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**CIVIL PARTICIPATION  
IN DECISION-MAKING PROCESSES**

**An Overview of Standards and Practices  
in Council of Europe Member States**

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For  
the European Committee on Democracy and Governance (CDDG)  
with a view to preparing guidelines on civil participation in  
Political decision-making processes

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## I. INTRODUCTION

*"...participatory democracy should be enhanced as a process in which all people, and not only nationals, are involved in the conduct of public affairs, at local, regional, national and European levels"<sup>1</sup>*

The Council of Europe Secretary General's 2015 report<sup>2</sup> specifically recognises the *"effective and sustainable mechanisms for dialogue, consultation and co-operation between civil society and the authorities at all levels"* as important vehicles that are *"allowing the participation of all individuals and societal groups in democratic decision making"*. Indeed, there is increased recognition in countries of Europe about the need to introduce legislative mechanisms or different models that will facilitate civil participation. However, the Secretary General's report correctly finds that in some countries *"the model works reasonably well. In others, the model and the institutions for public consultation and participation lack effectiveness and often exist as a formality"*. In the *"worst cases"*, governments are attempting *"to control citizen initiatives"*. The shrinking space for participation and overall engagement of non-governmental organisations (NGOs) is notable; whilst in some Council of Europe member states it is a recognized challenge, in others it is emerging as a potential problem.

The trend needs to be reverted, existing good practices highlighted and shared; and benefits of participation promoted. Towards this end, the Secretary General recommends that *"the Council of Europe should prepare new guidelines to ensure meaningful civil participation in political decision making, based on best practice and shared standards."* In addition, it commits to address the issue through national level engagements to ensure that *"countries provide for active civil participation in decision-making processes, with formal safeguards in place in line with Council of Europe standards."*

Following up the report, the Terms of Reference of the European Committee of Democracy and Governance 2016-2017, tasked the Committee to *"draw up new guidelines to ensure meaningful civil participation in political decision making, based on best practice and shared standards."* To support the development of the Guidelines, the Committee is to adopt an overview of the existing practice and standards in the Council of Europe member states. The overview and guidelines would encourage member states to take action in order to achieve meaningful civil participation in political decision making.

The following paper<sup>3</sup> provides the requested overview to support the development of the Council of Europe guidelines and their implementation on national level. The paper is developed based on a desktop review of existing materials on participation, recognizing that there has been a number of theoretical papers and research conducted in order to identify practices and models in countries in Europe.

The scope of the civil participation covered in the overview encompasses participation in decision-making processes by individuals and by their organisations. The overview describes

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<sup>1</sup> Council of Europe, PACE, Resolution 1746 (2010) Democracy in Europe: crisis and perspectives, available at: <http://assembly.Council of Europe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17882&lang=en>.

<sup>2</sup> Secretary General of the Council of Europe, *State of Democracy, Human Rights and the Rule of Law in Europe. A shared responsibility for democratic security in Europe*, 2015 <https://edoc.Council of Europe.int/en/an-overview/6455-state-of-democracy-human-rights-and-the-rule-of-law-in-europe.html>

<sup>3</sup> Developed by the European Center for Not-for-Profit Law (ECNL)

the policy cycle in which participation occurs and describes the standards and practices from the perspective of the three main levels of participation: access to information, consultation and active partnership. The overview also provides examples of mechanisms and models which promote broader dialogue as the overarching form of engagement that applies to all levels and phases.

The standards for participation have evolved over the past years, not only in Europe but also internationally. Therefore, this overview describes the existing standards and principles of participation by referring to key documents adopted by United Nations (UN) bodies as well as international conventions and documents adopted by the Council of Europe, the European Union and the OSCE.

The overview provides country examples of mechanisms and models from national level (parliament, government, ministries), as well as regional and local level, and provides practical examples from Council of Europe member states. These examples were selected according to the following criteria:

- whether the mechanisms and initiatives support meaningful participation, i.e. there is information that they are effective in practice or have the potential to be effective if the relevant conditions are met;
- whether they include some innovative approach;
- whether they have the potential to serve as models and be transferable;
- whether there are already some lessons learned in the process of their implementation;
- whether they have the potential to contribute to sustainable and longer term participation, partnership and dialogue.

Ultimately, the overview aims to facilitate cross-border learning and to support the Council of Europe in developing guidelines that will help formalize the right to participation, strengthen guarantees and contribute to meaningful, effective and participatory decision-making processes on national level.

## **II. SCOPE AND PRINCIPLES OF CIVIL PARTICIPATION**

This section describes the specific aspects of participation in political decision-making processes that will be reviewed, including the overall scope and definitions. It relies mainly on standards adopted by the Council of Europe, European inter-governmental organisations, as well as relevant UN documents. It also outlines most common principles and values of participation already integrated in Council of Europe's and other relevant documents.

### **1. Scope and definitions of civil participation**

#### Scope

Civil participation can occur during different times of election and in-between elections, during the various stages of development of policies and laws. The report provides an overview of civil participation in processes where public authorities aim to develop and adopt a policy document, strategy, law, regulation, or any process where a decision that affects the public or a segment of it is made. Civil participation goes in parallel with representative democracy, namely the processes which happen during free and fair elections.

As the General Comment on Article 25 of ICCPR provides the conduct of public affairs:

*“... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.” (§5) Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government” (§6).<sup>4</sup>*

### Participation of individuals and NGOs in the processes

Considering that this overview is developed for the Council of Europe, the scope of the overview focuses on participation of NGOs in such processes. This is in line with the Recommendation CM/Rec (2007)14 which sets standards for participation of NGOs in such processes (as opposed to individuals)<sup>5</sup>. Similarly, the background document of the INGO Code of Good Practice for Civil Participation in the Decision-Making Process (INGO Code on Participation),<sup>6</sup> describes civil participation as *“the engagement of individuals in non-formal institutions such as non-governmental organisations, associations, community services and their participation in the overall public policy-making processes”*. The INGO Code on Participation limits its own scope to *“contribution of organised NGOs in the democratic process and is not focused on the related question of civic participation, i.e. individuals.”*<sup>7</sup>

However, this does not mean that participation should be limited to organized groups and NGOs; most elements of it and models are inevitably applicable to the general public and individuals. Indeed, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that *everyone* shall have the right and the opportunity, without any of the distinctions without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives. In addition, the scope of participation includes *“public and NGOs in particular, as well as other interested parties and stakeholders, who should be able to contribute to the development of policies and legislation which affect or may affect them.”*<sup>8</sup>

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<sup>4</sup> UN Human Rights Committee, General Comment No. 25: *The Rights to participate in public affairs, voting rights and the right of equal access to public service* (Art. 25) CCPR/C/21/Rev.1/Add.7, 27 August 1996, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en)

<sup>5</sup> Council of Europe the Committee of Ministers ,Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states *on the legal status of non-governmental organisations in Europe*, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d534d](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d534d)

<sup>6</sup> Council of Europe Secretariat General, *Code of good practice on civil participation*. Background paper prepared by the Secretariat for the meeting of the Civil Society and Democracy grouping, 2008.

<sup>7</sup> Council of Europe, Conference of INGOs of the Council of Europe, *Code of Good Practice for Civil Participation in the Decision Making Process*, CONF/PLE(2009)CODE1, adopted on 1 October 2009 Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eed5c>

<sup>8</sup> Recommendations on *Enhancing the Participation of Associations in Public Decision-Making Processes* from the Participants to the Civil Society Forum Organized on the Margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association, April 2015 <http://www.osce.org/odihr/185841?download=true>

### Definition of NGOs

When referring to NGOs, this overview uses the Council of Europe definition which states that "NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members."<sup>9</sup> The INGO Code on Participation further describes this definition by elaborating on the types of organisations that can be considered NGOs - specifically voluntary groups, non-profit organisations, associations, foundations, charities, as well as geographic or interest-based community and advocacy groups.<sup>10</sup>

### Participation and political activities

There are recent examples by countries to limit participation by characterizing it as political activities. Therefore, it is important to distinguish between activities related to policy and decision-making processes and political activities.

CM/Recommendation(2007)14 highlights that contributions of NGOs to the society "are made through an extremely diverse body of activities which can range from acting as a vehicle of communication between different segments of society and public authorities, through the advocacy of changes in law and public policy, the monitoring of compliance with existing obligations under national and international law, and on the provision of a means of pursuing, promoting and defending interests shared with others."<sup>11</sup> It also states that "NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with public authority policy or requires a change in the law."<sup>12</sup>

Indeed, many activities of the NGOs have implications for public policy, and may include attempting to influence legislation, lobbying, campaigning on issues of relevance, raising awareness of issues of concern, monitoring elections.<sup>13</sup> However, since there is no universally accepted definition of political activities the term "political activity" is sometimes applied restrictively to limit NGO activities and ability to voice opinions or criticism of actions by public authorities. In terms of good practice, when countries regulate political activities they explicitly list what is considered as "engagement in political activities". If there are limits to such engagement, those are clearly prescribed and narrowly defined.<sup>14</sup> This helps ensure that participation in decision-making processes is distinguished from political activities and is not restricted in the name of political activities.

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<sup>9</sup> Council of Europe Committee of Ministers, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, available at: <https://wcd.councilofeurope.int/ViewDoc.jsp?id=1194609>

<sup>10</sup> Council of Europe Secretariat General, *Code of good practice on civil participation*. Background paper prepared by the Secretariat for the meeting of the Civil Society and Democracy grouping, 2008

<sup>11</sup> CM/Recommendation(2007)14

<sup>12</sup> CM/Recommendation(2007)14

<sup>13</sup> Conference of INGOs, *Non-Governmental Organisations: Review of Developments in Standards, Mechanisms and Case Law 2013-2015* <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492965>

<sup>14</sup> Conference of INGOs of the Council of Europe, Expert Council on NGO Law, *Regulating Political Activities of Non-governmental Organisations*, 2015, <http://www.coe.int/en/web/ingo/expert-council>

## 2. Values and principles of civil participation

The International Association for Public Participation has summarized the core values that participation aims to promote<sup>15</sup>. These include:

- **involving** in the decision-making process those who are affected by or interested in a decision;
- seeking **input** from participants in designing how they participate;
- providing participants with the **information** they need to contribute meaningfully;
- recognizing and communicating the **needs** and interests of all participants, including decision makers;
- enabling public's contribution to influence the decision;
- **communicating** to participants how their input affected the decision.

Code of Good Practice for Civil Participation in the Decision-Making Process elaborates five important principles for civil participation<sup>16</sup>:

- **participation**, in terms of collecting and channelling views of various members and concerned citizens via NGOs to input the political decision-making process;
- **trust**, as honest interaction between actors and sectors;
- **accountability** and **transparency**, from both NGOs and public authorities at all stages;
- **independence** of NGOs, as it is important to recognise NGOs as free and independent bodies in respect to their aims, decisions and activities.

The Recommendations on Enhancing the Participation of Associations in Public Decision-making Processes, from the participants to the NGOs Forum organized by OSCE-ODIHR<sup>17</sup> enumerate the following principles:

- **transparency**, including timely public access to all documents, drafts, decisions and opinions relevant for participation process;
- **impartiality**, especially of NGOs, as they have the right to act independently and advocate different positions from the authorities;
- **openness** and **accessibility**, as the processes for participation needs to be open and accessible to all, based on agreed framework for participation;
- **accountability** and **efficiency**, where participation should be result-oriented to have an actual impact on the content, including authorities to be accountable to the public with respect to consultation processes and report on the results;
- **non-discrimination, equal treatment and inclusiveness**, especially equal access to all, including addressing the needs of minority, disadvantaged, vulnerable or marginalized persons or groups wishing to participate;
- **independence** of associations, including refraining from imposing the obligation on NGOs to engage in decision-making processes or to defend certain positions.

