged citizens' initiative, following a decision of the Working Group on Political Renewal of the previous legislature. This new mechanism makes it possible to place on the agenda of the Chamber a bill on environmental issues that has received 25,000 signatures from citizens in the three regions (14,500 in Flanders, 8,000 in Wallonia and 2,500 in Brussels).

Although this mechanism is hardly used at federal level in Belgium, the Constituent Assembly authorised the organisation of **communal or provincial popular consultations** on 12 March 1999 in Article 41, paragraph 5 of the Constitution: "*Matters of communal, supra-communal or provincial interest may be the subject of a popular consultation in the commune, supra-communal authority or province concerned*". The rule refers to Article 134, which regulates the modalities and organisation of the popular consultation<sup>16</sup>. It is currently Article 39bis, paragraph 1, which allows the regions to organise a public consultation in matters falling within their competence, with the exception of matters relating to finance and the budget.

**Advisory boards** are consulted either before or after the first reading of a text in the Council of Ministers (after in the case of the Walloon government). Each advisory board is regulated individually to reflect the variety of issues and stakeholders, although the approach is based on a set of "models". The Belgian governments also usually consult external stakeholders informally at an earlier stage in the development of regulations. Other forms of more open consultation are also emerging alongside the traditional approach, for example, in the context of administrative burden reduction programmes (e.g. through interviews with stakeholders).<sup>17</sup> The results of the consultation process are used in different ways by Belgian governments. At the federal level, the note attached to the text sent to the Council of Ministers must include the opinions of the advisory bodies (summary and full text) and the list of bodies still to be consulted. The government is not, however, required to attach these when it sends the proposal to the Federal Parliament.

Advisory boards comprise representatives of target groups related to various policy/regulatory issues. The system has the broad support of most stakeholders. Advantages inherent to the system (when it works at its best) include the fact that consulted stakeholders are targeted in terms of their representativeness and expertise, and that they are integrated in an "interactive" discussion with the government.

The largest **advisory boards have a website** on which they publish their comments. Examples of boards publishing their notice of opinions are the National Council of Labour, the Advisory Committee of Telecommunications, the Economic and Social Council of the Walloon Region. In some cases, government departments also publish the advice of some of the advisory councils.

The **Federal Advisory Council of the Elderly** (Conseil consultatif fédéral des aînés - CCFA) is the representative body for senior citizens at the federal level. Until recently, senior citizens had only an advisory body for pensions at the federal level (Advisory Committee for the Pension Sector). The Federal Advisory Council of the Elderly takes over the tasks of this advisory committee and extends them to all matters that fall within the competence of the

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<sup>16</sup> The consultations are regulated by Title XV of the new municipal law. Moreover, since the 6th State Reform, the revision of Title III of the Constitution with a view to inserting a new article allows the Regions to institute and organise a popular consultation in matters that fall within their competences (Proposal for the insertion of an Article 39bis in the Constitution, Doc. Ch. 2012-2013, 24 July 2013, No. 2966/001)

<sup>17</sup> *Better Regulation in Europe: Belgium* (2010), OECD (Chapter 3: Transparency through consultation and communication)

federal authorities and concern seniors. It falls under the joint responsibility of the Minister for Pensions and the Minister for Social Affairs.

The Federal Advisory Council of the Elderly was created on the initiative of the Parliament, through the Act of 8 March 2007 creating the Federal Advisory Council of the Elderly (M.B. 27 March 2007), then amended by the law of 18 December 2012 (M.B. 10 March 2010). The Federal Advisory Council of the Elderly came into force with the publication of the Royal Decree of 13 November 2012 appointing the members of the Federal Advisory Council of the Elderly. Since that date, the Advisory Committee for the Pension Sector no longer exists. The official installation of the Federal Advisory Council of the Elderly took place on Tuesday 27 November 2012, during the closing conference of the European Year of Active Ageing.

Consultation is considered an essential instrument for **reaching consensus and overcoming tensions**. This is, for example, formalised in the Walloon Guide on Regulation: “Consultation of users is a non-expensive and efficient solution to contribute to identifying issues, assess the necessity for governmental action and define the best way to act”<sup>18</sup>. The need for consultation of all affected parties is also part of the eight principles for good regulation set by the Flemish government in 2003.

### **European Union**<sup>19</sup>:

The European Union also represents a law-making institution, since some of its acts are compulsory in the EU member States and therefore to all EU citizens.

The European Commission defined the minimum standards for consultations in 2002<sup>20</sup> and since then, several means are used to secure EU citizens’ participation in the process of EU law-making. That aims at making the European Union mechanism and activities more transparent, accountable and effective.

**The Treaty of Lisbon**<sup>21</sup> **enshrined the importance of consultation with citizens in decision making processes in its Article 11**: “*The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent*”. The Protocol No. 2 on the application of the principles of subsidiarity and proportionality annexed to the Treaty strengthens this, by stating that “*before proposing legislative acts, the Commission shall consult widely and publish consultation documents whenever appropriate*”<sup>22</sup>. Stronger principles on EU consultations are defined in the “**Better Regulation Guidelines**” of 2015 and the toolbox which accompanies them, the “**Stakeholder Consultation Tools**”: “*the Commission prepares laws and policies transparently, based on evidence and backed up by the views of citizens and stakeholders.[...] Anyone who might be affected by an existing or proposed law or policy has the right to contribute. This includes public authorities, businesses, civil society organisations and the public*”.

There are various opportunities to contribute to EU law-making as it evolves – from the preparation phase to the definition of proposals for new laws, and until the evaluation of how existing laws are performing. Feedback can be given through **open public consultations** and

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<sup>18</sup> *Réglementation – Guide de simplification*”, *Collection guides pratiques, 2<sup>e</sup> édition, Janvier 2007*, EASI-WAL (2007), Commissariat wallon E-Administration et Simplification, Namur.

<sup>19</sup> Please refer to Annex I for a detailed reference.

<sup>20</sup> *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission* (2002), Commission of the European Communities:

[http://ec.europa.eu/governance/docs/comm\\_standards\\_en.pdf](http://ec.europa.eu/governance/docs/comm_standards_en.pdf)

<sup>21</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:ai0033&from=EN>

<sup>22</sup> *EU public consultations in the digital age: Enhancing the role of the EESC and civil society organisations* (2017), European Economic and Social Committee, Published by: “Visits and Publications” Unit EESC-2017-110-EN.

other **online tools**. The Commission takes account of feedback when further developing the law or policy, or when evaluating several related laws or policies in a single policy area. The EC may also seek expertise in a given area and target specific stakeholder groups through, for example: targeted consultations, meetings, workshops, seminars, small-business panels, online discussion forums.

As an example, the platform “Have Your Say” allows citizens and businesses to share their views on new EU policies and existing laws, in any of the 24 official EU languages<sup>23</sup>.

### **Finland:**

**The Finnish Constitution** emphasises the importance of citizen participation<sup>24</sup>: “*Democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions.*” **The Act on the Openness of Government Activities** states the right of citizens and media to access official documents. As a rule, such documents are defined as public unless specific grounds exist for keeping them confidential<sup>25</sup>.

Consultation is included in the law-making process<sup>26</sup>. After the regulatory drafting step, the draft Government bill is circulated among **stakeholders for comments**. This procedure is usually observed also when consultation of stakeholders has been a part of the preliminary preparation and regulatory drafting steps. Government draft proposals are sent to the Finnish Council of Regulatory Impact Analysis and then circulated for consultation.

When comments are requested to a draft government proposal, a draft decree or a draft regulation, a memorandum including background documents and any other material necessary for understanding the contents of the proposed legislation shall be appended to the request. **It is recommended to use [Lausuntopalvelu.fi](https://www.lausuntopalvelu.fi), which is a service for responding electronically to official consultation**. The request for comments is submitted to all known key stakeholders and published to enable other interested parties to comment as well.

### **France:**

**The French legal system includes various ways to integrate public consultation without the need to have a specific and fully generic law to regulate this**. New forms of consultation and dialogue emerged throughout the years, in order to include citizens as part of the decision-making process. In 1988, a large public consultation was carried out to assess the potential of this new form of decision-making. Within 2 years, based on recommendations provided by the population, **law n. 95-101 of 2 February 1995 or Barnier law**<sup>27</sup> was adopted, strengthening the use of public consultations in specific fields, namely public planning of projects of national interest for the State, local communities, public institutions, and public/private companies dealing with social issues or having an impact on the environment<sup>28</sup>. In regards to the

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<sup>23</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say>

<sup>24</sup> Section 2 of the Finnish Constitution, Democracy and the rule of law

<sup>25</sup> In addition, pursuant to this act, authorities are obliged to provide information actively:

- Open Government Support Package (<https://avoinhallinto.fi/assets/files/2018/10/ENG-Sivu-4.pdf>)
- Open Government Partnership Finland Action Plan 2019-2023
- ([https://www.opengovpartnership.org/wp-content/uploads/2019/09/Finland\\_Action-Plan\\_2019-2023\\_FN.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/09/Finland_Action-Plan_2019-2023_FN.pdf))
- Guide to Consultation in Statute Drafting, lakisaatteiset kuulemisvelvoitteet (ei englanniksi) (<http://kuulemisopas.finlex.fi/5-lakisaatteiset-kuulemisvelvoitteet/lakisaatteiset-kuulemisvelvoitteet/>)

<sup>26</sup> <http://lainvalmistelu.finlex.fi/en/3-lausuntomenettely/#esittely>

<sup>27</sup> [Loi n° 95-101 du 2 février 1995](#) relative au renforcement de la protection de l'environnement

<sup>28</sup> [Article 2 de la Loi n° 95-101 du 2 février 1995](#) : “[...] pour les grandes opérations publiques d'aménagement d'intérêt national de l'Etat, des collectivités territoriales, des établissements publics et des sociétés d'économie mixte présentant un fort enjeu

environmental issues, the Barnier law was further complemented with two initiatives of consultation of citizens taking part in such political and social debates: “[Le Grenelle de l’environnement](#)” in 2007 and “[La Convention citoyenne pour le Climat](#)” in 2020. The Barnier law regards mostly the environment and public planning topics as objects for consultation and it is reinforced by the **Environmental Code**<sup>29</sup> as well as the **Environmental Charter**<sup>30</sup> (which focuses on water management and infrastructures). Those subjects cover living environment and it resulted soon to be socially difficult to implement legislative reforms without having the views of the citizens on the matters. Additionally, considering the importance of this topic, the legislator proposed a consultation process both at the national and at the local level.

Public consultation was also recognised in the 2011 report of the *Conseil d’État*<sup>31</sup> as key for engaging citizens in policy-making. Other topics such as education, social security, or retirement can be subject to public debate. As an example, the **Article L.1 of the Labour Code** stipulates the use of public consultations to contribute to the elaboration of the legal reforms<sup>32</sup>.

The analysis of the French public consultations shows that the legislator did not decide to produce a law about public consultation. He proceeded, however, to integrate in the national framework the international treaties and European conventions such as the [Convention of Aarhus](#) through the **decree No. 2002-1187 of 12 September 2002**<sup>33</sup>. With digital transformation and the raising interest of the citizens in environmental issues, the policymakers and authorities at all levels recognised the opportunity to integrate this innovative way of consultation in the laws. Nevertheless, it must be said, that the multiplication of decrees, orders, laws can make the process sometimes overburdening for the authorities and not understandable for citizens.

Practices of public consultation are very important in France but are not fully fledged practices of “direct democracy”, such as referendums. Indeed, public consultation enables citizens to make recommendations and views on future legislative reforms, without having a final word. Public consultations are regulated by the French law, but they are not *making* the laws, which remain a prerogative of public decision makers.

## **Georgia:**

In Georgia there is no specific law on public consultation, although it is regulated by the Constitution and it is referred to in several laws.

Georgia is a signatory to the Open Government Partnership<sup>34</sup>, which adds additional commitments to increase and improve involvement of citizens into the decision-making processes.

It should also be noted that at the national level, during **Committee Hearings in the Parliament of Georgia**<sup>35</sup>, stakeholders can get involved and state a position on the legislative

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socio-économique ou ayant un impact significatif sur l’environnement, un débat public peut être organisé sur les objectifs et les caractéristiques principales des projets, pendant la phase de leur élaboration.”

