

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

**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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

BACKGROUND

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

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

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

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

- Standardise consultation processes by developing a simple, yet comprehensive regulatory framework
- Work consistently on strengthening the participatory culture among regulation devisers and decision-makers (public administration and elected officials)
- Empower civil society and key stakeholders.

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

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

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

Current Developments in the Eastern Partnership Countries

Systematic open policy making has only been a trend for the past fifteen to twenty years. Countries of the region have taken several important steps in this field as well.¹ In recent years, all of them have ensured (passive) access to information related to adopting regulations and decisions, and also worked increasingly towards having it published proactively. Some of them have already established single governmental websites enabling consultations with stakeholders, which makes searching for and access to information considerably easier. The majority of them have also regulated the so-called traditional participation mechanisms, such as citizens' and civic petitions, and legislative initiatives. They are also developing various tools to make their use easier and bring them closer to people. However, their development has not been uniform, some countries having reached further than others.

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

In recent years, participatory activities of the civil society and other stakeholders have intensified in all countries, yet they are not always obstacle free. Certain restrictions still exist in the region regarding the funding of policy and advocacy civil society

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

programmes, particularly from foreign resources. They should be withdrawn in all countries to ensure free (advocacy) operation and funding for the civil society. It would also be sensible for all countries to support actively the strengthening and empowerment of civil society in the future. Although this is a very progressive concept, it still remains subject to their own initiative and support of donors coming from abroad rather than own country.

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

RECOMMENDATIONS

1. RECOMMENDATIONS FOR CIVIL PARTICIPATION REGULATION

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

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

The state should enable citizens' legislative initiative at all levels of government: local, regional and national. It has to be based on reasonable and proportionate quorums and quotas. People should be actively informed on the possibilities and procedure of citizens' legislative initiative. It is particularly important that citizens are aware of the demands related to the contents of the initiative. The initiatives submitted will thus be better prepared, which will make them easier and quicker to process.

Consultation processes must be mandatory, framed and standardised. The rules have to apply both to the executive as well as legislative power at all levels of decision-making (local, regional and national), to all kinds of documents and decisions, and to all areas of decision-making. Any exceptions have to be defined narrowly and explicitly in advance. There are several possibilities to frame the rules: one of them is to use a regulation, but there are also softer methods, such as official guidelines, recommendations, handbooks, collections of good practices, or combinations of both methods. The approach depends on the local tradition and past practices. Where previously processes have not been regulated, it is sensible to introduce soft approaches

and only adopt legally binding rules if the first method fails to bring success. For cases where there has been partial regulation, which, however, was dispersed across various rules, and was regulated differently across various areas, or not at all in some areas, it is recommended to supplement the valid rules with additional rules, particularly for the areas that might have been left out, and to sum up all the rules in a single informative/reference document. Both the administration and the public will thus be given an opportunity to learn about the rules from a single source. The latter is also important from the point of view that knowing the rules well is a prerequisite for high-quality collaboration.

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

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

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

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

Public consultations should include online consultations, expert working groups, and public hearings as a standard practice. Various consultation methods are required due to their different features and the targeted stakeholders. Electronic consultations are wide, open to everybody, allowing people to join at any time of day.

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

All draft legislation and policy documents should be accompanied by explanatory notes justifying the need for the law or amendments, and the objectives and outcomes of the proposed legislation. Sufficient information is required to ensure that those consulted understand the issues and are able to give informed responses. The information provided should also include validated assessments of the costs and benefits of the options being considered. It is also helpful to provide for each regulation a contact person, responsible for providing additional information to interested stakeholders.

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

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

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

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

Appeal mechanisms and bodies must be envisaged for cases of infringement, and mechanisms of judicial and legal control should also be established. In the event that mechanisms of judicial and legal control have not been defined, an institution has to be indicated for following the regulations prepared in the light of the public discussions held (the so-called gate-keeper). If the public discussion regarding a certain regulation failed to be implemented in accordance with the rules, the indicated institution should be able and obliged to return the proposed regulation back to the submitting party.

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

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

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

2. RECOMMENDATIONS FOR STRENGTHENING THE PARTICIPATORY CULTURE WITHIN THE PUBLIC ADMINISTRATION AND ELECTED OFFICIALS

- a. Promoting inclusive and open decision-making

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

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

Competent authorities should examine and evaluate compliance with the rules on a regular basis. In case of infringements, corrective measures have to be imposed. The approaches and processes have to be improved continuously. It is

sensible for the entire administration to use a unified evaluation system, thus enabling mutual comparison and learning.

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

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

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

Public administration should envisage sufficient human resources and adequate time for consultation in all phases of policy development. Disproportionally short time limits for drafting the regulations (imposed by the parliament to the government or by the government to the public institutions) should be avoided, as public consultations could thus be prevented.

b. Capacity building

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

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

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

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

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

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

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

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

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

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

International donors supporting civil society advocacy programmes and participation of CSOs have to be ensured the appropriate supportive environment. There should be no unreasonable barriers interrupting their operations and financial programmes. Even more, their presence and activity in countries of the region should be actively encouraged. State support is helpful for coordination and collaboration with donors, this could encourage target financing and reduce duplication.

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

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

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

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

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

Special attention should be paid to multi-stakeholder cooperation projects and activities (cooperation among CSOs, business sector, trade unions, religious communities, etc.). Not only does multi-stakeholder cooperation highlight the issue from several angles, each of the stakeholders being based on different premises, it also brings a potential harmonisation of standpoints and partners, which facilitates the dialogue for the state. Furthermore, through the exchange of opinions and increased awareness of

different perspectives, such projects also strengthen the capacities of individual stakeholders.

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

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

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

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

b. Capacity building

Existing training programmes, other forms of strengthening civil society capacities for policy and advocacy (consultancy, mentorship programmes, exchange of good practices) should be developed and supported (including financial support). Development of new programmes should be encouraged. This will improve the quality of civil society initiatives and the quality of the dialogue, making key contributions to the quality of the adopted political solutions.

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