In addition, other institutions and organisations in Europe have highlighted several more principles which guide the process of civil participation, including commitment, recognition

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<sup>15</sup> International Association for Public Participation. Available at <http://www.iap2.org>

<sup>16</sup> Council of Europe *Code of Good Practice for Civil Participation in the Decision Making Process*

<sup>17</sup> Recommendations on *Enhancing the Participation of Associations in Public Decision-Making Processes* from the Participants to the Civil Society Forum Organized on the Margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association, April 2015

of rights and responsibilities, resources, allocation of sufficient time, acknowledgement and feedback, evaluation, etc.<sup>18</sup>

### III. THE ENABLING ENVIRONMENT AS PREREQUISITE FOR MEANINGFUL PARTICIPATION

*“Freedom of assembly and freedom of association are inextricably linked to freedom of expression. Exercised together, they support an inclusive and effective system of checks and balances, in which power is held to account. A guaranteed enjoyment of these rights is a precondition for the active participation of civil society in decision making at all levels of government.”*<sup>19</sup>

As addressed in the findings of the Secretary General’s 2015 report, there is a clear connection between the possibility of people and organisations to participate in decision making and the enabling conditions for operation of NGOs. This is particularly emphasized in the General Comment on Article 25 of ICCPR:

*“Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association”. (§8) “The right to freedom of association, including the right to form and join organisations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25” (§26).*

The same is recognized by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, who stated that *“both individuals involved in association and the association itself must be protected by international human rights law and shall be able to participate in the State’s decision making process.”*<sup>20</sup> It is important, therefore, that when countries review their regulatory frameworks for participation, they also consider and improve the conditions that enable individuals and organisations to engage and contribute in decision-making process. Such approach will contribute to the success of the participatory models and the overall practice of participation.

The overall conditions for NGO development and participation are considered as enabling when the environment (laws and practices) respects the fundamental rights to freedom of association, freedom of assembly, freedom of expression and the protection of human rights defenders.<sup>21</sup> This entails the rights of individuals to organize in groups or formal associations, to be free to decide on their internal governance in a way that would most

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<sup>18</sup> Emina Nuredinoska (MCIC, “The former Yugoslav Republic of Macedonia”) and Katerina Hadzi-Miceva Evans (ECNL, Hungary), *Transparency and Public Participation in Law Making Processes, Comparative overview and assessment of the situation in Macedonia*, 2010.

<sup>19</sup> Secretary General of the Council of Europe, *State of Democracy, Human Rights and the Rule of Law in Europe. A shared responsibility for democratic security in Europe*, 2015. Available at: <https://edoc.CouncilofEurope.int/en/an-overview/6455-state-of-democracy-human-rights-and-the-rule-of-law-in-europe.html>

<sup>20</sup> UN Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 21 May 2012, A/HRC/20/27, available at: [http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27\\_en-annual-report-May-2012.pdf](http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf)

<sup>21</sup> UN Human Rights Council, *Factors that impede equal political participation and steps to overcome those challenges : Report of the Office of the United Nations High Commissioner for Human Rights*, 30 June 2014, A/HRC/27/29, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/069/52/PDF/G1406952.pdf?OpenElement>



effectively help them reach their mission, and where needed, to also engage their constituencies without fear of repercussion. The latter is particularly important for those cases of NGOs who represent vulnerable and marginalized groups who may have particular concerns about their positions or opinions. Freedom of assembly should also be guaranteed, as “assemblies play a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing public policy”.<sup>22</sup> Freedom of expression is closely linked to the participation and conditions important elements of the process, from the ability of everyone to voice opinion<sup>23</sup>, through providing access to information or provision of documents during consultations. In sum, an enabling legal environment sets a protective framework for NGO activities and limits the ability of governments to interfere with NGO basic rights to be established and operate freely.<sup>24</sup>

In addition, central to the issue of participation is the issue of resources that would enable NGOs to actively participate in decision-making. NGOs need resources to take part in the processes, whether it is about covering cost related to the time of their personnel to attend official meetings, write comments, reach out to constituencies or to solicit feedback. They often rely on their own resources to cover costs for this. Therefore, NGOs should be able to raise funds to operate and engage in decision making processes and countries should be encouraged to facilitate supportive financing framework. Enabling laws would provide for the ability to access domestic and foreign funding without a need for authorisation and formal constraints on the process, tax benefits and possibility to raise funding from the public without imposing administrative burdens.

Finally, engagement in decision-making processes should be enabled not only at country level but also in multi-lateral institutions where standards and decisions that also affect national conditions are made. Towards this end, the Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically lists commitments for countries to ensure that they adopt and implement specific legislation and policies to effectively protect those engaging or seeking to engage with multilateral institutions.<sup>25</sup>

#### IV. STANDARDS FOR MEANINGFUL CIVIL PARTICIPATION

*“...every citizen shall have the right and opportunity to take part in the conduct of public affairs”<sup>26</sup>*

The international and European framework for public participation in decision-making processes continues to evolve. Only in the last two years, several UN Human Rights Council resolutions were adopted with the aim to strengthen guarantees for participation in political

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<sup>22</sup> UN Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 21 May 2012, A/HRC/20/27.

<sup>23</sup> The European Court of Human Rights has held that states should create an environment which allows for full participation in open debates, enabling everyone to express their opinions and ideas without fear. (Council of Europe Secretary General, *State of Democracy, Human Rights and the Rule of Law in Europe. A shared responsibility for democratic security in Europe*, 2015)

<sup>24</sup> Katerina Hadzi-Miceva, *A Supportive Financing Framework for Social Economy Organisations*. Paper developed for and presented at a conference on Social Economy in CEE: Emerging Trends of Social Innovation and Local Development, organized by OECD and LEED Program (2005)

<sup>25</sup> UN General Assembly, *Rights to freedom of peaceful assembly and of association*, 16 October 2014, A/69/365, available at: <http://freeassembly.net/reports/report-multilaterals/>

<sup>26</sup> ICCPR article 25

life. This section provides an overview of how participation is regulated and promoted through presentation of the existing norms and standards, with emphasis on documents adopted by the UN bodies and mechanisms, Council of Europe, OSCE and the European Union.

## 1. International level

The *ICCPR*<sup>27</sup> recognizes and provides guarantees for public participation in decision-making processes for every citizen. Article 25 stipulates that every citizen shall have the right and opportunity to take part in the conduct of public affairs, the right to vote and the right to have access to public service. General Comment<sup>28</sup> to Article 25 adopted by the Human Rights Committee further clarifies that the protection is provided to individuals as well as organized gatherings of citizens.

The participatory approach in policy and decision-making processes has been strongly supported by the UN HRC. During the past years, the UN HCR has adopted three resolutions on equal participation in the conduct of public life. *The Resolution on Equal Political Participation from 2013*<sup>29</sup> emphasizes “*the critical importance of equal political participation for democracy, the rule of law, social inclusion and economic development, and advancing gender equality, as well as for the realization of all human rights and fundamental freedoms.*” Towards this end, the Resolution reaffirms the obligation of States to take all appropriate measures to ensure the right to participate in political and public affairs on an equal basis.

*The UN HRC Resolution on Equal Participation in Political and Public Affairs from 2014*<sup>30</sup> reemphasizes the critical importance of equal and effective participation in political and public affairs for democratic governance. In the follow up *Resolution on Equal Participation in Political and Public Affairs* adopted in 2015<sup>31</sup> the UN HRC notes the emergence of new forms of participation and urges states to ensure the full, effective and equal participation of all citizens in political and public affairs:

*“h.) Exploring new forms of participation and opportunities brought about by new information and communications technology and social media as a means to improve and widen, online and offline, the exercise of the right to participate in public affairs, and other rights directly supporting and enabling it.”*

The right to or importance of participation has been emphasised in other UN HRC documents. For example, the *Resolution on Protecting Human Rights Defenders* adopted in

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<sup>27</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>28</sup> UN HRI *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* HRI/GEN/1/Rev.9 (Vol. I) from 27 May 2008, available at: <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>.

<sup>29</sup> UN Human Rights Council, *Equal political participation* : resolution / adopted by the Human Rights Council , 8 October 2013, A/HRC/RES/24/8 , available at: [http://dag.un.org/bitstream/handle/11176/305484/A\\_HRC\\_RES\\_24\\_8-EN.pdf?sequence=3&isAllowed=yn](http://dag.un.org/bitstream/handle/11176/305484/A_HRC_RES_24_8-EN.pdf?sequence=3&isAllowed=yn)

<sup>30</sup> A/HRC/RES/24/8

<sup>31</sup> UN Human Rights Council, *Equal participation in political and public affairs* : resolution / adopted by the Human Rights Council , 12 October 2015, A/HRC/RES/30/9, available at: <http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=A/HRC/RES/30/9&Lang=E&Type=DOC>

2013<sup>32</sup> recognizes the value of the work of human rights defenders in the monitoring of existing legislation and for providing input to draft legislation. It also urges states to create an enabling environment for the operation of human rights defenders.<sup>33</sup>

The UN HRC *Civic Space Resolution* from 2013<sup>34</sup> stipulates that special importance should be given, among other measures, to the real and effective participation of the people in the decision-making processes. The Resolution further urges countries to acknowledge the essential role of the NGOs in the promotion of human rights, democracy and the rule of law, and calls upon them to enable its participation in the public debate on the related issues. This was re-emphasized by the follow up *Resolution on Civic Space from 2014*<sup>35</sup>.

The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*<sup>36</sup> adopted by the UN General Assembly in 1999 acknowledges the right of “everyone” to participate in the decision-making processes. Article 8 of the Declaration provides that:

*“1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the public authority of his or her country and in the conduct of public affairs.”*

There are also other UN thematic documents that emphasise right to participation, such as, for example, the UN Convention on the Rights of Persons with Disabilities.<sup>37</sup> Article 9 of the Convention makes reference to the physical accessibility and among others it refers to participation in meetings and accessibility of consultation documents. The Convention stipulates:

*“9...[t]o enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”*

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<sup>32</sup> A new resolution on protection of human rights defenders addressing economic, social and cultural rights that also recognizes the importance of public participation is currently debated at the Human Rights Council.

<sup>33</sup> UN Human Rights Council, *Protecting human rights defenders* : resolution / adopted by the Human Rights Council , 12 April 2013, A/HRC/RES/22/6 [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/22/6](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/22/6)

<sup>34</sup> UN Human Rights Council, *Civil society space : creating and maintaining, in law and in practice, a safe and enabling environment* : resolution / adopted by the Human Rights Council, 9 October 2013, A/HRC/RES/24/21, available at: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/22/6&Lang=E>

<sup>35</sup> UN Human Rights Council, *Civil society space: resolution* / adopted by the Human Rights Council A/HRC/RES/27/31, available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/27/31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/31)

<sup>36</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* : resolution / adopted by the General Assembly , 8 March 1999, A/RES/53/144, available at: <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>37</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities* : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

One of the very important documents adopted at the international level is the *Aarhus Convention*,<sup>38</sup> signed by 46 countries and the European Union. The Convention sets out minimum requirements for public participation in environmental decision-making especially through accessing information and providing comments on environmental documents.<sup>39</sup>

## 2. Council of Europe

The primary document that provides guarantees related to participation is the *Convention for the Protection of Human Rights and Fundamental Freedoms*.<sup>40</sup> Article 10 of the Convention protects **freedom of expression** and Article 11 **freedom of assembly and association**. “*Exercised together, they support an inclusive and effective system of checks and balances, in which power is held to account. A guaranteed enjoyment of these rights is a precondition for the active participation of civil society in decision making at all levels of government.*”<sup>41</sup>

The **right to access relevant information held by public bodies**, especially for those acting in the public interest is a precondition for effective participation.<sup>42</sup> The 2009 Convention on Access to Official Documents<sup>43</sup> elaborates on the right of access to official documents held by public authorities. The Convention introduces minimum standards to be applied when processing the requests for access to official documents and provides flexibility for the signatories to introduce even greater rights of access to these documents. Article 10 of the Convention stipulates that: “*At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.*”

**Electronic democracy** is a means for participation. *Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy)* recognizes that information and communication technology (ICT) facilitates wider democratic participation by individuals and groups and greater transparency and accountability in democratic institutions and processes and contains concrete guidelines for introducing and developing e-democracy.

The **importance of public participation** has been acknowledged in numerous Council of Europe instruments many of which concern the **local level**.

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<sup>38</sup> UN Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (“Aarhus Convention”) 1998, available at: <http://ec.europa.eu/environment/aarhus/>.

<sup>39</sup> The establishment of the Aarhus Convention Compliance Committee was envisaged by the Article 15 of the Aarhus Convention. More about the Committee at: <http://www.unece.org/env/pp/ccbackground.html>.

<sup>40</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, available at: [http://www.echr.Council of Europe.int/Documents/Convention\\_ENG.pdf](http://www.echr.Council of Europe.int/Documents/Convention_ENG.pdf).

<sup>41</sup> Secretary General of the Council of Europe, *State of Democracy, Human Rights and the Rule of Law in Europe. A shared responsibility for democratic security in Europe*, 2015 <https://edoc.Council of Europe.int/en/an-overview/6455-state-of-democracy-human-rights-and-the-rule-of-law-in-europe.html>

<sup>42</sup> The European Court of Human Rights has consistently recognised that the public has a right to receive information of general interest.