<sup>29</sup> [Article L. 123-19-1](#) du Code de l’environnement

<sup>30</sup> [Article 7](#) de la Charte de l’environnement: “Toute personne a le droit, dans les conditions et les limites définies par la loi, d’accéder aux informations relatives à l’environnement détenues par les autorités publiques et de participer à l’élaboration des décisions publiques ayant une incidence sur l’environnement.”

<sup>31</sup> <https://www.conseil-etat.fr>

<sup>32</sup> [Article L1](#) du Code du travail

<sup>33</sup> [Décret n° 2002-1187 du 12 septembre 2002](#) portant publication de la convention sur l’accès à l’information, la participation du public au processus décisionnel et l’accès à la justice en matière d’environnement (ensemble deux annexes), faite à Aarhus le 25 juin 1998 (1)

<sup>34</sup> <https://ogpgeorgia.gov.ge/finished/>

<sup>35</sup> <https://matsne.gov.ge/ka/document/view/13528?publication=44>

initiative under consideration. The Rules of Procedure of the Parliament of Georgia define that **Scientific Advisory Councils** are established as committees, which consist of “competent, relevant, invited expert-consultants” in the relevant field.

Public consultations are held with various groups of the public, which always have two sides, the public on the one hand and the various branches of government on the other. Public consultation is conducted in various forms at almost all levels (national, regional and local). This often happens through the format of public meetings, where issues relevant to the public are discussed between the parties.

For example, the Committee on Regional Policy and Self-Government of the Parliament of Georgia has a **Scientific Advisory Board on Regional Policy and Local Self-Government**, which aims to develop recommendations and proposals on regional policy and local self-government, development of mountainous regions, as well as other important issues within the Committee. The tasks of the Committee include: intellectual and professional participation in the development of legislative initiatives on issues within its competence; development of recommendations based on adequate assessments and conclusions, etc.

In accordance with its objectives, the Committee participates in the preparation and discussion of legislative initiatives, promotes the development of effective law enforcement mechanisms, acts in agreement with state and local self-government bodies to overcome existing problems, collaborates with international organisations to find resources for event planning and funding, collaborates with the media and civil society.

### **Germany:**

In Germany the principles on public consultation, as for other policy areas, are mostly governed by traditions and government policies, by means of specific consultation groups<sup>36</sup>. According to the OECD, “*This relatively informal framework governs a system of consultation that is longstanding, intensive and consensus driven*”. Furthermore, “*while the process is not particularly transparent, it facilitates consensus building and is valued for this*”<sup>37</sup>.

Regarding the political structure and the legal framework for public consultation in Germany, formal rules are set out in the *Joint Rules of Procedure*, which apply to the Federal ministers and refer to both primary legislation and subordinate regulations<sup>38</sup>. The Rules **leave scope for considerable flexibility as to their application. It is the leading Ministry that decides on the timing, scope and selection of consultation partners, as well as on the practical execution of the consultation process.** Normally, Ministries proceed to the so-called pre-consultation rounds, which are conducted at an early stage prior to the drawing up of a bill. **This initial consultation involves the Länder, municipalities, the experts’ community and associations, on the basis of key papers.** The results of this consultation contribute to the draft bill, on which the same parties are later consulted for a second time. These procedures may be conducted by submitting the draft in paper or through electronic form. As for consultation deadlines, they are provided by the Joint Rules of Procedures only for the final examination of draft bills, and they are normally equal to four weeks<sup>39</sup>. As for the other parts of the procedure, there are no set deadlines for consultations or for replies. It is a common practice to allow periods for consultation adequate to the purpose and scope of the proposed regulation. The

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<sup>36</sup> *Better Regulation in Europe: Germany* (2010), OECD: <https://www.oecd.org/gov/regulatory-policy/45049494.pdf>.

<sup>37</sup> *Ibidem*. OECD reports that the level of satisfaction among directly involved stakeholders (SMEs, consumers, citizens, businesses) **would appear to be generally acceptable**.

<sup>38</sup> Federal Ministry of the Interior, *Joint Rules of Procedure of the Federal Ministries (GGO)*, 30/07/2020, p. 7.

<sup>39</sup> Federal Ministry of the Interior, *Joint Rules of Procedure of the Federal Ministries (GGO)*, pp. 32-33.



same applies to the provision of information to the parties to be consulted<sup>40</sup>. It has been noted that it might seem to be quite difficult for new stakeholders, who are not part of the usual system of consultation, to participate in the consultation<sup>41</sup>.

In Germany there are no rules for systematic consultation on draft laws and legal acts. **The actual consultation procedures vary significantly between ministries in terms of who is invited, by which means, and in terms of documents made available to support the consultation procedure.** Individual ministries choose on a discretionary basis which draft regulations they will make available for public comments, as well as for how long. Comments from stakeholders that do participate and provide written input to draft regulations are not made publicly available. **The federal web portal [www.bund.de](http://www.bund.de) does not make available a single contact point for consultation on federal regulation**<sup>42</sup>. In light of this context, according to the recommendations from the 2004 OECD report, “*there is scope for improving current consultation and communication mechanisms. Germany should improve regulatory transparency by establishing formally defined standards for consultation procedures and by improving accessibility to existing regulations*”. Furthermore, Germany was invited to “*establish standards for consultation procedures and improve accessibility to existing regulations*”<sup>43</sup>.

### **Italy:**

Article 118 of the Italian Constitution states that “*the State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, based on the principle of subsidiarity*”<sup>44</sup>.

According to article 9 of the Legislative Decree no. 82/2005<sup>45</sup>, all public bodies must encourage all forms of use of new technologies to **promote greater participation of citizens in the democratic process**, to facilitate the exercise of political and civil rights and improve the quality of their actions, including through the use of forms of prior consultation electronically, where envisaged and within the framework of the resources available under the current legislation.

The issue of public consultation is regulated by the **Directive no. 2 of 31 May 2017 “Guidelines on Public Consultation in Italy”**<sup>46</sup>, adopted by the Department of Public Administration in accordance with the legal framework. This regulation recommends to all public administration bodies to promote greater citizens’ participation in public decisions. This act also takes into consideration the public consultation – conducted by the Department of Civil Service from 5 December 2016 to 12 February 2017 – on the draft *Guidelines for public consultation in Italy*<sup>47</sup>. **It invites public administration to promote citizens’ participation through public consultations in the decision-making processes.** The public bodies are

<sup>40</sup> *Better Regulation in Europe: Germany* (2010), OECD.

<sup>41</sup> *Ibidem*.

<sup>42</sup> *Ibidem*.

<sup>43</sup> *Ibidem*.

<sup>44</sup> <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1947-12-27&atto.codiceRedazionale=047U0001&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo=10&qId=3075867e-3cb8-4a1c-b9d4-6039b60c6735&tabID=0.9554370513814647&title=lbl.dettaglioAtto>

<sup>45</sup> <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2005-05-16&atto.codiceRedazionale=005G0104&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo=10&qId=3852d637-1299-486e-90d0-edb068ed4a06&tabID=0.23888374410558022&title=lbl.dettaglioAtto>

<sup>46</sup> <https://www.gazzettaufficiale.it/eli/id/2017/07/14/17A04797/sg>

<sup>47</sup> <http://open.gov.it/wp-content/uploads/2017/03/guidelines-consultations-italy.pdf>

invited to comply with the **guidelines on public consultation**, that are an integral part of this act, with the purpose to ensure the *inclusiveness, transparency and effectiveness* of public consultations. The principles enshrined in the Guide are the following: commitment, clarity, transparency, support to participation, privacy, impartiality, inclusion, timeliness and citizen-oriented approach<sup>48</sup>.

The portal “**Consultazione.gov.it**”<sup>49</sup> is a point of access for users wishing to participate in consultation initiatives carried out by all the public administrations, in particular national authorities, regional or local bodies, European Union and OECD. It presents consultations online but also indicates events for consultation through meetings, providing the information about where and how consultations are held. The publication on the website is not compulsory but recommended. In addition, in conformity with the transparency principle, the Italian Government launched the **platform “ParteciPa**”<sup>50</sup>, which is available for all public administrations – regional and local – that shall involve citizens in participatory processes on a given process. At the time of drafting this Report (June 2021), the only open consultation invites citizens to contribute to the strategy on digital competences.

### **Moldova:**

Moldova adopted **Law no. 239 of 13 November 2008 on transparency in the decision-making process**, which establishes the norms applicable to ensure transparency in the decision-making process of the central and local authorities and regulates their relations with citizens, NGOs and other interested parties. The execution act that implements the existing legislation is the Government Decision no. 967/2016 on the **mechanism of public consultation with civil society in the decision-making process**. Also, rules applicable to ensure transparency in the decision-making process are contained in several other normative acts<sup>51</sup>. Based on this, the public authorities are obliged to consult citizens, civil society and other interested parties (trade unions, employers' associations, parties and other socio-political organisations, mass media, representatives of the business environment) to produce normative and administrative drafts that may have social, economic, and/or environmental impacts on living conditions, human rights, culture, health and social protection, local communities, and public services.

The legislation aims at stimulating active participation and transparency in decision-making based on the principles of informing all parties about the initiation of the decision-making process and holding a public consultation on the respective draft decisions and to ensure equal opportunities for the participation of all parties.

### **The Netherlands**

**In recent years, the Netherlands placed a strong focus on accessibility and transparency of the regulatory process.** The website from the central government that is currently active is <https://www.internetconsultatie.nl>. This website provides information on legislation and regulations prepared by the government or parliament, about which consultation takes place

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<sup>48</sup> Ibidem

<sup>49</sup> <http://consultazione.gov.it/it/>

<sup>50</sup> <https://partecipa.gov.it/>

<sup>51</sup> Law no. 100/2017 regarding the normative acts; Law no. 136/2017 regarding the Government; Law no. 797/1996 for the adoption of the Regulation of the Parliament; Law no. 98/2012 on the specialised central public administration; Law no. 436/2006 on local public administration; Integrity Law no. 82/2017; Law no. 235/2006 on the basic principles for regulating entrepreneurial activity; Government Decision no. 610/2018 for the approval of the Government Regulation; Government Decision no. 23/2019 on the approval of the Methodology for analysing the impact in the process of substantiating the draft normative.

via the Internet. It started in 2011 as a 1-year pilot project of the government, but it is still active. The Cabinet has decided to use Internet consultations more often when preparing legislation and regulations, but not in all cases. It has proved effective with respect to legislation and regulations that affect mainly the rights and duties of citizens, companies and institutions or that have major consequences for implementation practice. The Cabinet considers Internet consultation a useful instrument, supplementary to the existing consultation practice in the legislative process.

**Internet consultation provides more people, companies and institutions with information on legislation that is in preparation and enables them to make suggestions to improve the quality and feasibility of these proposals.** The evaluation of the government-wide experiment shows that Internet consultation does cost additional time and capacity, but that the possibilities for public participation improve and that it contributes to the quality of legislative proposals.

Below is a list of actions that can be undertaken during and after the legislation period of a law:

**Lobbying:** Politicians will take into account the opinions of important movements that enjoy major public support, such as trade unions, the farming sector or the Royal Dutch Touring Club (ANWB). Some of these organisations are represented in official **advisory bodies**, which the Government or Parliament often consult before taking a decision on a matter. Examples of such bodies are the Social and Economic Council (SER) or the Education Council of the Netherlands (De Onderwijsraad).

**Campaigning:** People who want a certain social issue to get widespread attention can hold a demonstration or organise communication campaigns. Many organisations and pressure groups, such as the environmental movement and the women's rights movement make their opinions heard by campaigning and demonstrating. They play an important role in democracy, and society has changed drastically because of the activities of such organisations.

**Petition:** A petition is a political request in writing, expressing a person's opinion on a government policy. A petition is often presented on behalf of a group of people, following a national campaign. People who want to present a petition must register in writing. The petition must state the policy measure or rule that the petitioners do not agree with, the objective they want to achieve and the names of the organisers. The request to present the petition is put on the list of incoming correspondence during the next sitting of the House. The committee then decides whether the petitioners may present their petition, and if so, when. Petitions to a specific standing committee (chair) must be sent to the clerk of the committee in question, accompanied by an explanatory letter.

**Citizens' initiative:** Anyone can put an item on the agenda of the House of representatives by means of a citizens' initiative. A citizens' initiative is a detailed proposal, for instance to improve the environment, the educational system or public transport. It contains a request to the House of Representatives to examine the proposal and to take a stand on it. A citizens' initiative is explicitly a new proposal and not a reaction to legislation already dealt with or due to be dealt with by the House. The members of the House of Representatives represent the Dutch people. The citizens' initiative is one of the most direct ways to make one's ideas on how to improve society known to MPs. The committee on Petitions and Citizen's Initiatives examines all submitted proposals and assesses whether the requirements have been met.