<sup>43</sup> Council of Europe, *Convention on Access to Official Documents* 2009 (CETS No. 205). Available at: <http://www.Council of Europe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084826>.

*Recommendation CM/Rec (2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life*<sup>44</sup> was the first instrument in this field. It recommends to member states' governments to frame a policy promoting public participation in local public life and to enable local authorities to employ various participation instruments within a national legal framework.

*Recommendation CM/Rec (2009)2 of the Committee of Ministers to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level*<sup>45</sup> includes a self-assessment tool for citizen participation at the local level.

The **right to participate** in the affairs of a local authority was introduced by the *Additional Protocol to the European Charter of Local Self-Government*.<sup>46</sup> The Protocol regulates the right to participate in the affairs of a local authority, sets out implementing measures for its application in practice and determines the authorities and territories to which the Protocol applies. Article 1 provides for the introduction of legally binding guarantees for the right to local participation:

*“1(1) The States Parties shall secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.”*

The **participation of NGOs in democratic decision making process** is addressed in two Council of Europe documents.

The first instrument is CM/Recommendation (2007)14 on the legal status of NGOs<sup>47</sup> highlights *“the essential contribution made by NGOs to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities.”* The Recommendation further elaborates on the obligations of states:

*“76. Governmental and quasi-governmental mechanisms at all levels should ensure the **effective participation of NGOs without discrimination in dialogue and consultation** on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.*

*77. NGOs should be consulted **during the drafting of primary and secondary legislation** which affects their status, financing or spheres of operation. “*

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<sup>44</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (2001)19 to member states *on the participation of citizens in local public life*, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2721001&SecMode=1&DocId=234770&Usage=2>.

<sup>45</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)2 of the Committee of Ministers to member states *on the evaluation, auditing and monitoring of participation and participation policies at local and regional level*, available at: [https://wcd.Council of Europe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)2&Language=lanEnglish&Site=CM&BackColorInternet=DBCDF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.Council of Europe.int/ViewDoc.jsp?Ref=CM/Rec(2009)2&Language=lanEnglish&Site=CM&BackColorInternet=DBCDF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

<sup>46</sup> Council of Europe, *Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority*, CETS 207 – Local Self-Government (Protocol), 16.XI.2009, available at: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482a>.

<sup>47</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states *on the legal status of non-governmental organisations in Europe*, available at: <https://wcd.Council of Europe.int/ViewDoc.jsp?id=1194609>.

The second document is the *Code of Good Practice for Civil Participation in the Decision Making Process (2009)* developed by the Conference of INGOs. The Code defines general principles, guidelines, tools and mechanisms for active participation of NGOs in the decision-making process, based on actual experiences from NGOs across Europe. Even though this INGO Code on Participation is not legally binding, it provides detailed guidance for the development of participatory decision-making processes at all levels. To encourage the Code's implementation, the Committee of Ministers adopted a *Declaration*<sup>48</sup> which calls on national authorities to take due account of the Code when undertaking actions to foster NGO participation in the decision-making processes.

The importance of the NGO participation in decision-making processes at all levels was also acknowledged by the *OSCE-ODIHR – Venice Commission Guidelines on Freedom of Association* from 2015.<sup>49</sup> The Guidelines provide a set of principles for a meaningful participation and give examples of how such participation should be facilitated.

The Council of Europe Secretary General's 2015 report also refers to the fact that “*States should create an enabling environment, including a favourable legal framework, for the functioning of non-governmental organisations (NGOs) as well as sustainable mechanisms for dialogue, consultation and co-operation between NGOs and the authorities.*” Further on, the Chapter 4 of the Report provides several measurement criteria on Good Governance, which should be applied by public authorities:

*“**Openness and transparency:** decisions are taken and enforced in accordance with rules and regulations; the public has access to all information which is not classified for well-specified reasons; information on decisions, policies, implementation and results is made public. **Innovation and openness to change:** new, efficient solutions to problems and improved results are sought; modern methods of service delivery are tested and applied; and a climate favourable to change is created. **Accountability:** all decision makers take responsibility for their decisions; decisions are reasoned, subject of scrutiny and can be sanctioned; remedies exist for maladministration or wrongful decisions.”*

The Parliamentary Assembly (PACE) regularly recalls the importance of participation for a democracy: Resolution 1746 (2010) on “*Democracy in Europe: crisis and perspectives*”<sup>50</sup> calls on the Council of Europe member states to establish participatory and deliberative processes and structures open to everyone living in the country, set up independent supervisory institutions to hold the decision-makers accountable and improve education and political training. Resolution (2096) on “*How can inappropriate restrictions on NGO activities in Europe be prevented?*”<sup>51</sup> calls on member States to “*ensure that NGOs are*

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<sup>48</sup> Declaration by the Committee of Ministers on the *Code of Good Practice for Civil Participation in the Decision-Making Process* adopted on 21 October 2009 at the 1068th meeting of the Ministers' Deputies. Available at: <https://wcd.CouncilofEurope.int/ViewDoc.jsp?id=1525009&Site=CM>.

<sup>49</sup> OSCE-ODIHR – Venice Commission, *Guidelines on Freedom of Association*, 2015. Available at <http://www.osce.org/odihr/132371?download=true>.

<sup>50</sup> Council of Europe, PACE, Resolution 1746 (2010) *Democracy in Europe: crisis and perspectives*, available at: <http://assembly.CouncilofEurope.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17882&lang=en>.

<sup>51</sup> Council of Europe, PACE, Resolution (2096) on “*How can inappropriate restrictions on NGO activities in Europe be prevented?*” <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnceveG1sL1hSZWYvWDJILURXL>

*effectively involved in the consultation process concerning new legislation which concerns them and other issues of particular importance to society.”* Resolution 2095(2016) on “*Strengthening the protection and role of human rights defenders in Council of Europe member States*”<sup>52</sup> requests member states “*to ensure that human rights defenders are included, where possible, in the legislative process concerning human rights and fundamental values.*”

The Congress of Local and Regional Authorities takes a particular interest in citizens’ participation through NGOs. Resolution 385(2015) on “*Fostering active citizenship by building partnerships with civil society*”<sup>53</sup> focuses on the application and updating of the above mentioned Code of Good Practice for Civil Participation of the Conference of INGOs.

The Council of Europe developed standards for the **participation of certain categories of persons in public life**. Some concern the local level of government, others all levels.

The above mentioned *Recommendation CM/Rec (2001)19 to member states on the participation of citizens in local public life* provides specific steps and measures to encourage participation of the categories of individuals who have greater difficulty in participating with a particular emphasis on women and young people. Similarly, the Additional Protocol to the European Charter of Local Self-Government from 2009 stipulates that:

*“1(3) Without unfairly discriminating against any person or group, the law (on the right to participate in the affairs of local community) may provide **particular measures for different circumstances or categories of persons.**”*

### Foreigners

*The European Convention on the Participation of Foreigners in Public Life at Local Level*<sup>54</sup> obliges the parties to guarantee to foreign residents, on the same terms as to its nationals, the rights to freedom of expression, assembly and association. In addition, the parties may commit to apply Chapters B and C of the Part I. of the Convention, hence to set up consultative bodies to represent foreign residents at a local level and guarantee foreign residents the right to vote in local elections. All parties have to ensure that all information is available to foreign residents concerning their rights and obligations related to the local public life.

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<sup>52</sup> Council of Europe, PACE, Resolution 2095(2016) “*Strengthening the protection and role of human rights defenders in Council of Europe member States*” <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmVncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0yMjUwMjZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTIyNTAy>

<http://www.semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmVncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0yMjUwMjZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTIyNTAy>

<sup>53</sup> Council of Europe, Congress of Local and Regional Authorities, Resolution 385(2015) on “*Fostering active citizenship by building partnerships with civil society*” <https://wcd.coe.int/ViewDoc.jsp?p=&id=2376591&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C&direct=true>

<sup>54</sup> Council of Europe, *The European Convention on the Participation of Foreigners in Public Life at Local Level*, available at: <http://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168007bd26>.

## Women

The importance of the fair representation of women in the decision-making bodies is emphasized in several Council of Europe documents, for example, in the *Declaration on equality between women and men as a fundamental criterion of democracy*<sup>55</sup> and the above mentioned *Recommendation CM/Rec (2001)19 on the participation of citizens in local public life*. To ensure this, the latter suggests introducing compulsory or recommended quota systems for the minimum number of same-sex candidates for local councils, local executive bodies and the various committees and boards formed by local bodies.<sup>56</sup>

## Persons with disabilities

*Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life* encourages governments to continue their efforts in this field by adopting appropriate legislation, developing support services so that persons with disabilities can participate in political life as citizens holding equal political rights and obligations.

## Young people

The Committee of Ministers adopted numerous Recommendations to support the effective participation of the youth in public life. The first *Recommendation CM/Rec (97)3 of the Committee of Ministers to member states on youth participation and the future of civil society*<sup>57</sup> dating back to the 1997 reaffirms the crucial role of youth in the development of civil society and recommends to promote partnership between public authorities and youth organizations.

*Recommendation CM/Rec (2004)13 of the Committee of Minister to member states on the participation of young people in local and regional life*<sup>58</sup> recalls that the principles for youth participation apply also at a local level. The *Revised European Charter on the Participation of Young People in Local and Regional Life* is appended to this Recommendation. It regulates youth participation and institutional participation by young people in local and regional affairs. The instruments include trainings in youth participation, provision of information to young people, promotion of youth participation through information and communication technologies and media, encouragement of youth voluntary work and others. Institutional participation provides for the creation of youth council, parliaments and youth forums.

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<sup>55</sup> Council of Europe: *Declaration on equality between women and men as a fundamental criterion of democracy MEG-4(1997)018*.

<sup>56</sup> Appendix of the Recommendation CM/Rec (2001)19 *on the participation of citizens in local public life, point D, Article 3 ii*.

<sup>57</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (97)3 *on youth participation and the future of civil society*, available at: [http://pjp-eu.coe.int/documents/1017981/1663182/Rec3\\_1997\\_Coe\\_youth-participation-and-the-future-of-civil-society.pdf/f0c6f2b7-1369-47ac-bb1b-adf8428e4ba1](http://pjp-eu.coe.int/documents/1017981/1663182/Rec3_1997_Coe_youth-participation-and-the-future-of-civil-society.pdf/f0c6f2b7-1369-47ac-bb1b-adf8428e4ba1).

<sup>58</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (2004)13 *on the participation of young people in local and regional life*, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805dbd33](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dbd33).



*Recommendation CM/Rec (2006)1 of the Committee of Ministers to member states on the role of national youth councils in youth policy development*<sup>59</sup> recognizes the value of youth councils' in the development of public youth policies and calls on the member states to facilitate their creation and support their work. In addition, the document recommends the member states' governments to "(g) consider involving national youth councils in the definition of procedures and mechanisms used by public authorities to consult young people in general."

*Recommendation Rec(2006)14 of the Committee of Ministers to member states on citizenship and participation of young people in public life*<sup>60</sup> reinstates the recommendation to create youth councils and calls the member states to develop a favourable environment for effective youth participation, including through provision of information in accordance with the established principles. The effective access to information for young people is also encouraged by the *Recommendation CM/Rec (2010)8 of the Committee of Ministers to member states on youth information*.<sup>61</sup>

*Recommendation CM/Rec (2012)2 of the Committee of Ministers to member states on the participation of children and young people under the age of 18*<sup>62</sup> acknowledging the value of their contributions as "unique resources for strengthening human rights, democracy and social cohesion in European societies." The Recommendation calls on the member states to protect the child's and young person's right to participate through adoption of legal guarantees with a periodical review of their application and provision of effective redress and remedies in case of violations.

In addition, the Committee of Ministers recognizes the importance to provide meaningful opportunities and programs for participation also to the young people from disadvantaged neighbourhoods. In the *Recommendation CM/Rec(2015)3 on the access of young people from disadvantaged neighbourhoods to social rights*<sup>63</sup> the Committee recommends to involve youth from disadvantaged neighbourhood in public decision-making, particularly in the planning and management of their living environment.

### Minorities

Council of Europe instruments for protection of minorities also include rules for the participation in public affairs.