**Written request:** A written request or individual petition relates to an individual case in which the petitioner believes the Central Government has made the wrong decision. People who believe themselves affected by negligent or improper actions by a Central Government body can file a complaint with the Petitions and Citizens' Initiatives committee of the House of Representatives. The matter concerned must be an individual one and there must be no



possibility of objection, or appeal, to an independent court. This means that people cannot lodge appeals with the House of Representatives against court rulings.

### **Norway:**

No legal references are mentioned in the documents that are available online. Nevertheless, the Economist Intelligence Unit ranked Norway 1<sup>st</sup> among the "full democracy" countries in 2019<sup>52</sup>. Reporters Without Borders ranked Norway 1st in the world in the 2019 Press Freedom Index<sup>53</sup>.

Regarding public consultations in the country, on the Norwegian government's website there is a dedicated page on public consultations<sup>54</sup>. Some context is provided on the public consultation process: "*Presenting a case for consultation is done when the Ministry wants to consult affected parties on a suggested bill or act*".

Consultations are used to allow the public, organisations and the business community to state their opinion, and to control how the public administration works and performs its tasks. Among the cases presented for consultation are suggested laws and regulations to regulate people's rights and duties, suggested changes in how the public administration is organised, jurisdiction changes<sup>55</sup>. On this page, citizens can find a public archive including all the documents submitted to public consultation by each Ministry. The files can be sorted by date, by topic or by Ministry involved; each file contains the "consultation letter" with a reference number, the Ministry issuing it, a brief resume, the date of the publication, the deadline for the consultation, the contact to which the involved stakeholders can provide comments or evaluation of the bill and, finally, the status of the process.

Another key document regarding public consultation in Norway is the **National Guide on Public Participation**, launched by the Norwegian Ministry of Local Government and Modernisation in 2014. It aims at providing guidelines on "*How to Facilitate Increased Public Participation and Influence in Municipal and Regional Planning pursuant to the Planning and Building Act*"<sup>56</sup>.

According to the Regulatory Policy Outlook published by OECD in 2015<sup>57</sup>, it appears that public online consultation is conducted for all primary laws in the country.

Norway also places great emphasis on consultation and co-ordination between national and sub-national levels (local authorities). An agreement was established in 2000 to conduct regular consultative meetings between the central government and the local authorities. These consultations improve local autonomy and provide a better foundation for central government decision-making and framing of rules and regulations aimed at municipalities and counties.

In conclusion, the practice of public participation regarding draft bills and regulations is well established in Norway, and the referred guidelines for the practice are produced mainly by the Ministry of Local Government and Modernisation.

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<sup>52</sup> *Democracy Index 2019* (8 January 2019), The Economist Intelligence Unit - Retrieved 13 January 2019. [https://www.eiu.com/public/topical\\_report.aspx?campaignid=democracyindex2019](https://www.eiu.com/public/topical_report.aspx?campaignid=democracyindex2019)

<sup>53</sup> "2019 World Press Freedom Index". Reporters Without Borders. 2019. <https://rsf.org/en/ranking/2019>

<sup>54</sup> <https://www.regjeringen.no/en/find-document/consultations/id1763/>

<sup>55</sup> Ibidem.

<sup>56</sup> *Public participation in planning* (2014), Norwegian Ministry of Local Government and Modernisation: [https://www.regjeringen.no/contentassets/7fa15b41220849c9adba3eeca28538ec/medvirkning\\_veileder\\_engelsk.pdf](https://www.regjeringen.no/contentassets/7fa15b41220849c9adba3eeca28538ec/medvirkning_veileder_engelsk.pdf)

<sup>57</sup> *Regulatory Policy Outlook, Country profile: Norway* (2015), OECD: <https://www.oecd.org/gov/regulatory-policy/Norway-web.pdf>

An example of a recent public consultation process in the country is the **Public consultation on APA 2020 – Awards in Pre-defined Areas**<sup>58</sup>. In this case, the Ministry asks for consultative inputs related to whether new and significant information has emerged pertaining to the decision about where petroleum activities can be conducted. The consultation is under the supervision of the Ministry of Oil and Energy. All Norwegian citizens are potentially aware of the consultation and can consult the inputs and the documents which are debated (all the material is available online, on the government's website). However, there are specific organisations in the sector which are concerned by the consultation and can provide inputs, hence the process seems different from an open public consultation.

### **Poland:**

In Poland, the term *public consultation* concerns only consultations at central government level. The consultation carried out by local authorities is called *social consultation*. As for public consultations conducted by the government, they are governed by the Rules of Procedure of the Council of Ministers of 29 October 2013<sup>59</sup>. The consultation conducted by the Sejm – the lower chamber of the Polish Parliament – legislative power is governed by the Rules of Procedure of the Sejm of the Republic of Poland of 30 July 1992<sup>60</sup>.

From the point of view of ensuring public control over the decision-making process of public authorities, the Act on access to public information of 6 September 2001<sup>61</sup> is crucial. The Act guarantees every citizen access to public information, excluding information classified as secret or private information about natural persons or the secrecy of the entrepreneur.

Consultation on the following matters is mandatory: spatial planning and investment, environmental protection, waste management, territorial development strategies. NGOs and individual citizens take part in the consultation. The selection of a target group for public consultation is a key condition for the success of the consultation. The challenge for the consultation's organiser is to define and reach out to relevant target groups that are interested in the problem and can add value to the consultation.

Optional consultations are organised in situations where the implementation of a project involves a significant risk of social conflict and if it can provoke *strong emotions* among those concerned.

For example, in recent years, the topic of smog and air quality has been at the centre of the public debate in Poland. A public consultation on this issue was held through the citizens' panel, which was organised in 2018 in Lublin (the capital of the homonymous region, located in eastern Poland, with about 340,000 inhabitants). Out of 250 different proposals, participants of the panel selected by a majority of 80% of the votes 55 binding recommendations to the city authorities. The recommendations covered the areas of heating, transport, spatial planning, green areas, education and so on. Out of 752 candidates, 60 persons (and 12 reserves) representing the social cross-section of Lublin in terms of gender, age, education and inhabited district were selected in a two-stage draw to participate in the panel.

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<sup>58</sup> <https://www.regjeringen.no/no/dokumenter/offentlig-horing-om-tfo-2020/id2695388/>

<sup>59</sup> Website INFOR: <https://www.infor.pl/akt-prawny/MPO.2013.172.0000979,uchwala-nr-190-rady-ministrow-regulamin-pracy-rady-ministrow.html> (accessed on 16.03.2021)

<sup>60</sup> Website INFOR: <https://www.infor.pl/akt-prawny/MPO.2012.008.0000032,uchwala-regulamin-sejmu-rzeczypospolitej-polskiej.html> (accessed on 15.03.2021)

<sup>61</sup> Website INFOR: <https://www.infor.pl/akt-prawny/DZU.2001.112.0001198,ustawa-o-dostepie-do-informacji-publicznej.html> (accessed on 16.03.2021)

In such cases, residents usually want to get involved in solving the problem and developing an optimal solution to it. If the matter concerns the interests of residents, then the organisation of consultations is advisable.

### **Serbia:**

The legislation in Serbia **defines a clear obligation for authorities and for the government to make all drafts and law proposals accessible to the public.** This legislation comes from the 2019 Government's work plan that foresees the obligation to provide the public with total transparency when it comes to official documents. This issue is also regulated in the Law on Public Administration, where Article 77 directly refers to public participation in the preparation of draft laws. Furthermore, the Government Rules of Procedures aim at conducting public debates and at aligning with practical guidelines for public participation in the preparation of draft laws.

However, the legislative framework in Serbia also shows that more emphasis and importance are given to **law-drafting working groups** promoted by competent authorities. While it is an effective way of consultation, some would say that it leaves the other stakeholders (not part of the law drafting working group) in a weaker position since they will "only" be able to discuss the topics through the platform but won't actually participate in elaborating the law through a more participative and initial process.

### **Spain:**

The principal law regulating the issue of public consultation at State level is the general **Law 50/1997**<sup>62</sup>.

**Public consultations shall be carried out prior the elaboration of draft laws,** draft royal legislative decrees and draft regulatory rules, to collect opinions and contributions by interested and affected citizens' parties about: the problem to be solved, the objective of the draft to be approved, the need and opportunity of its approval, possible legal and no-legal alternative solutions (art. 26, clause 2).

Public consultation is promoted by public administration and addressed to any subjects at community level **potentially affected by the drafted standards,** as well as associations grouping or representing citizens' rights. The competent administration in charge of the policy preparation is responsible for publication of the public consultation on the **web portal of the competent department**<sup>63</sup>. The minimum period for a public consultation is 15 days. When publishing a public consultation, the competent administration is asked to provide a legal **impact report including information such as: objective, justification, content and legal analysis, economic and gender analysis impact, calculation of administrative costs** (art. 26, clause 3). Finally, the legal impact report must include a summary of the main **contributions received from the public consultation** (art. 26, clause 3). In the case of draft laws and drafts

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<sup>62</sup> [BOE.es - BOE-A-1997-25336 Ley 50/1997, de 27 de noviembre, del Gobierno, then modified by the Law no. 40/2015 about the legal regime of the Spanish public sector and published on the Boletín Oficial del Estado \(BOE\) no. 236/2015: BOE.es - BOE-A-2015-10566 Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público.](#)

<sup>63</sup> On September 2016, the Council of Minister adopted an Agreement providing instructions to enable public participation in the policy-making process through the web portals of different ministries, as well as to facilitate access, use and visibility.

of royal legislative, the Council of Ministers must evaluate citizens' contribution, their application and following procedure (art. 26, clause 4)<sup>64</sup>.

### 3.2 Public consultation concerning local and regional government decision-making

Large information is available as for consultation at the local and region level for decision-making, acts and possible laws (regional laws).

#### Albania:

Considering the regress in the transparency in the electronic platforms and premises of the Albanian municipalities, with reference to the monitoring report on the transparency of local government in Albania developed by the Balkan Investigative Reporting Network (BIRN)<sup>65</sup>, a new program on transparency has been prepared by municipalities, that is aiming to enable the publication of all documents accessible to the public (which means the previous laws do not work efficiently) and free of charge. The publication of all notifications for public consultations will be still available at the web portal <http://www.konsultimipublik.gov.al/>. The new program aims at increasing the transparency of the information as well as to encourage citizens to engage in public consultations.

#### Armenia:

In order to ensure the participation of citizens in the **five-year community development plan or annual budget management** (compilation, public discussion, implementation and control), upon the suggestion of the head of community<sup>66</sup>, an **advisory (consultative) body** is formed with the involvement of relevant specialists from the municipality staff and other community organisations as well as up to three members of the community council, residents, experts, and other stakeholders (with the consent of the latter). Before submitting the drafts of the five-year community development plan or the annual budget to the community council for approval, the head of community organises and conducts open public hearings or discussions within the period defined by Article 27.1 of the Law of the Republic of Armenia "On Legal Acts". The head of community provides information to the community council on accepted suggestions or objections received at open public hearings or discussions.

The communities, particularly urban ones, usually implement the law on the organisation of public discussions or hearings and engage citizens in decision-making processes. Suggestions and objections are included, even though not in all cases, in the documents that are further approved by city councils.

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<sup>64</sup> An example of public consultation is the one run by the Spanish State for the preparation and elaboration of the IV National Action Plan - Open Government - Spain 2020-2024. In 2019, a preliminary consultation was conducted and published on the national transparency portal, where citizens and CSOs made proposals concerning the Plan through a dedicated web form. A social media campaign was launched to raise awareness and stimulate participation. As a result of this process, 130 initiatives were received and the plan was drafted accordingly.

<sup>65</sup> <https://birn.eu.com/wp-content/uploads/2019/05/National-Monitoring-Report-on-Transparency-of-Local-Government-1.pdf>

<sup>66</sup> As there are rural and urban communities only the head of urban community can be considered as a mayor, but this law refers to all communities. Therefore, the term "head of community" will be used.

## **Finland:**

Pursuant to the **Local Government Act / Kuntalaki (410/2015)**, municipalities are obliged to ensure that **local residents have the opportunity to participate and have a say** in the operations of their municipality. In particular, as expressed in **Section 22 – Opportunities to participate and exert influence**:

- (1) A municipality's residents and service users have the right to participate in and influence the activities of the municipality. Local councils must ensure that there are diverse and effective opportunities for participation.
- (2) Participation and raising actions of influence can be furthered especially by:
  - a) arranging opportunities for discussion and for views to be presented, and setting up local resident panels;
  - b) finding out residents' opinions before taking decisions;
  - c) electing representatives of service users to municipal decision-making bodies;
  - d) arranging opportunities to participate in the planning of the municipality's finances;
  - e) planning and developing services together with service users;
  - f) supporting independent planning and preparation of matters by residents, organisations and other corporate entities.

In addition, various areas of specific legislation (such as the Youth Act) lay down certain obligations regarding openness and participation.

## **France:**

As for the use of public consultations at the local level, the **law of 13 August 2004** within the **General code of territorial communities**<sup>67</sup> has a **special section regarding citizens' consultations**. This enables, at the local level, to consult citizens on the decisions that the authorities want to implement. The request of a public consultation can come either from the authorities or from the citizens themselves<sup>68</sup>. The environmental and public planning topics, even at the local level, are regulated by the law and the **order of 21 April 2016**<sup>69</sup> describes how in this context the public consultation can be done. Local consultations are allowed on projects affecting the living environment, going from infrastructure to environmental change.

## **Italy:**

The **Lombardy Region** promotes participation of citizens within the art. 6 of the Regional Law 20/2017<sup>70</sup>, especially for representatives of social and economic interests involved in the evaluation of regional policies and in the processes of monitoring the implementation of regional laws.

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<sup>67</sup> [Section 2 : Consultation des électeurs \(Articles L1112-15 à L1112-23\)](#) du Code général des collectivités territoriales

<sup>68</sup> [Article L1112-16](#) du Code général des collectivités territoriales

<sup>69</sup> [Ordonnance n° 2016-488 du 21 avril 2016](#) relative à la consultation locale sur les projets susceptibles d'avoir une incidence sur l'environnement

<sup>70</sup> [http://normelombardia.consiglio.regione.lombardia.it/NormeLombardia/Accessibile/main.aspx?exp\\_coll=lr002017080800020&view=showdoc&idoc=lr002017080800020&selnode=lr002017080800020](http://normelombardia.consiglio.regione.lombardia.it/NormeLombardia/Accessibile/main.aspx?exp_coll=lr002017080800020&view=showdoc&idoc=lr002017080800020&selnode=lr002017080800020)

Four Regions have their own website permanently dedicated to participation initiatives: **Sardegna Partecipa**<sup>71</sup>; **Partecipa Toscana**<sup>72</sup>; **Partecipazione Emilia-Romagna**<sup>73</sup>; **La casa della partecipazione Puglia**<sup>74</sup>. Puglia, Toscana and Emilia Romagna have approved dedicated **Regional Laws** that contain specific provisions on the consultation initiatives, in particular: Law no. **28 of 2017**<sup>75</sup> – Puglia; Law no. **46 of 2013**<sup>76</sup> – Tuscany; Law no. **15 of 2018**<sup>77</sup> – Emilia Romagna. These legal acts provide a general framework on the public consultation without describing in the details the proceedings and settling liability.

In the regions studied above, stakeholders of the consultation are: resident citizens, foreigners and stateless persons regularly resident in the territory concerned by participatory processes; persons who work, study or reside in the territory or who have an interest in the territory itself or in the subject of the participatory process; companies, associations, organisations and other social groups that have their headquarters in the territory affected by participatory processes or that have an interest in the participatory process.

Regarding the **Puglia Region**, participatory and consultative processes may be promoted by: local authorities, schools, universities and any other public administration; associations, foundations, and other institutions of a private non-profit nature, as well as trade associations, trade unions, political parties and movements; companies and enterprises with reference to their own projects or interventions that have a significant environmental, social or economic impact. Such processes must **meet the following criteria** to be financially and methodologically supported by the region (art. 14, Regional Law no. 28 of 2017): precisely defined subject matter; definite time frames for its implementation, not to exceed six months in duration; provide for inclusive procedures and specific actions for the dissemination of information; indicate in advance any expenses for the implementation and the commitment to co-financing; indicate a single contact person.

The Regional Law no. 28 of 2017 of the Puglia Region especially describes **two tools for citizens' participation**: a) the **annual programme of participation** (art. 4) and b) **public debate on major works** (art. 7). The latter is also described in the article 7 of the Regional Law no. 46/2013 of Tuscany Region.

The public debate is a process to provide information and ensure participation related to works, projects or interventions of particular relevance to the regional community, in the environmental, landscape, social, territorial, cultural and economic fields.

**The public debate is mandatory for public and national works that amount to 50 million Euros or more.** The *participation office (Ufficio Partecipazione)* is responsible for the public debate and it sets the deadline of conclusion. At the end of this participatory process, the public body must accept, refuse or propose modifications to the public work. Finally, **both Regional Laws (in Puglia and Tuscany) establish the *Guarantee institution***, with the purpose to ensure the correctness of participatory processes.

For the **Tuscany Region**, participatory and consultative processes may be promoted by (art 13 Law no. 46/2013): citizens of municipalities; associations, committees and local authorities,

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<sup>71</sup> <http://www.sardegnapartecipa.it/>

<sup>72</sup> <https://partecipa.toscana.it/>

<sup>73</sup> <https://partecipazione.regione.emilia-romagna.it/>

<sup>74</sup> <https://partecipazione.regione.puglia.it/>

<sup>75</sup> [https://partecipazione.regione.puglia.it/legge\\_partecipazione.pdf](https://partecipazione.regione.puglia.it/legge_partecipazione.pdf)

<sup>76</sup> <http://raccoltanormativa.consiglio.regione.toscana.it/articolo?urndoc=urn:nir:regione.toscana:legge:2013-08-02:46&pr=idx.0;artic.1;articparziale.0>

<sup>77</sup> [https://demetra.regione.emilia-romagna.it/al/articolo?urn=er:assemblealegislativa:legge:2018:15&dl\\_t=text/xml&dl\\_a=y&dl\\_id=10&pr=idx.0;artic.1;articarziale.0&ev=1](https://demetra.regione.emilia-romagna.it/al/articolo?urn=er:assemblealegislativa:legge:2018:15&dl_t=text/xml&dl_a=y&dl_id=10&pr=idx.0;artic.1;articarziale.0&ev=1)



with the support of residents who sign the request; companies, on their own projects or interventions that have a significant impact of environmental, social or economic, possibly with the support of the local authority territorially concerned; educational institutions.

Such processes must meet the following criteria to be supported by the region (art.14): precisely defined subject matter; timing and period of performance, with a total duration normally not exceeding 180 days; context, reasons and goals; methodological proposals on how to carry out the participatory process and an estimation cost.

A Committee evaluates the proposal based on precise criteria established in the article 15 Law no. 46/2013.

In the **Emilia Romagna Region**, the Regional Law no. 15/2018 establishes that the participatory processes can be promoted by responsible bodies or other public and private subjects that obtained the formal adhesion of the Region. At the end of the participatory process a document with the results must be published and the competent authority must take it into consideration at the moment of deliberation, otherwise it is necessary to give an explicit reason for not doing so in the legal act.

### **Poland:**

There are three legal references for mandatory consultations for local authorities and they regard planning and spatial management, development policies and environmental issues. On other issues within the competence of local authorities, consultation is not compulsory, but is very often used<sup>78</sup>. Many local authorities set up *permanent advisory councils* bringing together young people and seniors. The creation of such councils is not mandatory but is listed in the Act on Local Government. They are consulted on acts, decisions and strategies proposed by the local governments. Very often, the initiative to create youth and seniors' councils come from local communities based on the bottom-up principle. In many municipalities, advisory councils are also created for issues such as entrepreneurship, equal treatment, culture, the disabled, social dialogue, social economy, animals, etc. The composition of the *council* is determined by the mayor. Most often they are composed of officials, representatives of NGOs, opinion leaders, independent experts. Such councils are used to continuously consult on draft decisions

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<sup>78</sup> In the case of local authorities, three acts regulate the conduct of mandatory consultations:

- The Act on planning and spatial management of 27.03.2003 - consultation of zoning plans and study of the conditions and directions of zoning;
  - The Act on the principles of conducting development policy of 6.12.2006 - consultation of draft development strategies of self-governments units;
  - The Act on making available the information on the environment and its protection, public participation in environmental protection and environmental impact assessments of 3.10.2008 - consultation on investments affecting the environment.
- Optional consultations are governed by the following laws:
- The Act on municipal self-government of 8 March 1990 article 5a of the Act says: 1. In the cases provided for by law and in other matters of commune's affairs, consultations may be held on its territory with the inhabitants of the municipality; 2. The rules and procedures for consulting the inhabitants of the municipality shall be laid down in the resolution of the municipal council. Article 5b. [Consent to the creation of a youth municipal council]: 1. The municipality shall take measures to promote and disseminate the idea of self-government among the inhabitants of the municipality, including in particular among young people; 2. The municipal council may, at the request of the communities concerned, agree to the creation of a youth council of a consultative nature; 3. The municipal council, when establishing the youth council of the municipality, gives it a statute specifying the procedure for the selection of its members and the rules of operation. Article 5c. [Municipal Council of Senior Citizens]: 1. The municipality promotes intergenerational solidarity and creates the conditions for stimulating the civic activity of older people in the local community; 2. The municipal council may, on its own initiative or at the request of the communities concerned, set up a municipal council for senior citizens; 3. The municipal council of senior citizens shall be consultative, advisory and initiative.
  - The Act on regional self-government of 5 June 1998 article 10a. 1. In cases provided for by law and in other matters important for the region, consultations with residents of the region may be carried out on its territory; 2. The rules and procedures for conducting consultations with the inhabitants of the region shall be determined by the resolution of the regional parliament.

taken by local authorities. They are also advisory bodies on urban policies. Each municipality council or regional parliament is obliged to adopt a resolution which lays down the rules for conducting optional public consultations. The provisions of the resolution are the basis for starting the consultation process.

Important stakeholders of public consultation are NGOs operating in the territory of a given local government. Each municipality or region has a responsibility to develop a cooperation programme with NGOs and consult them. This is an important process for dialogue between local authorities and organised groups of citizens.

### **Spain:**

Various laws on general consultation are adopted at the regional level (Autonomous Communities).

In the Autonomous Community of **Andalusia**, the issue of public consultation is regulated both at regional and local level by the general Law no. 7/2017 about citizens participation. Public consultation initiatives are promoted by regional and/or local administrations<sup>79</sup>, as well as by citizens<sup>80</sup>, stakeholders and organisations representing specific targets *potentially interested and or affected by the policy under consultation* (art. 43). **Any citizen at least 16 years old and resident in Andalusia, potentially interested and/or affected by the theme subject of consultation** (art. 35)<sup>81</sup>, can participate into consultative initiatives, by means of a non-referendum voting system (art. 36). The object of the consultation must be exclusively related to those issue of **public interest which are competence of the public administration**, on issues motivated by the competent administration and which are relevant to a specific sector or group of the population (art. 37)<sup>82</sup>. At regional and local level, public consultations cannot be carried out during parliamentary and municipal elections, the constitution of new chambers, council and local governments, referendums. When referring to public consultation at regional level, a **maximum of 3 annual consultations per year can be carried out** (art. 47). The number of admissible local consultations should be determined by local regulations, no specific limit is indicated in the Law (art. 50). **In addition, a consultation on the same subject cannot be promoted before two years have passed from the previous consultation** (both at regional and local level). The Law establishes other consultative forms to collect citizens' opinion and contribution, such as: surveys; public hearings; forum for participation; citizens' panels; citizens' juries (art. 25).

In the Autonomous Community of **Madrid**, all resident citizens<sup>83</sup>, CSOs operating in the regional area and community representative organisations can participate in a consultative process. The minimum period for a consultative process is 30 days.

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<sup>79</sup> At regional level, institutional consultations are responsibility of the President of the Andalucía Government, and of 10% of the municipalities representing at least 500.000 recorded citizens at least 16 years old in total (art. 44). At local level, it is responsibility of the local authority following the proposal of the local authority president, at least 2 political parties and at least 1/3 of members composing the local authorities (art. 48, clause 1).