The *Framework Convention for the Protection of National Minorities*<sup>64</sup> obliges the parties to:

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<sup>59</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (2006)1 *on the role of national youth councils in youth policy development*, available at:

[https://www.coe.int/t/dg4/youth/Source/IG\\_Coop/Documents/CM\\_Rec\\_06\\_national\\_youth\\_councils\\_en.pdf](https://www.coe.int/t/dg4/youth/Source/IG_Coop/Documents/CM_Rec_06_national_youth_councils_en.pdf).

<sup>60</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (2006)14 *on citizenship and participation of young people in public life*, available at:

[https://www.coe.int/t/dg4/youth/Source/IG\\_Coop/Documents/CM\\_Rec\\_06\\_youth\\_participation\\_public\\_life\\_en.pdf](https://www.coe.int/t/dg4/youth/Source/IG_Coop/Documents/CM_Rec_06_youth_participation_public_life_en.pdf).

<sup>61</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (2010)8 *on youth information*, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cecd8](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cecd8).

<sup>62</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec (2012)2 *on the participation of children and young people under the age of 18*, available at: <http://www.refworld.org/docid/506981802.html>.

<sup>63</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2015)3 *on the access of young people from disadvantaged neighbourhoods to social rights*, available at:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c46f7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c46f7).

<sup>64</sup> Council of Europe: Framework Convention for the Protection of National Minorities, available at: <http://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168007cdac>.

*“15. ...create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”*

The *European Charter for Regional or Minority Languages*<sup>65</sup> provides a general framework for the protection of the right to use a regional or minority language in private and public life and a set of concrete measures to promote the use of these languages in various areas of public life.

### **3. European Union**

The participatory approach of policy and law-making processes at the EU level is guaranteed in the Lisbon Treaty.<sup>66</sup> Specifically, Article 8 A prescribes that: *“Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”* Further, Article 8 B provides that *“1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. 2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and NGOs.”* The document further obliges the European Commission to carry out consultations with parties concerned and regulates a right of EU citizens to invite the European Commission to submit a proposal on matters necessary for the implementation of the Treaty.

Prior the adoption of the Lisbon Treaty, the European Commission developed several documents emphasizing the importance of public participation and providing guiding principles for its implementation in practice. Namely, the *White Paper on European Governance*<sup>67</sup> adopted in 2001 which highlights five principles of ‘good governance’ in order to increase the legitimacy of the decision-making processes. The White Paper called on the European Commission to ensure its implementation which resulted in the adoption of the *General principles and minimum standards for consultation of interested parties by the Commission (EC Principles and Minimum Standards)*<sup>68</sup> in 2002. The standards are organized around five areas: providing clear content of the consultation process, defining consultation target groups, organizing awareness raising publicity and publishing the consultations online, defining time limits for the receipt of responses and acknowledging and providing feedback to the received contributions.

Public participation in decision-making processes is also one of the priority areas of the EU support for NGOs development in the enlargement countries and qualification requirement for EU membership. According to the *Guidelines for EU support to NGOs in enlargement*

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<sup>65</sup> Council of Europe: The European Charter for Regional or Minority Languages, available at: <http://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168007bf4b>.

<sup>66</sup> European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

<sup>67</sup> European Union, Commission of the European Communities COM(2001) 428, *White Paper on European Governance*. Available at: [http://europa.eu/rapid/press-release\\_DOC-01-10\\_en.htm](http://europa.eu/rapid/press-release_DOC-01-10_en.htm).

<sup>68</sup> Communication from the Commission - *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties* by the Commission; COM/2002/0704, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52002DC0704>.

*countries (2014-2020)*<sup>69</sup>: “NGOs participation is a key factor in ensuring good quality comprehensive legislation and in developing sustainable policies that reflect people's needs and are accepted by those most concerned by them.” The Guidelines conclude that mechanisms for cooperation between NGOs and public institutions and access to information of public interest are of critical importance.

#### 4. OSCE ODIHR

The Joint Guidelines of the OSCE/ODIHR and the Venice Commission on Freedom of Association from 2015 were already mentioned in chapter IV.2.

Participants to the NGO Forum held in Vienna in April 2015 prepared *Recommendations on Enhancing the Participation of Associations in Public Decision-making Processes* as input to the Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association organised by the OSCE /ODIHR.<sup>70</sup>

### V. FRAMEWORK FOR MEANINGFUL CIVIL PARTICIPATION

*“The quality of EU policy depends on ensuring wide participation throughout the policy chain – from conception to implementation”.*<sup>71</sup>

This section will elaborate and discuss the different levels for participation (access to information, consultation, active involvement) and their relationship with the policy cycle to highlight how meaningful participation can be achieved. In order to refine and further elaborate how participation is implemented, this section builds on existing frameworks that elaborate the levels and policy cycles, considering the INGO Code of Good Practice<sup>72</sup> as the basis but also contemporary approaches and practice,. It should be emphasised that, in practice, all levels of participation can occur in all policy phases.

#### 1. Policy cycle phases

Broadly speaking, the policy cycle refers to a process of (1) developing laws and policies, (2) implementing them, and (3) monitoring their impact on the ground.<sup>73</sup> It is an ongoing process, which can be structured around three main phases: policy formulation, policy

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<sup>69</sup> European Union, DG Enlargement, *Guidelines for EU support to NGOs in enlargement countries (2014-2020)*. Available at [http://ec.europa.eu/enlargement/pdf/civil\\_society/doc\\_guidelines\\_cs\\_support.pdf](http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf).

<sup>70</sup> Recommendations on *Enhancing the Participation of Associations in Public Decision-Making Processes* from the Participants to the Civil Society Forum Organized on the Margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association, April 2015

<sup>71</sup> Communication from the Commission - *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties* by the Commission; COM/2002/0704, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52002DC0704>. of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission

<sup>72</sup> Code of Good Practice for Civil Participation in the Decision-Making Process; *Civil Dialogue, Making It Work Better*, Fazi Elodie and Smith Jeremy, NGOs Contact Group, 2006; *How to establish an effective dialogue between the EU and NGOs*, European Social Platform. 2009; *Policy Dialogue Manual, Capacity building of civil society to take part in policy dialogue*, Bosnia and Herzegovina (Cidi), 2011.

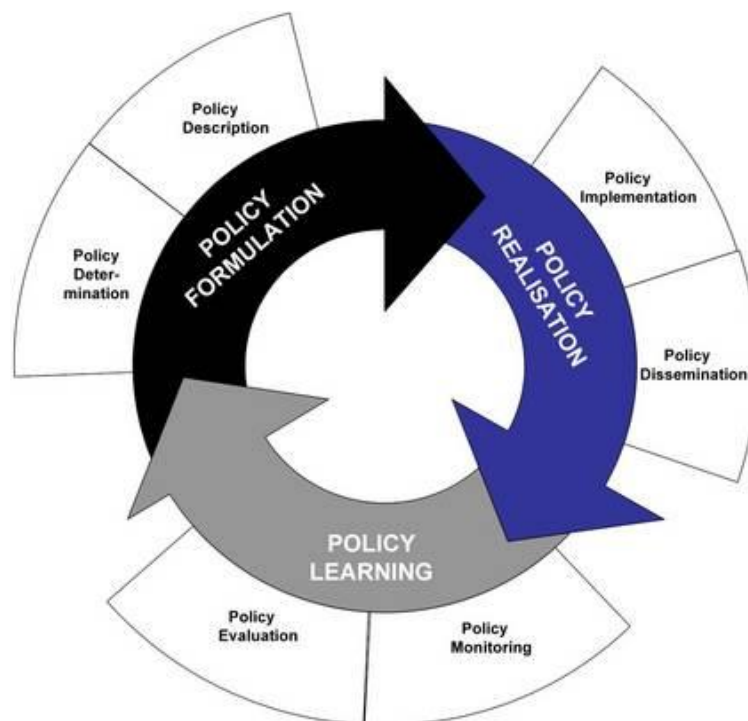
<sup>73</sup> Fazi Elodie and Smith Jeremy, *Civil Dialogue, Making It Work Better*, NGOs Contact Group, 2006, available at: <http://act4europe.horus.be/module/FileLib/Civil%20dialogue,%20making%20it%20work%20better.pdf>

realisation and policy learning. The European Commission recognizes the importance of participation in all phases by stating *"the quality of EU policy depends on ensuring wide participation throughout the policy chain – from conception to implementation"*<sup>74</sup>.

During the entire policy cycle, it is a good practice to ensure the following:

1. inform the public, provide regularly updated and accessible information about the policy development process and the contents;
2. develop and adhere to transparent, user-friendly procedures in decision making, to encourage civil participation;
3. actively involve participants in dialogue through listening to suggestions, being responsive to their inputs and providing feedback;
4. provide additional resources (e.g. grants, administrative services and other goods or services) so that participants can be engaged in a meaningful manner.

The phases are illustrated in the following scheme:<sup>75</sup>



### 1.1 Policy formulation (agenda setting, drafting, decision)

The policy formulation phase typically starts with a decision to introduce a new policy (or regulation), or amend the existing one. This can be reflected by setting policy priorities, as political agenda of the public authorities in general, or within some type of strategic planning process for specific sectors. In all cases, policy formulation may and should be influenced by other sectors of society, such as the business sector and NGOs. Moreover, public authorities may actively seek NGOs input into their agenda to refine ideas and needs of different

<sup>74</sup> Communication from the Commission - *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties* by the Commission; COM/2002/0704, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52002DC0704>.

<sup>75</sup> Illustration from *Policy Dialogue Manual, Capacity building of civil society to take part in policy dialogue*, Bosnia and Herzegovina (Cidi), 2011.

segments of society. In addition, during the process of concrete drafting of the policy or regulations, public authorities can include input from participation harvested through various levels and methods of participation (such as consultation, dialogue, referendum, etc.).

### **1.2 Policy realisation (implementation, dissemination)**

This phase includes putting into effect and disseminating the adopted policy. Civil participation can have several important roles in this phase, but most notably NGOs and other actors may participate actively in implementing the policy or regulations through own activities. The public authorities can also select them to be a partner in the implementation of a law or policy through a transparent process. Participation in this phase can be developed through active dialogue or establishing partnership with NGOs. There needs to be a clear and efficient procedure for selection of those participating in the formal implementation of policies and regulations, in order to ensure transparency and impartial authority's approach.

### **1.3 Policy learning (monitoring, evaluation)**

During this phase, the effectiveness and impact of a policy are monitored and evaluated. This may provide the information needed to restart a new policy cycle. Assessing the effectiveness of the policies or regulations after a certain period of time is a crucial element of monitoring. NGOs can play an important role in this phase as they can sometimes provide quick and more efficient impact monitoring as they will likely have direct access to beneficiaries. The public authorities can also engage with NGOs in official monitoring and evaluation processes within active dialogue or establishing partnership with NGOs, or selecting them as official provider. Here too, the public authority needs to provide clear and efficient procedures for selection of those participating in the monitoring and evaluation if such processes are led by the public authority.

## **2. Levels for participation**

Most policy documents<sup>76</sup> consider participation as a continuum of interaction between different levels of public authority and the public, which ranges from informing and listening to implementing jointly agreed solutions. Having in mind the different phases of the policy cycle, the intensity and form of participation will vary, depending on the phase and the desired result. Council of Europe documents and several country specific legal frameworks and practices recognize the following levels of participation: (1) access to information, (2) consultation, (3) active involvement (partnership). In addition, as an overarching dimension of participation and engagement is through dialogue, which is an underlying form of collaboration. These levels are discussed in detail below.

### **2.1 Access to Information**

This is a crucial precondition for participation where authorities inform the public about the process, types of documents they wish to adopt or activities involved. It is a basic and important right underlying the whole process of participation. It includes the right of the

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<sup>76</sup> Emina Nuredinoska (MCIC, “The former Yugoslav Republic of Macedonia”) and Katerina Hadzi-Miceva Evans (ECNL, Hungary), *Code of Good Practice for Civil Participation in the Decision Making Process, Transparency and Public Participation in Law Making Processes: Comparative overview and assessment of the situation in Macedonia*, 2010

public to access all information (e.g., drafts, comments and reasoning) throughout the entire policy cycle. This level does not require intensive interaction between the public authority and the public; however, the public authority should ensure that the public receives timely and accurate information relevant for the process during all policy phases. Useful tools and mechanisms to enforce it may include:

- access to relevant, accurate and timely information on process, draft documents, background papers and political decision-makers;
- publish research to understand an issue and develop suggested solutions;
- FAQs online or other channels to offer information presented as questions and answers;
- websites of public bodies with comprehensive access to key documents and announcement of public events and participation opportunities, which sometimes include possibility to monitor public authority spending and policy impact;
- e-mail alerts announcing upcoming participation opportunities;
- awareness raising campaigns to promote possibilities for participation;
- web casts from hearings, meetings and debates allowing people to get informed in real time.

*Country example no.1:*

<b>Country</b>	France
<b>Name/title</b>	“DATA.ASSEMBLEE-NATIONALE.FR” <sup>77</sup>
<b>Participation level</b>	Access to Information, Consultation
<b>Institutional level</b>	National Assembly
<b>Specific purpose</b>	Aims to (1) Strengthen the transparency of the legislative process and of the operation of the National Assembly; (2) Strengthen ties between citizens and their representatives; (3) Call on the opinion and expertise of citizens.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Provides citizens with a better understanding of the entire legislative process;</li> <li>• Allows them to develop tools or applications from the data provided and contribute to democratic debate;</li> <li>• More than 800,000 documents from the National Assembly were made available by the end of 2015.</li> </ul>
<p>In October 2014, president of the French National Assembly, Claude Bartolone, announced a program to digitalize and open up data of the Assembly, as a part of the Action Plan for the Open Government Partnership. In addition to opening data, the program introduces measures for monitoring parliamentary work and drafting of bills.</p> <p>The programme’s propositions are put in practice through a web platform <a href="http://data.assemblee-nationale.fr/">http://data.assemblee-nationale.fr/</a>. Besides general data on the legislative files, proceedings and proposed amendments, the platform also includes information on how each and every deputy was voting throughout the past years. In addition, each citizen can submit contributions to the impact studies developed by rapporteurs in charge of specific legislative bills, who could annex them to their reports.<sup>78</sup> The website provides an “open licence” for everyone to facilitate and encourage the reuse of the available data.</p>	

<sup>77</sup> Data.Assemblee-Nationale.Fr, available at: <http://data.assemblee-nationale.fr/>.

<sup>78</sup> For more information on the measures introduced and planned, please see: <http://www.opengovpartnership.org/sites/default/files/National%20Assembly%E2%80%99s%20Action%20Plan.pdf>.

The programme was accompanied by a Roadmap to facilitate its implementation. The Roadmap envisaged a continuous data collection of legal and legislative resources, but also other documents related to the work of the Assembly. It planned for events open to various stakeholders to bring additional innovative solutions for the parliamentary work and debate.

Key elements:

- Design a mechanism for data collection and digitalization of the documents;
- Develop a Roadmap to facilitate the implementation and monitor the progress;
- Organize events to raise awareness and collect new ideas for improvement.

Country example no.2:

<b>Country</b>	Netherlands
<b>Name/title</b>	<b>Open Municipal Information (Open State)</b> <sup>79</sup>
<b>Participation level</b>	Information, Active involvement (partnership) <sup>80</sup>
<b>Institutional level</b>	Local public authority
<b>Specific purpose</b>	Introduce an “action democracy” where citizens may address social issues themselves without the intervention of a public authority through an access to all public sector data.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Allows to access detailed information on decision-making documents, including spending of the municipality/province;</li> <li>• Enables experimentation with the democracy at the local level: citizens may propose alternatives on how to address specific issues.</li> </ul>

In 2013, the European Parliament and Council passed a Directive 2013/37/EU<sup>81</sup> on the re-use of public sector information, implemented to the Dutch legal framework in June 2015 as a ‘Law for re-use of public authority information’.<sup>82</sup> According to this Law, ministries, municipalities, provinces, museums, libraries and archives are obliged to provide all public sector information for re-use and reply to the requests for re-use.

Up to now, six Dutch municipalities released detailed public data, including information on income and expenditure as open data. The aim of the Open Municipal Information is to collect public data and publish them in a unified and integrated way as an open source. Citizens are then enabled to create innovative applications, visualizations, websites and analysis and propose new solutions for their municipalities. The Open Municipal Information can be found with a search engine. Several websites provide guidance on how to use and work with the data, such as for example Github<sup>83</sup> and API-docs.<sup>84</sup>

Success of the Open Information is conditioned by the commitment of all responsible authorities to publish the data and make them available for re-use. It is essential to develop an effective search engine to enable the access to previously unsorted information and provide detailed guidance on the utilization of the data. For the sustainability of the mechanism and its added value, the data should be continuously updated.

<sup>79</sup> Open Raadsinformatie, available at: <http://zoek.openraadsinformatie.nl/#/>.

<sup>80</sup> More information about the Open Municipal Information: <http://www.openraadsinformatie.nl/>; <http://www.openstate.eu/en/projects/political-transparency/open-municipal-information/>.

<sup>81</sup> Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF>.

<sup>82</sup> Law for re-use of public sector information, Act No. 596 of June 24, 2015, available at: <http://wetten.overheid.nl/BWBR0036795/2015-07-18>.

<sup>83</sup> Github, Open Raadsinformatie, available at: <https://github.com/openstate/open-raadsinformatie>.

<sup>84</sup> Open Raadsinformatie API, available at: <http://docs.openraadsinformatie.nl/>.

Key elements:

- Build a commitment of the public authorities to make available all public sector information;
- Collect all the public data and organize them around several key elements within an easily researchable engine;
- Develop detailed guidelines for the citizens/organize trainings on the utilization of the mechanism;
- Raise awareness among public about the potential and added value of open data and re-use.

## 2.2 Consultation

This level includes inviting the public to provide its opinion, comments, views and feedback on a specific document or agenda. Whilst the public authority would typically define the issues for consultation, the process should allow input on other issues contained in the draft document as well. Consultation can be organized in many different methods, but should be characterised by: a clearly defined process, inclusiveness of all those affected by the draft and ample time for providing comments and feedback by the public authority. It is a reactive way of participation, as the public gets involved upon public authority requests. Consultation is especially relevant for policy formulation and policy learning phase. Useful tools and mechanisms may include:

- consultation, online (e.g. web platforms) or in person meetings (e.g. focus group, panels, public debates, expert seminars, etc.) to discuss the formulation, implementation and evaluation of policy with the public;
- mechanisms to follow progress such as polls, online surveys or questionnaires, to collect interests and suggestions from stakeholders;
- open plenary or committee sessions to ensure debates during the decision-making.

In general, when organizing consultations on a specific document (e.g. a draft law or regulations), it is advisable to make available all accompanying documents that are related to the draft (e.g. relevant impact assessments, implementation studies, etc.). As a matter of good practice, the public should be able to gain access to these documents and drafts at the earliest stage of their development, to facilitate meaningful input. If it is not possible to release the early versions of specific documents, authorities could provide summaries and address issues they plan to include in the draft. Such approach can save time and decrease potential disagreements in the later stages. In addition, the public should be consulted on all subsequent drafts as well.

When planning for a consultation it is important to consider how much time is given to the public for meaningful input, as the timeline will depend on the type of document and the issues raised. It is good to keep the option of extending the timeline, e.g. in case the public needs more time to absorb the next issues raised in the draft.

Providing feedback on received inputs is a crucial element in increasing trust and strengthening cooperation. Participants know that their opinion is indeed considered, and included in the draft when appropriate. The feedback does not need to be individualized; rather, it could include a summary of all responses and the action taken within one brief report.

Assessment as to how the consultation process was conducted can help improve such processes in the future. In addition, these can help transfer experiences, correct any obstacles



and help record innovative methods and tools that have been used. Such assessment can also be done in collaboration with participants in the process.

*Country example no. 3:*

<b>Country</b>	Malta
<b>Name/title</b>	<b>Public Consultations (ePublic authority)</b> <sup>85</sup>
<b>Participation level</b>	Consultation
<b>Institutional level</b>	National/Local Public authority
<b>Specific purpose</b>	To improve the efficiency, transparency and public involvement in the implementation of projects, the enactment of laws and formulation of new policies.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Gives a possibility to subscribe in order to be informed when there is a new online public consultation;</li> <li>• Provides live streaming of the Local Councils' official meetings and also a possibility to attend them personally, as they are open to the public;</li> <li>• According to the European Commission's e-Public authority Benchmark Reports 2014 and 2015<sup>86</sup> that measure the delivery and performance of e-Public authority services Malta ranks first among 33 countries (the 28 European Union member states together with Iceland, Norway, Serbia, Switzerland and Turkey).</li> </ul>
<p>Online public consultations are part of the Malta's ePublic authority initiative. The broad initiative also includes a provision of Public authority's e- services, including <i>eForms</i> (allows for creation of online forms); <i>MyBills</i> (Public authority's online billing solution) and <i>eProcurement</i> (allows to track public tenders).</p> <p>The online public consultations are divided into four stages: (1) <i>Open Consultation</i>: when public is requested to submit the comments; (2) <i>Closed Consultation</i>: when all received comments are filtered through a moderation process; (3) <i>Publication of Feedback</i>: when the feedback selected during the moderation process is published;(4) <i>Consultation outcome</i>: when a detailed report of the outcome of the consultations is developed and made available to the public. Submission of comments is enabled through a simple online form, via e-mail or by telephone.</p> <p>In order to make the mechanism the most successful, it is essential to secure citizen's engagement and educate them how to use the ePublic authority tools. With this respect, several free basic ICT courses were organized to familiarize citizens with the use of the internet and computers in general. On the side of the Public authority, it is of the utmost importance to ensure that all ministries use the online tool and continuously update the platform with new documents for consultations.</p> <p>Key elements:</p> <ul style="list-style-type: none"> <li>• Design a user friendly web platform, easily accessible for everyone;</li> <li>• Organize educational trainings for citizens on the utilization of tools;</li> <li>• Create commitment of the ministries to publish all the documents in a timely manner.</li> </ul>	

<sup>85</sup> Public Consultations Online, available at: [http://socialdialogue.gov.mt/en/Public\\_Consultations/Pages/Home.aspx](http://socialdialogue.gov.mt/en/Public_Consultations/Pages/Home.aspx).

<sup>86</sup> EU eGovernment Report 2015 shows that online public services in Europe are smart but could be smarter. Published on 23 June 2015, European Commission, Digital Single Market. Available at: <https://ec.europa.eu/digital-single-market/en/news/eu-egovernment-report-2015-shows-online-public-services-europe-are-smart-could-be-smarter>

Country example no. 4:

<b>Country</b>	Austria
<b>Name/title</b>	<b>Standards of Public Participation</b> <sup>87</sup>
<b>Participation level</b>	Information, Consultation, Active involvement (partnership)
<b>Institutional level</b>	Federal Public authority/all fields of public administration
<b>Specific purpose</b>	To maximize the effectiveness and efficiency of public participation.
<b>Key/innovative features</b>	<ul style="list-style-type: none"><li>• Innovative design of the document: list of questions serving as a checklist for the assessment on whether the standards have been met;</li><li>• Includes performance standards for politics and administration to achieve the involvement of citizens and interest groups and quality standards for participants to assess the quality of participation;</li><li>• The standards are increasingly used by all levels of public administration and diverge from the initial idea to apply them only on a federal level.</li></ul>

The “Standards of Public Participation” were adopted by the Austrian Council of Ministers on 2 July 2008 and were initially recommended to be applied by the Austrian federal administration. The document was prepared by an inter-ministerial working group with the participation of Austrian authorities and agencies, NGOs and external experts. It is coming from the perspective that politics and administration can benefit from the public involvement if the participation is exercised at a high quality. This can be guaranteed by the application of standards that aim to maximize the effectiveness and efficiency of public participation.

Standards are divided into three sections: (1) Standards for the preparation of the participation process; (2) standards for the implementation of the participation process; (3) standards for the monitoring and evaluation after the participation process. They are formulated as a list of questions to be answered for each decision-making process. If all questions can be affirmed, the public participation is considered as of a high-quality. The standards are now recommended to be used in all fields of public administration.

The functionality of the mechanism highly depends on the capacities of public servants and their commitment to implement the standards. Thanks to the participatory development of the document, the standards are already broadly communicated and accepted by many key actors in the field of public administration. To make sure the standards are applied in a unified manner, it is recommended to organize trainings for public servants applying them in practice.

Key elements:

- Ensure participatory process of the development of a document, with the involvement of all key players to create commitment to their implementation;
- Organize trainings for public servants on practical application of the standards;
- Secure the authority’s endorsement to make sure standards are followed in practice.