<sup>80</sup> Citizens' initiatives aimed to solicitate a public consultation at regional level are subject to the collection of 30.000 signatures of citizens at least 16 years old and resident in Andalucía (art. 45). At local level, the number of signature of citizens from 16 years old and resident in Andalucía depends of population density ranges (e.g. in case of municipality of 5.000 inhabitants, 500 signatures are required (48, clause 3)).

<sup>81</sup> The age requirement can be reduced if the policy under consultation directly affects children and their rights.

<sup>82</sup> At the exception of: issues out of the Andalusia regional and local administrations competencies; institutional organisation of regional and local administration; resources of the regional and local public treasuries; questioning people fundamental rights.

<sup>83</sup> <https://www.boe.es/buscar/pdf/2019/BOE-A-2019-10102-consolidado.pdf>



In the Autonomous Community of **Valencia**, according to the Law no. 2/2015<sup>84</sup>, participation is promoted by: the Generalitat (regional government) and its public administrations (art. 46); civic organisations (art. 43.1); the **Council of Citizens' Participation** (art. 49); the **Council of Valencian Centres Abroad** (art. 53). Other forms of consultations in the Law are the public information processes and public hearings, which can be implemented separately or simultaneously (art. 47). **The Generalitat of Valencia provides compensation for citizens' participation costs incurred by no profit associations while exercising the right of civic participation** (art. 44 bis, clause 1). The payment of the compensation is subject to some conditions listed in the article 44 bis, clause 2; as an example, the participation has to be legally regulated and applied for administrative procedures.

The Autonomous Communities of **Aragón**<sup>85</sup>, **Castilla-La Mancha**<sup>86</sup> and **Murcia**<sup>87</sup> adopt an **Annual Citizens' Participation Program** as required by the respective laws regulating participation and its tools. This program is a strategic plan including all policy decision-making processes that will be subject to a participatory and consultative process, with indications regarding the competent public authorities and consultative forms that will be adopted, e.g. public consultation.

### 3.3. How is the procedure for holding public consultations regulated?

#### **Finland:**

**Lausuntopalvelu.fi** is a tool for requesting and submitting statements in digital form. All central government agencies may publish requests for statements via the services. Statements may be submitted by all organisations and individuals. Other digital means are available for interaction between citizens and public decision making<sup>88</sup>:

- **Otakantaa.fi** is an online service designed to enhance interaction among individuals, organisations and authorities. The service facilitates civic engagement and access to information and promotes transparency in the planning of initiatives and decision-making while improving their quality.
- **Nuortenideat.fi** is a national service established to provide young people with a channel for putting forward their proposals, participating and having a say on matters that relate to them.
- **Kuntalaisaloite.fi** online service enables individuals to submit residents' initiatives to municipalities that have adopted the service and to follow initiatives submitted by others.
- **Kansalaisaloite.fi** is a digital service that enables citizens to launch a citizens' initiative with a view to proposing a new law, amendments to an existing law or the repealing of a law. The Finnish Parliament is obliged to process the initiative if 50,000 citizens who are eligible to vote express their support for it within six months.

<sup>84</sup> [Ley 2/2015, de 2 de abril, de Transparencia, Buen Gobierno y Participación Ciudadana de la Comunitat Valenciana. \(boe.es\)](#)

<sup>85</sup> [Boletín Oficial de Aragón \(aragon.es\)](#)

<sup>86</sup> [Proyecto de Programa Anual de Participación \(castillalamancha.es\)](#)

<sup>87</sup> [Programa Anual - Participación \(carm.es\)](#)

<sup>88</sup> -Almost all legal requirements for consultation are gathered in one place: <http://kuulemisopas.finlex.fi/5-lakisaateiset-kuulemisvelvoitteet/lakisaateiset-kuulemisvelvoitteet/>

All elements on processes of consultation and democratic dialogue are also easily found on the website [www.demokratia.fi](http://www.demokratia.fi), which encourages the use of online services. The demokratia.fi services are easy to access via a single website and they can be used free of charge. They offer citizens equal opportunities to follow decision-making on issues of common interest and to participate in the development of society and they include dedicated participation channels for the various stages of the development process. The request for comments is submitted to all known key stakeholders and published to provide other interested parties with an opportunity to comment as well. The Guide to Consultation in Statute Drafting, issued by the Government<sup>89</sup>, defines policies for the consultation of stakeholders and their participation in the law drafting process, and it applies to all drafting of acts and decrees.

### **France:**

With the rise of new technologies, digital transformation shows the importance of new forms of civic participation, such as online public consultation. **The Warsmann law (law of 17 May 2011) on simplification and improvement of the quality of law**<sup>90</sup> highlights the use of the public consultation process especially in articles 16 and 70. Article 16 makes the point on the use of the internet for public consultation: *“When an administrative authority is required to consult a commission prior to the enactment of a regulatory act, to the exclusion of nominative measures, it may decide to organise an **open consultation making it possible to collect, on a website, the observations of the persons concerned. The administrative authority makes the terms of the consultation known by any means. At the end of the consultation, it draws up a summary of the observations it has gathered, possibly accompanied by additional information. This summary is made public**”*. This last article is reinforced by the decree of 8 December 2011 which empowered the open consultation via the internet and defines how this approach should be implemented.

Nowadays, to make the online public consultation accessible to every citizen, the government put at disposal the website platform [Vie publique](http://Vie-publique.fr)<sup>91</sup>. Each public consultation is informing the citizens on the topic of the debate, the type of public consultation approaches (consultation opened to the public, consultation opened to the public organised by the Prime Minister, debate under the [National Commission for public debate](http://National-Commission-for-public-debate.fr), mainstream citizens’ participation), the legal grounds under which the consultation is done, the period of time the consultation is opened and the authorities in charge of the consultation.

The platform links to the website of the authority organising the public consultation on the internet. This site presents at least the draft text or decision accompanied by an explanatory note to make the consultation accessible to all as well as the decision to organise the consultation when it is intended to replace the consultation of a committee. Those who wish can, by clicking on the "Participate in the consultation" button, submit their observations on the website of the given authority. The minimum duration of consultations, and therefore the period during which citizens can formulate their observations, varies according to the type of consultation:

- 21 days (except emergencies) for consultations on decisions affecting the environment;
- 15 days for consultations replacing the mandatory consultation of an administrative commission;
- No minimum duration is, however, set for other consultations open on the internet.

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<sup>89</sup> The new Guide, published in 2016, replaces the Government Resolution on Consultation in Statute Drafting from 2010.

<sup>90</sup> [Loi n° 2011-525 du 17 mai 2011](http://Loi-n-2011-525-du-17-mai-2011) de simplification et d'amélioration de la qualité du droit (1)

<sup>91</sup> <https://www.vie-publique.fr/consultations>

At the end of the consultation, the organising administration must **publish a summary** of the public's comments on its website. The summaries of public observations on the [vie-publique.fr](http://vie-publique.fr) site is compulsory only for open consultations replacing the consultation of an advisory committee. In other cases of consultations, this summary is optional. For consultations on decisions affecting the environment, the summary should also specify whether it took into account the views expressed and why. In October 2017, the Secretary for Transformation of Public action published a toolbox on civic participation<sup>92</sup> and especially on the various ways to engage the population.

Regarding online public consultations, the legislator regulated this action under three main articles in the **Code of relationships between the public and the administration**<sup>93</sup> and the **organic law n° 2009-403 of 15 April 2009**<sup>94</sup>. These laws guarantee on one hand that the authorities in charge of the consultation give all the information to the public and that everyone can have access to this consultation, and on another hand to make sure that the recommendations expressed at the end of the public consultation are shared to the public. A report must be made and sent to the participants and be visible to all the citizens. In the specific cases regarding the environment, **Article 7 of the Environmental Charter** reinforces the principle where everyone has the right to participate in the drafting of public decisions having impact on the environment. Additionally, the Environmental code was modified in December 2012<sup>95</sup> and in August 2013<sup>96</sup> to make sure that the participation of citizens is considered.

### **Moldova:**

The Government Decision no. 967/2016 on the mechanism of public consultation with civil society in the decision-making process **mentions the need to inform the public about the start of the decision-making process**. This Decision consists mainly in publishing a notice on the proposed law. The notice is to be published within 15 working days after the initiation of the decision-making process. Although the Law provides several ways to publish the announcement, the most convenient are the publication of information on the official website of the public authority and on the portal [www.particip.gov.md](http://www.particip.gov.md), as well as the transmission of information by e-mail or letters to interested stakeholders. **The draft decision is made available to interested parties**. The public authority ensures access to draft decisions and related materials by publishing them on its official website and on the [www.particip.gov.md](http://www.particip.gov.md).

The notice of the organisation of public consultations and related materials shall be made public at least 15 days before the finalisation of the draft decision.

Interested parties may make recommendations on draft decisions within at least 10 days of the date of the announcement of the initiation of the decision or of the date of the announcement of the public consultation. That period may be extended at the request of interested parties. Recommendations are usually submitted electronically. In other cases, the verbal recommendations are reflected in the minutes of meetings. The recommendations are examined by the authority responsible for drafting the decision, which decides on the acceptance or rejection of each recommendation, systematising them in a summary in the form of a table.

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<sup>92</sup> <https://www.modernisation.gouv.fr/sites/default/files/fichiers-attaches/boite-outils-demarches-participation.pdf>

<sup>93</sup> [Titre III : L'association du public aux décisions prises par l'administration \(Articles L131-1 à L135-2\)](#) du Code des relations entre le public et l'administration

<sup>94</sup> [Article 8](#) de la loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution (1)

<sup>95</sup> [Loi n° 2012-1460 du 27 décembre 2012](#) relative à la mise en œuvre du principe de participation du public défini à l'article 7 de la Charte de l'environnement (1)

<sup>96</sup> [Ordonnance n° 2013-714 du 5 août 2013](#) relative à la mise en œuvre du principe de participation du public défini à l'article 7 de la Charte de l'environnement

They are displayed on the official website of the public authority and forwarded for examination to the competent authority together with the draft decision.

Following the adoption of the decisions, the public authorities shall ensure access to the decisions adopted by publishing them in the manner established by law (authorities' website, broadcasting in media etc.).

According to the study developed by the East European Foundation from Moldova (2019), although some ministries have developed internal rules to ensure transparency in the decision-making process decisions, there is no guide / manual at Government level describing the public consultation process of draft laws and policy documents. Some national CSOs and some international organisations have developed guidelines on public participation, but they are not published on the website of the State Chancellery and there is no data on whether they are used by civil servants.

In 2018, eight out of nine ministries (or 89%) published announcements on drafting laws either on their websites or on the platform [www.particip.gov.md](http://www.particip.gov.md). However, there are cases where the announcements did not provide important data (e.g. the date of publication of the notice and the deadline for submission comments, the subject of the project), or the indicated deadline was very short. It is also doubtful that the announcements are published for all legislative projects being developed.

### **North Macedonia:**

The Macedonian Government started over the years to implement new initiatives supposed to integrate better additional stakeholders' opinions – such as CSOs, chambers of commerce etc. – in order to create a relevant consultation process through the adoption of the Single Electronic Register of Regulations, also called [ENER](#). A few methods were adapted in 2006, in light of increasing public consultations, such as:

- the MAIR (Methodology for Assessing Impact of Regulation) and Handbook for its application.
- a Code for Public Consultation.

The legal framework on the consultation process is set up with the ENER as it allows to assess the laws proposals while consulting different stakeholders. This tool aims to provide more transparency to the public about the bills being discussed and is directly supporting the process of Assessing the Impact of Regulation (RIA). Any interested party in giving an opinion or sharing an idea about a project of law, may use the ENER platform<sup>97</sup>. The regulation for holding public consultations must follow the legal framework – drafts and laws proposals need to be available and clearly visible on the ENER platform (besides international laws and emergency procedures) and anyone willing to participate, comment or give their opinion, shall do it within 10 days from the date of publication. After this time, there will be no access to it anymore.

According to the Rules of Procedure of the Assembly, the **government may invite to a session, inter-alia, scientists, professionals, public employees and representatives of organisations, institutions, and associations to obtain their views on certain issues on the agenda** (Article 122, paragraph 2). The government may organise **public debates** regarding a draft law proposal of broader public interest (Article 145) and therefore, prepare a report on the outcome of the

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<sup>97</sup> On top of that, the adoption of the 2019-2021 transparency reform led to the new implementation of the Public Administration Reform Strategy. This new law is supposed to give free access to public information especially in regards of CSOs participatory manners.

public debate, and ultimately, take the initiative to debate certain issues that may have been raised, among others, by citizens' associations (Article 124, paragraph 3).