### 2.3 Active involvement (partnership)

This level refers to collaboration and jointly undertaken responsibilities at all stages of the decision-making process, as a highest form of participation (e.g. agenda setting, issue identification, drafting, decision and implementation, delegation of a specific task to NGOs). It involves representatives of the public sharing a seat at the table with the public authority

<sup>87</sup> Bundeskanzleramt Österreich, *Standards of Public Participation. Recommendation for Good Practice*. 2008, available at: [http://www.partizipation.at/fileadmin/media\\_data/Downloads/Standards\\_OeB/oeb\\_standards\\_engl\\_finale\\_web.pdf](http://www.partizipation.at/fileadmin/media_data/Downloads/Standards_OeB/oeb_standards_engl_finale_web.pdf).

representatives. The initiative can come from both sides. Whilst there should be an agreement about the common goals of the process, those involved from the public should be able to retain their independence, and to advocate and campaign for the solutions they want to see adopted. Partnership may take place at all phases of policy cycle particularly relevant at the policy formulation (agenda setting) or policy implementation and learning. Useful tools and mechanisms may include:

- work group or committee formed as a permanent or ad hoc expert group to advise on policy preferences;
- co-drafting: active involvement in drafting parts of the legislative process,
- co-decision making such as participative budgeting;
- strategic partnership where NGOs and public authorities form a partnership to implement policy.

One of the most discussed issues in the case of active partnership is how to select NGOs and stakeholders that take part in the process. For this purpose countries have adopted several models and approaches. For example, when members of public are invited to take part in working groups they can be selected through an open call. The Croatian Code on Consultation lists specific criteria that could be considered such as: expertise, previous public contributions on the subject matter, qualifications relevant to the matters regulated by law, or other regulations or established by the act of the state body.<sup>88</sup>

Country example no. 5:

<b>Country</b>	Latvia
<b>Name/title</b>	<b>Cooperation Memorandum between Non-governmental Organisations and the Cabinet of Ministers (Memorandum)</b>
<b>Participation level</b>	Active involvement (partnership)
<b>Institutional level</b>	National Public authority
<b>Specific purpose</b>	Ensure that non-governmental organisations are actively engaged and able to effectively participate in decision-making processes
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• The implementation of the Memorandum is monitored by the <i>Council for Implementation of the Cooperation Memorandum between Non-governmental Organisations and the Cabinet of Ministers (Council)</i>.<sup>89</sup></li> <li>• NGOs are increasingly signing the Cooperation Memorandum, since 2008 to 2013 the number of signatories increased from 429 to 709. By signing the Memorandum, organisations demonstrate their willingness to cooperate with the public authority.<sup>90</sup></li> </ul>
The Public Administration Act <sup>91</sup> and the Cabinet of Ministers Rules of Order <sup>92</sup> , as well as other legal documents provide legal guarantees for public participation in public administration and decision-making. Towards this end, NGOs are eligible to participate in the various working groups and advisory boards of the public administration bodies. The Memorandum of cooperation confirms the willingness of NGOs and Cabinet of Ministers to cooperate in improving public administration.	

<sup>88</sup> Croatia, *Code on Consultation with the interested public in procedures of adopting laws, other regulations and acts* (2009)

<sup>89</sup> Council for Implementation of the Cooperation Memorandum between Non-governmental Organisations and the Cabinet of Ministers. Available at (in Latvian) <http://likumi.lv/doc.php?id=263733>

<sup>90</sup> For more information see (in Latvian): <http://www.lvportals.lv/visi/likumi-prakse/261524-nvo-un-ministru-kabineta-sadarbibas-memorands-apliecinajums-valdibas-un-sabiedribas-sadarbibai/>.

<sup>91</sup> Public Administration Act, available at: <http://likumi.lv/doc.php?id=63545>.

<sup>92</sup> Cabinet of Ministers Rules of Order No. 300 from 7 April 2009, available at: <http://m.likumi.lv/doc.php?id=190612>

To monitor the implementation of the memorandum, the *Council for Implementation of the Cooperation Memorandum between Non-governmental Organisations and the Cabinet of Ministers (Council)* was created in 2006. The Council determines the respective state budget priorities and prepares recommendations on necessary legal acts and policy planning documents connected with implementing cooperation between public administration institutions and NGOs. The members of the Council are the Director of the State Chancellery, a representative of the Prime Minister's Bureau, the State Secretaries of ministries and seven representatives from the NGOs that have signed the Memorandum. The Council meets regularly on the basis of a detailed annual work plan.

The cornerstone of this cooperation mechanism is the Council. Essential for the successful cooperation between NGOs and Cabinet of Ministers is to ensure the continuous functionality of the Council and its strong mandate.

Key elements:

- Ensure the political commitment to the implementation of the document and participation of public authorities in the joint Council;
- Organize regular meetings of the NGO representatives to discuss the priorities of the sector to be presented and implemented by the Council;
- Secure sufficient financial resources for preserving the functionality of the Council;
- Make sure the Council has a strong mandate and its adopted decisions/documents are respected and implemented.

Country example no. 6:

<b>Country</b>	Wroclaw (Poland)
<b>Name/title</b>	<b>Participatory budgeting</b> <sup>93</sup>
<b>Participation level</b>	Active involvement (partnership)
<b>Institutional level</b>	Local
<b>Specific purpose</b>	To make Wroclaw's citizens more active in the policy of the city, also called "giving citizens the right to the city".
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Local authorities have a chance to identify the needs of the citizens and can implement matching measures;</li> <li>• Citizens are allowed to actively engage in the development of the city and enhancement of conditions for living;</li> <li>• The amount of funds allocated within the framework of Wroclaw Civil Budget 2016 amounts to PLN 25 million (approximately EUR 5, 87 million).</li> </ul>

Participatory budgeting is a special process through which citizens of a particular city may be involved, individually or through an organisation, in the allocation of public funds. First city to introduce participatory budgeting in Poland was Sopot (2011). Since then, the number of cities involved in participatory budgeting has been growing annually. It has to be emphasized that there is no unified model and each city creates its own model of participatory budgeting according to its needs.

Participatory budgeting in Wroclaw was introduced in 2013 and according to the statistics it's one of the best examples in Poland.<sup>94</sup> The local authorities allocate part of the funds from the budget of the city that could be given for the purpose of participatory budgeting. Citizens are invited to submit their own ideas of projects to be implemented in the city, which are further examined and approved by the

<sup>93</sup> Principles of participatory budgeting in Wroclaw: <http://www.wroclaw.pl/wroclawski-budzet-obywatelski-2016-zasady>; More about participatory budgeting in Wroclaw: <http://www.wroclaw.pl/wroclawski-budzet-obywatelski-2016-zasady>.

<sup>94</sup> W. Kłębowski, Budżet partycypacyjny. Ewaluacja., Warsaw 2014, p.20

local authorities. Final projects are selected in a ballot by the citizens and are implemented in accordance with the previously developed roadmap/schedule.

The process of participatory budgeting is composed of many forms of active involvement of citizens, including the creation of projects and their proposal, participation in the disputable panels, possibility to observe the whole procedure on the internet, final voting on the projects and others.<sup>95</sup> For the final review, prior the vote, the Municipal Office of Wroclaw has to organize consultations with the project leaders and employees of the Office in at least 14 districts of Wroclaw. The authorities also organize special meetings about the projects and evaluations of the implemented projects.<sup>96</sup>

Key elements:

- Raise interest of the local authorities in the participative budgeting via presentation of the benefits it brings to the city as well as to the decision-makers;
- Allocate sufficient funding for the implementation of the projects;
- Raise awareness among citizens, create incentives for their active involvement;
- Ensure that the established procedure is followed in practice, particularly that all the consultations are conducted;
- Organize regular meetings for all interested parties, open for public.

## 2.4 Dialogue

This is an overarching, institutionalized form of participation that is long-lasting and is most sustainable when developed in a structured manner (e.g., joint councils). It requires *"a two-way communication built on mutual interests and potentially shared objectives to ensure a regular exchange of views."*<sup>97</sup> Dialogue is an underlying form of collaboration and should lead to commonly agreed outcomes. It is highly valued at all policy cycle phases, but is crucial for policy formulation and reformulation. Useful tools and mechanisms may include:

- ongoing public hearings and public forums with interested stakeholders (rather than on specific issue);
- multisectoral councils with participants from NGOs on specific issues;
- key public authority contact for liaison with NGOs;
- capacity building events to increase knowledge and capacity relevant to the participation of public.

It is important to recognize these different policy cycle phases and levels of participation as well as their mutual relations, when aiming to regulate participation or to design new mechanisms.

Country example no. 7:

<b>Country</b>	Montenegro
<b>Name/title</b>	Council for cooperation of the Montenegro Public authority and Non - Governmental Organisations.
<b>Participation level</b>	Active involvement (partnership), dialogue
<b>Institutional level</b>	National Public authority
<b>Specific purpose</b>	Further development of institutional mechanisms of cooperation and participation of NGOs, monitoring of Strategy implementation and

<sup>95</sup> For participatory budgeting in Poland see also: <http://budzet-partycypacyjny.pl/>.

<sup>96</sup> Examples of successful projects from 2015 available at: <https://www.wroclaw.pl/budzet-obywatelski-wroclaw/wyniki-glosowania-wbo-2015>

<sup>97</sup> INGO Code of Good Practice for Civil Participation in the Decision Making Process

	improvement of relations between the Public authority and NGOs.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Equal composition: 11 representatives of the Public authority and 11 representatives of NGOs;</li> <li>• Monitors the implementation of the Strategy for Development of NGOs</li> </ul>
<p>The main goals of the Council are to further develop institutional mechanisms of cooperation and participation of NGOs, monitoring of the implementation of the Strategy for Cooperation with NGOs and supporting the development of the relations between the Government and NGOs. The Council is composed of representatives of Ministries, the Head of the Office for Cooperation with NGOs and NGO representatives. The chairperson of the Council is the representative from the Government. The chairman and the members of the Council are appointed by the Government, for a mandate of 3 years. NGOs are elected through a public announcement.</p> <p>The main task of the Council is to:</p> <ul style="list-style-type: none"> <li>• monitor the implementation of the Strategy for Development of NGOs in Montenegro with its Action Plan for implementation, for the period 2014-2016 ; as well as the implementation of the Action Plan for the Chapter 23, Judiciary and Fundamental Rights, with reference to the cooperation with NGOs;</li> <li>• give opinions on draft legislation, i.e. the strategic and other documents relating to the operation and development of NGOs in Montenegro in order to create stimulating environment for their work;</li> <li>• initiate adoption of new legislation or amendments to existing one, in order to create a stimulating environment for the operation and development of non-governmental organisations;</li> <li>• propose to the public authority of Montenegro priority areas of public interest and the amount of funding for projects or programs of non- governmental organisations, from the state budget;</li> <li>• encourage and improve cooperation between the public authority and public administration with non-governmental organisations in the country and abroad, as well as with relevant entities in the international community, etc.</li> </ul> <p>Key elements:</p> <ul style="list-style-type: none"> <li>• Ensure the participation of both public authorities and NGOs in the joint Council;</li> <li>• Allocate adequate resources for efficient functioning of the Council, especially its support office;</li> <li>• Ensure that Council mandate allows for meaningful contribution to development of civil society.</li> </ul>	

Country example no. 8:

<b>Country</b>	Denmark
<b>Name/title</b>	<b>eDem</b>
<b>Participation level</b>	Overarching- Dialogue
<b>Institutional level</b>	National/local public authority
<b>Specific purpose</b>	Support and complement democracy (especially in relation to local level) through technical applications and devices.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Several layers/forms of participation, both on national (Smart City, Open Data Innovation Strategy, Inclusion...) and local level (Digital Citizen Panels, Statutory Elected Senior Citizens' Council...);</li> <li>• Use diverse ICT tools to involve all citizens, including through inclusion programs for persons with disabilities and social media involvement; Winner of the Open Government Partnership Awards- only the Statutory Elected Senior Citizens' Council</li> <li>• In 2015, a vast majority of the public sector was already</li> </ul>

digitalized.<sup>98</sup>

Denmark has been involved in adoption of e-democracy solutions for more than 15 years.<sup>99</sup> Current eDem mechanism is composed of many initiatives on both national and local level that are evolving independently without a unified state/local level strategy. Following are a few examples:

State Level:

- **Open data:** This initiative is part of the OGP Action Plan and is designed to provide access to the public data and enable their re-use. Access to public data may serve different purposes including, for example, as a base for the creation of new services, analytical documents and applications. It provides new information and better insight for the benefit of both citizens and private sector.
- **Social media involvement:** Many state institutions increasingly use social media to inform and engage in a debate with the public. In response, the Prime Minister's Office has developed guidelines on the legal aspects of the public authority's ministers' use of social media. In addition, a complete list of ministers with the links to their Facebook and Twitter accounts was developed.<sup>100</sup>

Local Level:

- **Senior Citizens' Councils:** Winner of the OGP 2015 Awards, Senior Citizens' Council is a socially innovative initiative that supports senior citizens' participation in decision-making process at a local level. The objective of the Council is to serve as an intermediary between city councils and local senior citizens. Senior Citizens are elected for four years by direct election among, and by, all 60+ year-old citizens and equally split between men and women. City councils are obliged by Law to consult the local Senior Citizens' Council about the decision-making on any issue relevant to the elderly population, typically including healthcare, standard of public services for elderly and disabled people and cultural policy.<sup>101</sup>
- **Digital citizen panels:** The panels are an alternative consultation channel that supplement other eDem initiatives of the municipalities. Citizens simply register themselves on the municipality's website and provide their feedback to the requested issues. The panels are used partly as a poll and also to generate input for planning and strategy processes in the municipalities.<sup>102</sup>

Key elements:

- Organize diverse awareness raising events, both for citizens and public authorities, to learn about different participatory approaches;
- Design an overarching mechanism for public participation, including various levels of participation and tools used;
- Introduce effective inclusion policies to enable everyone to take part in the decision-making processes, such as persons with disabilities or senior citizens.

<sup>98</sup> More information on eDem: Michala Høg Daimar: *eDem in Denmark- contribution to CDDG*, 2015. Available at: [http://www.Council\\_of\\_Europe.int/t/dgap/localdemocracy/CDDG/Budapest/Contribution-Denmark.pdf](http://www.Council_of_Europe.int/t/dgap/localdemocracy/CDDG/Budapest/Contribution-Denmark.pdf).

<sup>99</sup> According to Michala Høg Daimar: *eDem in Denmark- contribution to CDDG*, 2015, eDem is understood as democratic activities supported by electronic means. This includes, but is not limited to, ICT-driven methods to involve citizens.

<sup>100</sup> The government on social media. Available at: <http://digitalkommunikation.net/politikere-og-partier/regeringen-paa-de-sociale-medier/>

<sup>101</sup> For more information see: Statutory elected Senior Citizens' Councils in Denmark, European Commission, Joinup: <https://joinup.ec.europa.eu/community/opengov/case/statutory-elected-senior-citizens%E2%80%99-councils-denmark>.

<sup>102</sup> *eDem in Denmark - contribution to CDDG*, Public Renewal and Welfare Policy Unit, 2015 [http://www.Council\\_of\\_Europe.int/t/dgap/localdemocracy/CDDG/Budapest/Contribution-Denmark.pdf](http://www.Council_of_Europe.int/t/dgap/localdemocracy/CDDG/Budapest/Contribution-Denmark.pdf).

## VI. ENSURING MEANINGFUL CIVIL PARTICIPATION IN PRACTICE

It is important to emphasise that participation is not a one-off endeavour and cannot be truly achieved if it is not nurtured continuously. There are various models in practice that can facilitate sustainable and meaningful participation, through legislative framework or practical instruments. This section will therefore explore and elaborate how these models work and what can be lessons learned from their implementation. It will discuss what countries can do in practice to make sure that the principles and norms of civil participation are respected.

### 1. Integrating guarantees for participation in national legal frameworks

International human rights documents acknowledge the right of all people to be fully involved in participatory processes and that participatory mechanisms should be established by law.<sup>103</sup>

Further, the United Nations High Commissioner for Human Rights (UN OHCHR) study on promotion, protection and implementation of the right to participate in public affairs recommends that: “...*The right to participate in political and public affairs should be enforceable by law and its denial should be open to judicial challenge. Appropriate remedies should be available if a violation is established.*”<sup>104</sup>

In Europe, rules and regulations concerning participation in policy and law making processes are included in different types of documents and can be regulated under different thematic laws. The main difference of the documents that regulate participation is in their legal nature: some countries have included procedures and rules in legally binding documents (laws, regulations). For example, legally binding documents have been adopted in Bosnia and Herzegovina (rules of government), Croatia (within Access to Information Law and rules of government) and Romania (standalone law). Others have adopted documents with no binding measure (codes, standards, guidelines), for example, in Austria, Croatia, and the United Kingdom.

The legal nature of the document is crucial, as it has an effect on how much the provisions can be ultimately enforced in practice and what compliance measures are available. Legally binding documents can reinforce the importance of participation, provide clear recognition of the right to participate and strengthen the implementation guarantees. Legally binding documents could include the following<sup>105</sup>:

- legal obligation to publish draft legislation, expert documents and information;
- principles of participation;
- who to consult, with an emphasis that anybody who will be affected by the specific decision, an interested party should be part of the process, and special attention should be given to reach out and include vulnerable groups;
- inclusion of the civil society representatives into various consultative bodies and

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<sup>103</sup> UN Human Rights Committee, General Comment No. 25, para. 5.

<sup>104</sup> UN Human Rights Council, *Study on best practices, experiences and challenges and ways to overcome them with regard to the promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law*, A/HRC/30/26, available at: <http://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx>.

<sup>105</sup> Emina Nuredinoska (MCIC, “The former Yugoslav Republic of Macedonia”) and Katerina Hadzi-Miceva Evans (ECNL, Hungary), *Transparency and Public Participation in Law Making Processes, Comparative overview and assessment of the situation in Macedonia*, 2010



working groups;

- what documents should be consulted (laws, regulations, policies);
- publication of announcement about the beginning of a decision-making process and consultation on early and subsequent drafts;
- minimum timeframes (deadlines) for public consultations (recognizing that as a good practice draft should not be given less than 10 day for consultation);
- recommendation regarding the use of different methods of consultation;
- exemptions from general rules, when rules on the participation may need to be adjusted to specific local conditions or situations (e.g., emergency situations);
- how feedback on the process and issues consulted is provided;
- existence of a gatekeeper, a government body responsible for monitoring the implementation of public consultation;
- compliance with consultation rules in practice.

In addition to legislation, many countries have developed policy documents which lay out a clear basis for collaboration and facilitate ongoing dialogue and understanding between the NGOs and the public authorities. They may be in the form of bilateral agreements between NGOs, parliament and/or public authority which list joint undertakings or one-sided strategy documents which lay out specific commitments by the public authority to support NGOs development. While these documents address numerous issues concerning NGOs, they typically contain chapters that aim to promote participation in particular.

But regulating participation in law or policy is not enough by itself. Sometimes participation can be challenging to implement for various reasons. For example, there might be pressing deadlines to adopt certain legislation. Public authorities might not be certain who to consult or engage, or how to proceed with it. Those who participate may not have enough understanding of the issues at stake. In addition, participation process requires investment of time and resources, organisation and feedback. Finally, the political context may not be supportive of public engagement.

The learning from different countries is that it is important to develop a set of measures which will help ensure compliance and meaningful participation and ensure effective implementation of the legal guarantees. To address implementation challenges, countries could:

- Plan for human and financial resources necessary for effective participatory processes. This means assign specific persons that will coordinate the process, allocate enough funding, including where possible funds to ensure broader outreach to interested public. An assessment of the Romanian Law concluded that: *“the failure to assign the required resources has represented a practical difficulty as far as the implementation of the Law on the Transparency on Decision-Making was concerned”*.<sup>106</sup> Several countries propose the assignment of specific public authority officials in each public authority body to coordinate and monitor the consultation process (e.g., Austria, Bosnia and Herzegovina, Croatia, the UK);
- Introduce additional implementing regulations/bylaws to strengthen guarantees for implementation. For example, in Bosnia and Herzegovina the Ministry of Justice adopted a Rulebook, which contains detailed provisions relating to the

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<sup>106</sup> Stan, V., *The Transparency of Governance and the Participation to the Decision-Making Process - Concept, Legislation, Restrictions In A Democratic Society*, 2009

implementation of the Rules on Consultation in Legislative Drafting within the Ministry of Justice<sup>107</sup>;

- Develop guidelines, user friendly brochures or online tools and workshops to further explain the document, increase understanding and also ensure harmonized implementation by different bodies. For example in Austria worksheets on different topics were developed including check-lists to facilitate the participatory process<sup>108</sup>. The Croatian Government Office for Cooperation with NGOs produced guidelines for civil servants tasked to apply the Code for Consultations<sup>109</sup>;
- Develop plans for consultation to clarify the objectives of the process, decide on the best method, assess needed financial resources needed and plan for those before the drafting starts;
- Develop list of individuals and organisations active in the sector or potentially interested to take part in the process (e.g., such lists exist in Bosnia and Herzegovina). Such lists help identify who to involve, however, these should not prevent other parties to be involved in the process;
- Create lists of ongoing consultation processes and list of organisations represented in different working groups (e.g. Croatian Government Office for Cooperation with NGOs produced such lists).

*Country example no. 9:*

<b>Country</b>	Lithuania
<b>Name/title</b>	<b>Normative framework for participation</b> <sup>110</sup>
<b>Participation level</b>	Information, Consultation, Active involvement (partnership)
<b>Institutional level</b>	National, local
<b>Specific purpose</b>	To ensure legislative openness, transparency, find out public opinion about the regulatory issues and their solutions and to enable the public to influence the content of the draft legislation.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Introduces legal guarantees for three levels of participation in decision-making processes;</li> <li>• Guarantees the right to participate also for persons with disabilities-through participation in a consultative body: Council for the Affairs of Disabled.</li> </ul>
The legal framework for public participation in decision-making processes in Lithuania provides guarantees for three levels of participation:	
<i>Information:</i>	
The obligation to publish regulatory proposals is prescribed by the Resolution of the Public authority of the Republic of Lithuania No. 480 of 18 April 2003 <sup>111</sup> and by the Law on Legislative Framework of the Republic of Lithuania of 18 September 2012, No. XI-2220. <sup>112</sup> The Resolution obliges all the	

<sup>107</sup> Bosnia and Herzegovina, Ministry of Justice, *Rulebook for Implementing the Rules on Consultation in the Development of Legal Acts in the Ministry of Justice*, 2008

<sup>108</sup> *Partizipation & nachhaltige Entwicklung in Europa*. Available at: <http://www.partizipation.at>

<sup>109</sup> Vlada Republike Hrvatske, Ured za Udruge, *Smjernice za primjenu kodeksa savjetovanja sa zainteresiranom javnošću u postupcima donošenja zakona, drugih propisa i akata*, 2010. Available at [https://savjetovanja.gov.hr/UserDocsImages/dokumenti/kopija/Savjetovanja/Smjernice\\_PDF.pdf](https://savjetovanja.gov.hr/UserDocsImages/dokumenti/kopija/Savjetovanja/Smjernice_PDF.pdf)

<sup>110</sup> Online platform for consultation. Available at: <http://lrv.lt/lt/>.

<sup>111</sup> Resolution of the Government of the Republic of Lithuania No. 480 of 18 April 2003, available at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=474365&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=474365&p_tr2=2).

<sup>112</sup> *Law on Legislative Framework* of the Republic of Lithuania of 18 September 2012, No. XI-2220: <https://www.e-tar.lt/portal/lt/legalAct/TAR.B4FA4C56B8D5>.

responsible state institutions to maintain a special website, provides a set of requirements on the manner of maintenance and its overall technical design. The Law stipulates a list of documents for obligatory publication. The access to all documents is enabled via My Public authority website that classifies the sub-websites based on the institution in charge.<sup>113</sup>

Consultation:

Minimum standards of public participation are regulated in Article 7 of the Law on Legislative Framework, Article 4 of the Law No. XII-717 on Development of Non- governmental Organisations from 19 December 2012,<sup>114</sup> and in Article 2 of the Programme for the Improvement of Public Administration 2012-2020. The Law on Legislative Framework sets out the purposes of the consultations and provides that “*The public must be consulted on time and on key issues (consultation efficiency) as well as the extent necessary (consultation proportionality).*” The Law on Development of Non-governmental Organisations provides an obligation for the Ministry of Social Security and Labour to consult the Council of Non-governmental Organisations when implementing the development policies of NGOs.

Active involvement:

General provisions on inclusion of NGOs in consultative bodies are included in Article 7 of the Law No. VIII-123 on Public Administration from 17 June 1999,<sup>115</sup> and in Article 4 of the Law on Development of Non-governmental Organisations. The latter document further regulates the establishment of the Council of Non-governmental Organisations and councils of municipal non-governmental organisations and their composition.