According to the government officials and the findings of a survey conducted by the Institute for Democracy "Societas Civilis" Skopje (IDSCS) and the Center for Economic Analysis (CEA)<sup>98</sup> there is a low utilisation of the ENER, which has to do with the lack of knowledge and awareness of such a tool by the big majority of the population. In this case, the government said that it cannot *force* citizens to be politically active. Despite guaranteeing a public access to decision-making through the ENER platform, the government lacks initiative in publishing the information in the right time and in giving explanations for denied complaints that might have been submitted, according to their right, by a CSO. This statement is in line with the remarks contained in the European Commission progress reports on North Macedonia for the past years.

### **Poland:**

The legal reference on public consultation is the **Council of Ministers' Rules of Procedure of 29 October 2013**. In accordance with this procedure, each government institution (ministry, central office, agency, etc.) organising a public consultation is required to lay down the rules for the conduct of consultations: subject, purpose, form and timeline. All comments and opinions submitted as part of the consultation must be answered by the organiser of the consultation.

According to art. 36 of the Rules of Procedure, the applicant authority shall, taking into account the content of the draft law or regulation, and taking into account other circumstances, including the importance of the project and the expected socio-economic impact, complexity and urgency of the draft law, submit the draft for public consultation, including the possibility of referring the project to social organisations or other stakeholders or institutions to present their views, taking into account the guidelines for conducting public consultations if they have been established by the Council of Ministers or its subsidiary body<sup>99</sup>. In addition (art. 40), the applicant authority shall, when referring a draft government document for agreement, public consultation or opinion, indicate the time limit for the submission of a position. If the time limit for taking a position does not arise from separate provisions, the applicant authority shall designate it, taking into account the subject matter, scope and volume of the draft government document, the scope of the entities affected by the draft and the urgency of the matter. The applicant authority may organise a *conference* if it considers that its implementation will contribute to the proper conduct of the arrangements or to the opinion of the draft government document, in particular where numerous comments are submitted to the draft.

As a result of the agreement of the draft government document (art. 49), the content of the draft is *either agreed or a discrepancy of positions is found* (indicated by the stakeholders' consultation, note of the author). The applicant authority shall decide on the comments made in the context of the public consultation process or on the opinion of a draft government document.

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<sup>98</sup> Survey on citizens' perceptions on the process of RIA in 2018 (Анкета за перцепциите на граѓаните за процесот на проценка на влијание на регулативата во 2018). IDSCS, CEA. 2019

<sup>99</sup> § 38. 1. The applicant authority shall direct the draft government document for an opinion by the government authorities or other state bodies and institutions concerned by the project. 2. In the cases referred to in separate provisions, the draft government document shall be submitted for opinion to the entities designated in those provisions, in particular a draft whose provisions concern a subject-law falling within the scope of the Joint Committee of government and representatives of local government, churches, social partners or other entities, shall be submitted for the opinion of the competent joint committee.



### **Serbia:**

The public has at its disposal an electronic portal called E-Government<sup>100</sup> in which laws subject to consultations should be published. Thanks to this portal, citizens may post their opinions during official public debates but prior to do so, they need to be registered on the E-Government device. However, there is a limited number of citizens' comments available on the portal compared to the number of persons registered, which indicates that the potential of the platform is still limited. All adopted laws can be accessed free of charge through the National Parliament<sup>101</sup> and the ParagrafLex<sup>102</sup> webpages.

## **3.4. What liability is foreseen for violating the law on public consultations?**

### **Albania:**

There is no data clearly showing a liability in case of non-compliance with the law on public consultations. Part of the reason why such practice is not implemented, is that institutions have not developed mandatory procedures regarding structures responsible for ensuring effective implementation of the law, which leaves open interpretation. Additionally, another issue remains the fact that the Law on Public Consultation has not received much attention compared to the Law on the Right to Information, and therefore it is poorly implemented across public institutions. According to the Law on Public Consultation, public institutions have the obligation to display all the drafts and projects of laws in the platform assigned. In this case, public consultations are in line with the EU recommendations, even if many CSOs have reported numerous cases in which the provision of explanations – regarding their request being denied – were not answered. Furthermore, according to the study on Civil Society Participation in Decision Making in Albania, developed by Westminster Foundation for Democracy, some Ministry departments as well as the Parliament need to improve their transparency regarding the data being displayed and to increase their consultative processes, because they have failed this task in the past.

### **Germany:**

Paragraph 1 of Section 48 of the Joint Rules of Procedure stipulates that *“If it is intended to make bills available to the press and other bodies officially not involved or other persons before, the lead Federal Ministry or, in matters of fundamental political importance, the Federal Chancellery, determines on how this is to be done”*. As previously highlighted, the legislation on public consultation is largely left to the decision of the ministries and hence may vary a lot from one legislation to another. Hence, no liability for violating the law on public consultation is clearly foreseen in the Joint Rules of Procedure.

### **Moldova:**

Basic normative acts, which regulate the participation of civil society in the decision-making process **do not contain clear rules on mechanisms to control and sanction the non-**

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<sup>100</sup> <https://euprava.gov.rs/>

<sup>101</sup> <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

<sup>102</sup> <https://www.paragraf.rs/>

**compliance.** The Law no. 239 of 13.11.2008 includes the only article that deals with liability for non-compliance with transparency in the decision-making process (art. 16), which stipulates that **non-compliance with the provisions of this law constitutes a disciplinary violation and is sanctioned according to the provisions of the Labour Code or “special legislation”**. Nevertheless, a clear connection to the consultation mechanisms is not clearly identified.

### **North Macedonia:**

Some sanctions are applied – following the new Law on Free Access to Public Information, adopted in 2019 – in addressing the non-compliance with the requirements on access to Public Information. Such sanctions are applied whenever an official authority is failing to appoint public officials to deal with free access to public information or fails to inform the public concerning their fundamental right of free access. As a result, the public institutions are sanctioned with a 250 Euros fine for breaking this law. Sanctions are regulated in detail by the Law on Free Access to Public Information<sup>103</sup>.

The majority of CSOs/citizens that use the opportunity to access information receive responses, mostly within the deadline and in a clear form. However, complaints have been raised: when it comes to providing reasons for refusals, in most cases an explanation is not provided, nor is a procedure for filing a complaint made available.

### **Poland:**

In case of mandatory consultations indicated by law, failure to carry out consultations may result in the annulment of the decision by the Voivode, i.e. the representative of the central government in the region, appointed by the Prime Minister. The rules are clearly applied to the regional level. The Voivode has the right to repeal any resolution of local governments if it would be considered against the law. Failure to carry out mandatory public consultation is considered a violation of the law and may be the reason for the repeal of the resolution on behalf of the local government. However, the Voivode does not have the possibility to legally assess the quality of the consultations carried out. If the consultations have taken place and meet the minimum requirements laid down in the laws, the obligation has been fulfilled, even if the consultations were of poor quality and were not effective.

Mandatory consultations are commonly used by local authorities. It was not possible to identify a case of Voivode's repeal of a decision of the local government due to the failure to comply with the requirement of social consultation.

### **Serbia:**

In recent years, there is evidence that sanctions related to the violation of the Law regarding the right of access to public consultations were only partially respected and that the Commissioner for Information of Public Importance has been struggling in addressing the issues encountered. Most of the time, the claims have not led to the result expected by the complainer and the Government of Serbia did not provide the requester with access to the information needed.

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<sup>103</sup> <http://www.mod.gov.mk/wp-content/uploads/2019/07/Zakon-za-sloboden-pristap-do-informacii-od-javen-karakter.pdf>

Referring to the monitoring matrix developed by the Balkan Civil Society Development Network (BCSDN)<sup>104</sup>, since the beginning of 2019, the Commissioner for Free Access to Information has issued 80 decisions to execute the requests for violations of the law. He also addressed the Government 50 times, requesting that his decisions be enforced by direct coercion. The Commissioner has not received feedback in any of those cases.

### **Spain:**

Liability for non-consultation has been identified at the local level. For example, in Madrid, infringements range from failure to comply with the publication of consultations' results to obligations and rights of entities enrolled in the transparency register. Liable subjects are: regional and local administrations and their associated organisations; people and entities obliged to register in the Transparency Register. Penalties are proportionate to the seriousness of the infringements of the person in position to implement those tasks, who within the organisation, can be considered personally responsible (effects can be dismissal, activity and salary suspension and caution).

### **3.5. Is there a practice of restricting the right to public consultations (on the subject, composition of participants, stakeholders, etc.)?**

### **Moldova:**

The Law no. 239 of 13.11.2008 includes the article no. 13, which specifies that meetings of public authorities for decision-making are open, **except in cases of emergency situations**. In those cases, only, draft decisions may be developed and adopted without observing the stages provided for by this law. However, it has been observed that more substantial obstacles exist concerning the dialogue between civil society and authorities, expressed by the politicisation of the selection of partners and the formal character of the discussions on vital issues initiated by the authorities. In this sense, leaders of CSOs openly acknowledge how strongly the quality of dialogue with public authorities should change, arguing that there are no robust and efficient mechanisms for dialogue and consultations, with very few exceptions.

### **North Macedonia:**

The emergency procedure entitles the government to pass new laws without consulting other stakeholders. Therefore, those laws do not appear on the ENER and are almost “invisible”. This **emergency procedure** shed light on an incomplete consultation process since some laws appeared to be implemented despite strong objections. Therefore, it is important to understand when a procedure appears to be an *emergency* and when it is not. As a matter of fact, more emergency procedures were engaged during the past years compared to regular ones.

### **Poland:**

The minimum standards of consultation provided by law are almost always respected. It sometimes happens that public authorities do not carry out consultations *properly*. This means that public authorities share the information about the consultation in a way that is not clear to

<sup>104</sup> <https://monitoringmatrix.net/serbia-report/area-3-sub-areas/standard-3-2-2-public-access-to-draft-policies-and-laws/>



citizens, or organise meetings with residents during working hours, preventing the participation of working people. It should be noted, however, that these are marginal practices. Most public consultations in Poland are conducted in accordance with standards and rules.

The problem, however, is the full implementation in practice of the Act on access to public information. **Many citizens do not receive comprehensive and unambiguous public information from the administration. This claim is based on widespread media opinions.** This is also confirmed by the report on the practical implementation of the right of access to public information prepared by the Institute of Public Affairs in 2015<sup>105</sup>. The report shows that the proportion of requests for public information not responded in due time ranges from 26% on behalf of central authorities to more than 50% on behalf of local authorities. Although the right of access to public information is formally guaranteed in Poland, its practical implementation still faces serious obstacles. Institutions required to make information available, often do not treat requests with due seriousness and do not place sufficient importance on proactively publishing the most important information on their websites. The absence of a body responsible for widening access to and enforcing public information – in particular on the issuing and enforcing binding guidelines for obliged entities – can have a negative impact on the implementation of this right in Poland.

### **Serbia:**

There is no particular mention to limitations to public consultation. The Serbian government has the obligation to make available all drafts and policy documents on the dedicated platform.

### **Spain:**

Public consultation can be omitted if the following conditions occur:

- Drafting of budgetary laws, or laws related to the organisation of the State General Administration or of depending organisations;
- Proposed standard does not have a significant impact on economic activity and/or does not impose relevant obligations on potentially affected stakeholders or regulate partial aspects of a subject matter;
- Urgent processing of policy initiatives to comply with European laws;
- Some extraordinary and unexpected conditions occur requiring an urgent policy approval.

Article 26 of the general Law 50/1997 establishes other consultative forms, such as **public information process or hearings**, to be carried out during the drawing up of the preliminary legislative draft, and in case it affects the legitimate rights and interests of citizens (art. 26, clause 6)<sup>106</sup>. The public information process and hearings can be omitted if and only if there are grave reasons of public interest, to be described and justified in the legal impact report. Thus, both participative measures are not applied to regulation concerning budget, government structure and linked organisations (art. 26, clause 6).

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<sup>105</sup> *Dostęp do informacji publicznej w Polsce – najważniejsze zasady i postulaty* (2015) Aleksandra Kobyłańska (Access to public information in Poland – the most important principles and demands)

<sup>106</sup> The minimum period for a public information process and hearing is 15 working days, but can be reduced to a minimum of 7 working days in case of urgent policy initiatives development as established in art. 27, clause 2.

**3.6. Is there a practice of parallel application of consultative forms of direct democracy such as consultations, discussions, hearings, etc. in the framework of one legal system on forms of democracy? If so, what are the “pros” and “cons” of the division by types of the consultative forms of democracy in terms of their enforcement?**

As mentioned throughout the work, the practices of citizens’ participation and direct forms of democracy are multiple and widespread in all countries studied. They are more present at the local and regional level with successful implementation and in some cases, they are compulsory (regions in Spain or Italy, for instance).

Direct forms of democracy and citizens’ engagement are described at large in literature, which shows their added value, in particular for overcoming distances between citizens and local authorities and the gap of trust (as mentioned in many Council of Europe documents<sup>107</sup>). These forms of participation need to be prepared and implemented in order to engage all citizens and in particular those who cannot get involved (e.g. people with disabilities, educational gaps, etc.). Some issues have been raised (especially in the French laws) on the role of elected representatives and institutions versus the direct engagement of citizens and stakeholders in decision-making (through forms of participative democracy). In France, for instance, the *citizens’ councils* (or citizens’ panels) have created confusion as for the role of the municipal councils (elected by citizens). To respond to these uncertainties, especially in France, the answer is clearly that the “last decision is made by the elected body” and **not** through the consultative process. The Code of Good Practice for Civil Participation in the Decision-Making Process of the Council of Europe<sup>108</sup> introduces various forms of citizens’ engagement, highlighting the possibility (not always) of having a co-decision when it comes to “**dialogue**” and “**partnership**” between civil society and institutions. In present times, participatory democracy or consultative forms of democracy represent much more an added value than an issue. These forms of interaction generate more responsible citizens, engaged civil society and transparent and accountable public institutions.

**Albania:**

While public consultations are part of the legal framework in Albania, there is still a lot of progresses to be made. The European Commission 2019 Report stressed that consultation processes need to be more systematic, transparent, and inclusive when it comes to civil society participation in decision-making. The observation made in the report prepared by the Westminster Foundation for Democracy on Civil Society Participation in Decision Making in Albania<sup>109</sup> remarked that the major issue is that the consultation process is wrongly considered as being a formality, something that the government must respect in line with the EU guidelines. Therefore, it is not presented as a genuine process or as a democratic way of elaborating laws, in which different perspectives and points of view are being considered by the government<sup>110</sup>.

**Armenia:**

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<sup>107</sup> [Recommendation CM/Rec\(2018\)4 of the Committee of Ministers to member States on participation of citizens in local public life](#), which in its appendix recalls that “local public life” shall mean all matters, services and decisions and in particular the management and administration of the affairs relating to or concerning a local community;

<sup>108</sup> <https://www.coe.int/en/web/ingo/civil-participation>

<sup>109</sup> [Civil Society Participation in Decision Making in Albania](#), (2020), prepared for the Westminster Foundation for Democracy by the Institute for Democracy and Mediation in Albania (IDM).

<sup>110</sup> Conversation with the office of ALDA in Skopje

Citizens' participation in decision-making processes are effectively carried out at the local level via **public hearings and discussions** – used to discuss the essential community plans and legal acts referring to the development plan, budgets, strategic documents officially. Besides the face-to-face format for public discussions in Local Self-Government entities, alternative ways are effectively applied depending on the situation and financial resources:

1. Via their own website – a draft legal act or a community issue is placed on the official website providing opportunities for more citizens to participate and leave their comments and suggestions, either in a specified section or sending them by email.
2. Via the broadcasting – with public discussions via television/radio, videoconferences, other online means. This way enables more engagement on behalf of the citizens that are able to ask questions and comment during the live streaming.
3. Via Survey – the questionnaires are prepared by the community staff and are either placed on the official website for answers or are applied during the public meetings/hearings.

It is interesting to note that although the term “public discussion” is used within the laws, the term “public consultation” is of wider usage among the international organisations and delegations functioning in Armenia such as UNDP, OSCE, EU. Given this, both terms “public discussion” and “public consultation” refer to the same context without any strict terminological and legislative separation.

Some other instruments are also foreseen:

1. **Focus groups** – created to clarify and assess the community behaviour towards a certain initiative/project.
2. **Consultative bodies** – they implement consultations, present conclusions and suggestions to the head of community, participating in the elaboration of community policies, development strategies and projects.
3. **Community formal and non-formal groups** – Formal groups (registered legal entities such as civil society organisations, associations, foundations) and non-formal groups (active groups of civic initiative) can be created in the community with the aim to search solutions, exchange ideas, protect and advocate citizens' rights. Both groups advance citizens participation in the processes of community service delivery and elaboration of plans, as well as to bring citizens' problems to the attention of local authorities.

### **Belgium:**

Public consultation is carried out through an extensive network of advisory boards, including up to 600 boards at the federal level, 23 commissions in Wallonia and 13 key strategic boards in Flanders (with an undefined number of other consultative bodies). Each advisory board is regulated individually to reflect the variety of issues and stakeholders, although the approach is based on a set of “models”. Belgian governments also usually consult external stakeholders informally at an earlier stage in the development of regulations. Other forms of more open consultation are also emerging alongside the traditional approach, for example, in the context of administrative burden reduction programmes (e.g., through interviews with stakeholders).<sup>111</sup>

Consultation is considered by governments and many stakeholders as an essential instrument for reaching consensus and overcoming tensions. Stakeholders are generally consulted through a dense, highly structured, and extensive network of advisory boards, which comprise

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<sup>111</sup> *Better Regulation in Europe: Belgium* (2010), OECD

representatives of target groups related to various policy/regulatory issues. The system has the broad support of most stakeholders. Advantages inherent to the system (when it works at its best) include the fact that consulted stakeholders are targeted in terms of their representativeness and expertise, and that they are integrated in an “interactive” discussion with the government<sup>112</sup>.

All advisory boards have a general mission to enlighten administrative and political authorities and associate all relevant stakeholders with the decision-making process. Beyond this, their specific missions may vary. Advisory boards can be asked to provide comments and suggestions in the development of specific new regulations, in the implementation of regulations (e.g., issuing advice on delivery of specific authorisations), and in the development of broader policies. These differences can be reflected in their composition. They can take the shape of technical or expert committees, socio-economic committees (reflecting different target groups) and inter-federal coordination committees (through the representation of region and community organisations). Some advisory boards combine these three different missions. This is the case of the High-Level Statistical Council, which includes academics, business and trade union representatives, as well as federal, regional, and community agencies.<sup>113</sup>

### **Georgia:**

In July 2015, the Parliament of Georgia considered and approved a package of amendments, according to which the following were defined as forms of citizen participation in the implementation of local self-government: a) General Assembly of the settlement; b) Civic Advisory Council; c) Petition; d) Participating in the meetings of the Municipal Council and the Municipal Council Commission; e) Listening to the reports on the work done by the Mayor and members of the Municipal Council.

The **General Assembly of the settlement** is a form of citizens’ participation in the implementation of self-organisation and local self-government, which ensures the active involvement of voters registered in the respective settlement in the process of discussing, resolving and initiating issues of importance to that settlement or municipality. The purpose of the general meeting of the settlement is to ensure the initiation of various important issues for the settlement, and facilitate the involvement of the population in the discussion and resolution of these issues. The Assembly is authorised to consider important social and economic issues for the settlement and prepare relevant proposals for submission to municipal bodies. Also, before they are reflected in the municipal budget, it reviews the projects to be implemented in the respective settlement and submits substantiated remarks and proposals to the municipal bodies. All registered voters in the settlement have the right to participate in the voting. In particular, the right to a deliberative vote is enjoyed by any owner of real estate on the territory of the settlement and any adult person living in this settlement. The proposal, remark, assignment received as a result of the discussion at the General Assembly shall be recorded in the minutes of the General Assembly and the municipal bodies are obliged to consider the

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<sup>112</sup> Ibidem

<sup>113</sup> Ibidem. Belgium has specific consultative bodies to promote “social dialogue” between business and employee representatives (“social partners”) and governments on social and economic issues. This is against the background of a high trade union density relative to other OECD countries. At the federal level, the social dialogue takes place through two long-standing advisory boards (National Council of Labour established in 1952, often referred to as “Belgium’s social parliament”, and the Economy Central Council established in 1948). Each federated entity has established its own social and economic council, bringing together social partners. These councils provide advice and recommendations to their regional government on all matters of regional competence and those having an impact on the region’s economic and social life. They include several thematic permanent committees and ad hoc committees created for specific issues.

decision of the General Assembly and inform the relevant members or nominee of the General Assembly about the results of the discussion.

**Civic Advisory Councils** - An instrument of direct citizens' involvement in the decision-making process is the Civic Advisory council under the mayor, which is an institutionalised communication/consulting channel between the municipal executive and the population (Article 861 of the Local Self-Government Code). As the deliberative body of the highest elected official of the municipality, it is committed to assist in the successful performance of its political function. Within the framework of the Council, it is possible for the mayor to get information through direct communication and discussion with citizens about the problems faced by different groups of citizens and possible ways to overcome them. According to the Code, the mayor is obliged to submit a draft municipal budget and other important administrative-legal acts, proposals on the names of geographical objects, spatial planning documents, as well as other infrastructure and social projects to the Civic Advisory Council for consideration. One of the positive sides of this tool of citizens' involvement is its legislative institutionalisation, as well as the possibility of direct, short-distance communication between mayors and their citizens, and consultations on a wide range of issues needed by the public. Its weak point is the formal, law-abiding approach to the rule of forming a council, which depends entirely on the mayor's common sense and good faith. In addition, since the Council is only a deliberative body, its decisions are not mandatory to execute.

**The Petition** is a draft normative/administrative act, which is submitted to the population registered in the territory of the municipality. It is a form of direct democracy and the procedures formulated in the Local Self-Government Code require minimal involvement of the population (less than 1% of registered voters in the municipality are required) and prompt response from the municipal leadership. According to the Local Self-Government Code, a Petition can be submitted only to the City Council, whose scope of competence limits the list of issues to be submitted as a Petition. Representatives of certain groups of citizens can actively participate in the decision-making process, propose votes on issues of interest or change existing or future decisions. The main advantages of the Petition as an instrument of citizen involvement, especially after the introduction of the electronic Petition, are the wide availability to the population, the need for limited human resources to submit a proposal, the wide range of issues that can be submitted, and their influence on the adoption of future projects, as well as current normative acts. Its weak points are the high qualification required to submit the petition, the low activity of the population and the low impact on the final decision.

**At the regional level there is a Regional Advisory Council**, which is an advisory body to the municipalities under the State Representative. Its aim is to ensure that the interests of the municipality are considered in planning and implementing the development of the territory.

### Germany:

In Germany, independent high-level commissions have the role to assist in determining the shape of regulatory reform policies<sup>114</sup>. Those expert advisory commissions aim at answering to a regulator's specific request. Nevertheless, advisory bodies may themselves carry out extensive consultation processes involving hearings or other methods. For example, the mandate of the Deregulation Commission stated that it "may hear experts from research institutions, the business community and associations, and administration if it deems this

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<sup>114</sup> *OECD Reviews of Regulatory Reform: Background Document on Regulatory Reform in OECD Countries*, OECD Publishing, Paris, p. 20.

necessary”<sup>115</sup>. Public consultation in the country is not very tightly regulated but rather left to the appreciation of the ministries and the regulatory agencies, hence the most used practices may also vary a lot from one legislation to the other. The tools may vary as well and can be used separately or jointly: “a regulatory agency circulating a proposal for comment may arrange a hearing instead of inviting written comments or may do both”<sup>116</sup>.

### **Italy:**

Legislative initiatives allow citizens to submit a bill to the Parliament after having collected 500.000 signatures (Article 71, clause 2, of the Constitution and provisions 48 and 49 of Law no. 352 of 1970).

Referendums give the possibility to citizens to express their opinion directly on a regulation, act or a decision to be taken. Italy has 4 different types of referendum: consultative, confirmatory, overturning and making proposals.

Examples at State level:

- Proposal for a popular Law: "Refusal of medical treatment and lawfulness of Euthanasia" or “Provisions for the prohibition of gambling”<sup>117</sup>.
- Proposal of overturning referendum: “Do you wish Article 579 of the Penal Code (murder of the consenting subject) approved by Royal Decree No. 1398 of 19 October 1930, no. 1398, paragraph 1, limited to the following words ‘imprisonment of six to fifteen years’; comma 2 fully; comma 3 limited to the following words ‘are applied’?”<sup>118</sup>.
- Consultative referendum: In 1989 the Italian population was called to vote on the following question: “Do you believe that the European Communities should be transformed into a genuine Union, with a government accountable to the Parliament, and that the European Parliament should be given the task of drawing up a draft European Constitution to be submitted directly for ratification by the competent bodies of the Member States of the Community?”<sup>119</sup>.
- Overturning referendum: in 1974 the first overturning referendum took place, regarding the following issue: “Do you wish to repeal the Law no. 898 of 1 December 1970 providing for the dissolution of marriage?”<sup>120</sup>

Examples at Regional level:

- Emilia Romagna Region – proposal for a popular initiative to modify the Regional Law No 42 of 14 April 1995 on the provisions relating to compensation for those elected to the office of regional councillor<sup>121</sup>.
- Lombardy Region - by Decree No. 745 of 24 July 2017, it called a Regional Consultative Referendum for Autonomy which was held on 22 October 2017<sup>122</sup>.

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<sup>115</sup> *Background Document on Public Consultation*, OECD

<sup>116</sup> *Ibidem*

<sup>117</sup> Please consult:

[https://www.camera.it/leg18/141?tab=&selCostituzionali=&selIniziativa=Popolare&selTipologia=&selConclusi=&selInCorso=&tipoVis=&http\\_referer=http://www.camera.it/leg18/](https://www.camera.it/leg18/141?tab=&selCostituzionali=&selIniziativa=Popolare&selTipologia=&selConclusi=&selInCorso=&tipoVis=&http_referer=http://www.camera.it/leg18/)

<sup>118</sup> <https://www.gazzettaufficiale.it/eli/id/2021/04/21/21A02408/sg>

<sup>119</sup> <https://www.gazzettaufficiale.it/eli/id/1989/04/24/089A1761/sg>

<sup>120</sup> [https://www.gazzettaufficiale.it/atto/vediMenuHTML?atto.dataPubblicazioneGazzetta=1974-03-04&atto.codiceRedazionale=074U0031&tipoSerie=serie\\_generale&tipoVigenza=originario](https://www.gazzettaufficiale.it/atto/vediMenuHTML?atto.dataPubblicazioneGazzetta=1974-03-04&atto.codiceRedazionale=074U0031&tipoSerie=serie_generale&tipoVigenza=originario)

<sup>121</sup> [https://www.assemblea.emr.it/percorso%20leggi/percorso-delle-leggi/oggetti/111?tipo\\_proposta=Progetto+di+legge+regionale&tipo\\_propONENTE=Iniziativa+popolare&tipo\\_oggetto=Progetto+di+legge](https://www.assemblea.emr.it/percorso%20leggi/percorso-delle-leggi/oggetti/111?tipo_proposta=Progetto+di+legge+regionale&tipo_propONENTE=Iniziativa+popolare&tipo_oggetto=Progetto+di+legge)

<sup>122</sup> [https://anci.lombardia.it/documenti/6835-burl\\_indizione\\_referendum.pdf](https://anci.lombardia.it/documenti/6835-burl_indizione_referendum.pdf)

## **Moldova:**

According to the law on transparency, the consultation with citizens, associations and other interested parties is provided by the public authority **thanks to the following methods**: public discussion; public hearings; public opinion polls; referendum; seeking the views of experts in the relevant field; creating permanent or ad hoc working groups with the participation of civil society representatives. Apart from these methods, any individual or legal entity can contribute to public policy making through the platform [particip.gov.md](http://particip.gov.md).

The official civil society consulting body used to be the **National Participation Council** (which has not been active since 2016). There are several CSOs that are usually consulted by central government authorities: National Youth Council of Moldova, National Platform of the Eastern Partnership Civil Society Forum, EU-Moldova Civil Society Platform and the Platform for Gender Equality. The negative aspects of the forms of consultation in Moldova are that authorities make more formal announcements, not respecting the announcement deadlines and the necessary details. Often, when public consultations were held, only *politically aligned* CSOs were invited, whereas the most relevant ones were not considered. Nevertheless, compared to 10 years ago, the public consultation has been improved. For instance, the publication of announcements on [particip.gov.md](http://particip.gov.md) has increased in 2018 and 2019 compared to previous years.

## **The Netherlands:**

The Netherlands has a strong experience on citizens participation and it includes the law on decentralised participation<sup>123</sup>. A very good example in this sense is the implementation of the “Room for the River” program<sup>124</sup>. In general, the core of the “room for the river” concept is to give more space to a river to increase the velocity of the flow or to reduce the water level of excess flows and time of exposition to large floods. It can be described as a “simultaneous move from vertical flood defences (reinforcing embankments) to horizontal expansion (widening) of rivers, and from vertical, top-down management to more egalitarian forms of multi-actor network governance”, and it is in this framework that the Netherlands achieved extremely good results during the implementation phase.

The application of the room for the river concept entailed a multi-actor collaboration. In the program “the government is aiming for an integrated approach to flood protection in the river Rhine area, with a coherent strategy that takes account of the area’s functions and the interests at stake there”. The national government described the measures in general terms. On a regional level, actors had the possibility to propose additional measures, alternatives or new initiatives. Consequently, the national government, regional governments, the public institutions and the business community were involved in planning and implementation of the projects. The room for the river program is considered as one of the first adopted approaches in which NGOs and private stakeholders in different disciplines at national, regional and local levels are actively collaborating to reduce the flood risk and to enhance the spatial quality. The room for the river program is considered as a successful project. In the Netherlands, it is the first major infrastructure project to be realised on time and within budget.

It is also worth mentioning that in the period between 9 December 2019 (date of publication of the bill and beginning of the consultation period) and 14 February 2020 (closing date of the consultation period) the Act on Reinforcement of Participation has been a positive and fruitful

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<sup>123</sup> <https://www.internetconsultatie.nl/participatieverordening>

<sup>124</sup> <https://www.stowa.nl/deltafacts/waterveiligheid/waterveiligheidsbeleid-en-regelgeving/room-river>

object of a consultation procedure. This bill regulates those decentralised authorities and enables inhabitants to participate in the preparation, implementation and evaluation of policy. To this end, the regulation on participation in the Municipalities Act, Provincial Act, Water Boards Act and the Act for the public bodies of Bonaire, Sint Eustatius and Saba (WolBES) is extended to include participation. The bill implements the government decision of 2017 to create a Right to Challenge regulation, with which the government wants to offer citizens and local associations the opportunity to submit an alternative proposal for the implementation of collective facilities in their immediate vicinity.

### **North Macedonia:**

Some observers are expressing doubts on the potential of “inequality” of forms of citizens’ participation not regulated by electoral processes.

### **Poland:**

**A specific form of public consultation is the citizens’ budget.** Within the framework of the citizens’ budget, residents decide annually on part of the expenditure of the region's budget by direct vote. The tasks selected under the citizens’ budget are included in the budget resolution of the region. The Sejmik (Regional Parliament), in the course of its work on the draft budget resolution, cannot delete or substantially change the tasks selected within the framework of the citizen’s budget.

The **Sejm (Parliament)** organises a public hearing based on the Rules of Procedure of the Sejm of 30 July 1992 (article 70a). The Rules say that:

1. A public hearing on a draft law may be held.
2. The resolution to hold a public hearing shall be taken by the committee to which the draft has been referred for consideration.
3. The resolution to hold a public hearing shall be taken upon a written request made to the committee by a Member of the Parliament.
4. A resolution to hold a public hearing may be taken at the end of the first reading of the draft and before it is submitted to the further detail procedure.
5. The decision to hold a public hearing shall include, in particular, the date and time of the public hearing. The resolution and the information concerning the place where the public hearing is to be conducted shall be made available in the Sejm Information system at least 14 days before the date of the public hearing.

The right to participate in a public hearing on the draft law shall be open to entities which, after the publication of the draft, have submitted to the Sejm, at least 10 days before the date of the public hearing, an interest in the work on the draft law. The right to participate in a public hearing on the draft law shall also be exercised by entities which have not expressed, in accordance with the law of 7 July 2005 on lobbying activities in the law-making process, an interest in the work on the draft law.

In June 2017, a group of civil society and government experts invited by the Polish Ministry of Administration and Digitisation started to work on a document entitled “Seven Principles of



Consultation”<sup>125</sup>. The group elaborated a set of concrete recommendations for conducting public consultations, based on good faith, universality, transparency, etc.

### **Serbia:**

**The Serbian government occasionally involves expertise of local NGOs, especially when they require a technical support to satisfy a specific need, so they can discuss draft laws.** In June 2019, the Government of the Republic of Serbia held a meeting with CSOs aimed at changing the Law on Financial Support for Families with Children. The association “Moms are the Law”, whose attendance was most critical for this law, was not originally invited, but other CSOs that have never dealt with this law were invited. After this association’s post on social networks, an invitation to participate at the meeting was sent just the day before<sup>126</sup>.

In case of ad hoc consultations, the good aspect is that different stakeholders are getting the right to access to political meetings and to participate in elaborating new Laws. While taking part in those working group bodies, CSOs reported having the right to express their opinions in the truest way possible and to express critical stances without being subject to excessive control from the government. On the other hand, it is important to keep in mind that CSO representatives are being chosen through competitive selection processes that reduce their representativeness among the other participants. Additionally, CSOs are not truly engaging in any type of partnerships with the government, their role being limited to consultants and advisors.

Public consultations are embedded in the political system. The obligation by law to make accessible all draft proposals and the disposal, free of charge, of the E-Government platform, are aligned with the EU guidelines. However, the existence of minimal requirements for public consultation on draft laws does not necessarily mean that civil society is significantly engaged in decision-making policy. The fact that NGOs are included in working groups – so that they can access the policy-making process – is presented as sufficient by the government, while there is only a small portion of NGOs/CSOs that get to participate in those discussions, which is not enough in view of strengthening the citizens’ voice.

### **Spain:**

**Consultative initiatives** are promoted by regional public administrations and their bodies, and are addressed to resident citizens, CSOs (except for the Autonomous Communities of Castilla-La Mancha and La Rioja), community representative organisations and citizens living abroad in the case of the Autonomous Communities of Murcia and Valencia.

**Public consultations** are carried out in case of: design and planning of public policies and services; monitoring and evaluation of public policies and implementation of citizens’ services; elaboration and evaluation of general provisions. A final report of the consultation must be published on the web portal, providing explanations for the acceptance or rejection of citizens’ contributions. Public consultative initiatives are published on regional web platforms for transparency and/or participation, accompanied by the legal impact report as required in the above-mentioned national law.

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<sup>125</sup> Official website of Republic of Poland: <https://www.gov.pl/web/cyfryzacja/jak-prowadzimy-konsultacje> (accessed on 15.03.2021)

<sup>126</sup> <https://monitoringmatrix.net/serbia-report/area-3-sub-areas/standard-3-2-3-csos-representation-in-cross-sector-bodies/>

## ANNEX I: EU Bibliography and Laws references

1. *EU public consultations in the digital age: Enhancing the role of the EESC and civil society organisations* (2017) European Economic and Social Committee; Published by: “Visits and Publications” Unit EESC-2017-110-EN

2. *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission* (2002) Commission of the European Communities:

[http://ec.europa.eu/governance/docs/comm\\_standards\\_en.pdf](http://ec.europa.eu/governance/docs/comm_standards_en.pdf)

3. *Special Report ‘Have your say!’: Commission’s public consultations engage citizens, but fall short of outreach activities* (2019) European Court of Auditors:

[https://www.eca.europa.eu/Lists/ECADocuments/SR19\\_14/SR\\_Public\\_participation\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR19_14/SR_Public_participation_EN.pdf)

4. *Better Regulation Guidelines*, Commission Staff Working Document {SWD (2017) 350}:

<https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>

2. European Union Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community (2002/C 325/01)

3. Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01)

4. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007/C 306/01)

- a. TITLE I - INFORMATION FOR NATIONAL PARLIAMENTS Article 1 “Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.”
- b. Article 8B.3 “The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.”
- c. Article 9A.1 “The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.”
- d. TITLE II - INTERPARLIAMENTARY COOPERATION - PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY Article 2 “Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.”