Key elements:

- Introduce a legally binding framework for participation;
- Ensure that the responsible institutions implement the legal guarantees;
- Create an online platform for e-participation;
- Familiarize citizens with the ICT tools for participation.

Country example no. 10:

<b>Country</b>	Flanders (Belgium)
<b>Name/title</b>	<b>Normative framework for participation</b>
<b>Participation level</b>	Consultation, Active involvement (partnership)
<b>Institutional level</b>	Regional, local public authority
<b>Specific purpose</b>	To develop a comprehensive system of passive and active open government tools for all public authority agencies that fall within the competence of the Flemish Community and the Flemish Region, with the same rules of procedure for all levels of public authority.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Creates a comprehensive Open Government system for all public authority agencies that fall within Flemish community and Flemish region;</li> <li>• Establishes a special body to deal with the appeals related to the Open Government guarantees.</li> </ul>
The Flemish Government has adopted several legal documents that provide guarantees for public participation in decision-making processes, recognizing two levels of participation:	

<sup>113</sup> My Public authority , available at: <http://rv.lt/lt/aktuali-informacija/teises-aktu-paieska/teises-aktu-projektai-1>.

<sup>114</sup> Law on Development of Non-Governmental Organisations, Act no. No. XII-717 from 19 December 2012. Available at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478626](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478626).

<sup>115</sup> Law on Public Administration, Act no No. VIII-123 from 17 June 1999. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.OBDFFD850A66>

### Consultation:

Decree on Open Government from March 26, 2004<sup>116</sup> stipulates that all draft legislation must be consulted with the people of Flanders. In addition, there is a non-binding Code of Consultations (Consultatiecode)<sup>117</sup>, which regulates minimum standards and guidelines for consultations. Code serves as a practical tool helping public servants to plan, organize, execute, analyse, communicate and evaluate public consultations.

### Active involvement:

According to the recent publication *Public Participation in Decision-Making Process* developed by Center for Information Service, Co-operation and Development of NGOs, an Act on strategic consultative bodies was adopted stipulating an obligation to establish a strategic consultative council for every sector.<sup>118</sup> One of them was, for example, the Strategic Advisory Council on Foreign Affairs, composed of 20 members: 10 independent experts and 10 NGOs representatives. Until June 2015, the Council advised the Flemish public authority in the realization of its foreign policy, its policy on international entrepreneurship, tourism, and international cooperation.<sup>119</sup>

Key elements:

- Adopt legally binding guarantees for public participation in decision-making;
- Develop a roadmap for implementation of the minimum standards for participation to facilitate the organisation of public consultations by public servants.

## **2. Overarching instruments and practices providing guarantees for meaningful and successful participation**

There are certain tools and mechanisms in various European countries that provide cross-cutting support to civil participation throughout the whole decision-making process. These include, for example, enabling e-public authority solutions, increasing understanding of public authority officials and providing them with tools to foster participation, enhanced monitoring of civil participation, etc.

### **2.1 E-participation**

E-participation is becoming a standard for improving democratic practice and participation of NGOs. These tools, including central electronic portals, e-platforms for consultation, online petition tools, and similar, can contribute to the transparency, accountability and responsiveness of institutions, as well as to the promotion of engagement. To make the most use of these, it is necessary to integrate them in the decision making process at all phases and by both authorities and end users.

Most commonly used tools in many countries today are **central electronic portals** which offer many different features, including providing information, consultation platform and e-

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<sup>116</sup> Decree of March 26, 2004 on Open Government, available at: [http://openbaarheid.vlaanderen.be/nlapps/docs/default.asp?id=15&order=.](http://openbaarheid.vlaanderen.be/nlapps/docs/default.asp?id=15&order=)

<sup>117</sup> Consultation Code- Roadmap to public consultation in the preparation of regulations, available at: <http://www.vlaanderen.be/nl/publicaties/detail/consultatiecode>.

<sup>118</sup> Divjak, Tina; Forbici Goran: *Public Participation in Decision-Making Process: International Analysis of the legal framework with a collection of good practices*, CNVOS, December 2014

<sup>119</sup> Advices of the Flemish Foreign Affairs Council (SARiV) available at: <http://www.sariv.be/NL/algadviezen/1/>

services. In Estonia several systems were put in place to facilitate such e-consultation and were characterized by the following features which are applicable to other similar tools<sup>120</sup>:

- The portal publishes drafts of laws, amendments and development plans. Drafts are posted at the early stage of their development;
- The portal allows all registered users (registration is unrestricted) to express their opinion and make suggestions on a published draft act within an announced deadline. Individual feedback is not provided, however all comments are analysed by the drafters of the document. All comments, suggestions and ideas are answered with information on how the suggestion is to be treated: incorporated in the paper, acknowledged, left for further incorporation at a later stage (implementation phase, second amendment etc.), or ignored (reason is given for each exclusion). The results are written in a report and published on the site. After the process is closed for consultation the draft is processed for inter-ministerial discussion, and this process can be followed on the e-legislation web site<sup>121</sup>;
- The portal facilitates creation of interest groups to support or comment on a specific draft act, policy etc. as a one-off action; interested parties can collect signature for example. They can also launch initiatives, present ideas and submit petitions.

Country example no.11:

<b>Country</b>	Finland
<b>Name/title</b>	<b>National e-Participation Environment project</b>
<b>Participation level</b>	Consultation, Active involvement (partnership), Dialogue
<b>Institutional level</b>	National/local public authority
<b>Specific purpose</b>	The objective is to improve citizens' services and to promote efficient administration.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• The project has developed six different services that enable different forms of participation, all easily accessible for everyone;</li> <li>• Promotes pro-active approach to democracy and facilitates interaction between citizens, non-governmental organisations, central and local public authority decision-makers and the public administration;</li> <li>• During the first two years of <b>Kansalaisaloite.fi</b> initiative- online tool for submission of citizens' initiatives (2012-2014) a total of 279 citizens' initiative were launched. Out of them eight reached the prerequisite of 50 000 signatures for entering the Parliament.<sup>122</sup></li> </ul>
<p>Finland has a comprehensive framework for public e-participation composed of numerous initiatives on both national and local level. Following are a few examples of recent initiatives:</p> <p><u><i>Kansalaisaloite.fi: Online platform for submission of citizens' initiatives.</i></u><sup>123</sup> This is an online system enabling citizens to launch initiatives and collect statements of support for these initiatives. All Finnish citizen entitled to vote are eligible to make a citizens' initiative. There are three types of citizens' initiative: (1) propose a new law; (2) propose changes in existing law or (3) propose a withdrawal of the existing legislation. Legal basis for this initiative could be found in the Citizens'</p>	

<sup>120</sup> The description of the web site is taken from Mandel-Madise, Marie., *Participation Web Site Estonia, Study on Stakeholders' Involvement in the Implementation of the Open Method of Coordination in Social Protection and Social Inclusion*, Carried out by INBAS GmbH and ENGENDER on behalf of the European Commission, Employment, Social Affairs and Equal Opportunities DG, 2009; and also E-Practice.eu <https://joinup.ec.europa.eu/community/epractice/case/awards-osale-estonian-eparticipation-tool>

<sup>121</sup> <http://eelvoud.valitsus.ee/main#tZiVarHk>

<sup>122</sup> <http://www.demokratia.fi/2015/11/?type=post>

<sup>123</sup> Online platform for submission of citizens' initiatives. Available at: <https://www.kansalaisaloite.fi/fi>.

initiative law from 2012.

*Kuntalaisaloite.fi – Online platform for submission of citizens’ initiatives to municipal authorities:*<sup>124</sup>

Similarly as the previous platform, Kuntalaisaloite.fi serves as an online system for collection and support of citizens’ initiatives, but on a local level only. According to the Local Public authority Act, residents of the municipality have a right to submit initiatives related to the municipality’s activities. The platform allows for three types of initiatives: (1) normal, submitted by municipal residents; (2) initiative on a matter falling within a competence of the municipal council submitted by at least 2% of persons entitled to vote; (3) initiative on a municipal referendum, submitted by at least 5% entitled to vote. The platform provides detailed instructions for the users.

*Otakantaa.fi – Online platform for dialogue:*<sup>125</sup> The online platform enables different forms of public consultation and participation: from the drafting of laws, planning strategies and programmes, evaluation of services and policies, up to the mapping citizens’ needs and ideas. The platform shall serve Ministries, municipalities, institutes, NGOs and citizens for open discussions on diverse topics.

*Lausuntopalvelu.fi – Online platform for requesting comments:*<sup>126</sup> This platform enables public authorities on both national and local level to request comments and facilitate and monitor public consultations. Via this platform, NGOs and citizens may submit their comments and statements as well as browse the statements submitted by others.<sup>127</sup>

All Finish services for e-Participation are maintained online through separate web platforms. The functionality is preserved thanks to the continuous updates made by the authorities in charge of each and every platform.

Key elements:

- Create a system for e-Participation composed of various layers of public participation;
- Raise awareness and educate citizens on the utilization of e-Participation services;
- Designate public servants responsible for the continuous update of each platform;
- Provide legal obligations and ensure political will to take advantage of the e-Platform tools.

*Country example no. 12:*

<b>Country</b>	Georgia
<b>Name/title</b>	<b>e-Georgia Strategy</b> <sup>128</sup>
<b>Participation level</b>	Overarching instrument
<b>Institutional level</b>	National
<b>Specific purpose</b>	To become a more efficient and effective public sector offering integrated, secure, and high quality e-Services. Enable an ICT driven sustainable economic growth and societal changes.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Implementation mechanism includes 11 thematic priorities, each address different issues that need to be settled to ensure proper functioning of the e-Georgia project;</li> <li>• According to the United Nations Organisation’s 2014 e-governance survey, since 2010 (the creation of Data Exchange Agency) Georgia’s position has improved among 193 countries from 100 to 56.</li> </ul>

<sup>124</sup> Online platform for submission of citizens’ initiatives to municipal authorities. Available at: <https://www.kuntalaisaloite.fi/fi>.

<sup>125</sup> Online platform for dialogue. Available at: <https://www.otakantaa.fi/fi/>.

<sup>126</sup> Online platform for requesting comments. Available at: <https://www.lausuntopalvelu.fi/FI>.

<sup>127</sup> Sami Demirbas: *Finnish e-democracy: new online services for civic consultation and participation*, Budapest workshop 7-8th May 2015

<sup>128</sup> My e-government: <https://www.my.gov.ge/public/home/index?id=22&type=Main&index=0&p1=22>.

Development of e-Governance in Georgia is led by the Data Exchange Agency, created in 2010 under the Ministry of Justice. The agency developed a data exchange infrastructure that allows to collect data on certain topics and manage them from one consolidated centre. The infrastructure served as a first step for creation of a complex e-Georgia system.

Implementation of the E-Georgia Strategy combines 11 thematic priorities, from e-Services, e-Participation and Open Government, Skills and e-Inclusion up to Awareness. The latter emphasizes a need to raise awareness of citizens and businesses on the public sector e-Services and the benefits they provide. Without successful use of e-Services by citizens, businesses, public authority and NGOs there will be no return on public authority investment in infrastructure, security and back-end systems. Skills and e-Inclusion priority acknowledges that the Georgian people can only exploit the potential of ICT if they know how to use them. Towards this end, several measures will be taken, including the educational trainings with a special focus target groups like the elderly, disadvantaged, low-income people or people living in rural areas.

Key elements:

- Design a mechanism for initial data collection to create a base for a creation of a complex e-government system;
- Develop a policy document clearly stating mission, vision and goals to be achieved;
- Formulate key priorities that should lead a successful implementation of the policy document;
- Develop a mechanism for monitoring the implementation of the policy document.

Country example no. 13:

<b>Country</b>	France
<b>Name/title</b>	“Data.gouv.fr” <sup>129</sup>
<b>Participation level</b>	Information, Active involvement (partnership)
<b>Institutional level</b>	National
<b>Specific purpose</b>	Aims to encourage the reuse of data beyond their first use by the administration to: (1) answer questions; (2) make decisions; (3) benefit from services useful for everyday life; (4) encourage transparent democracy of the institutions and elected individuals.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Allows for 4 levels of utilization: as a citizen, as a producer of datasets, re-user of data sets and a developer of the website content;</li> <li>• Combines the quick availability of public data with the encouragement for active involvement of citizens;</li> <li>• As of March 2016, it included 22 996 datasets, 98 739 resources, 1 438 reuses, 13 660 users and 677 registered organisations.<sup>130</sup></li> </ul>

Data.gouv.fr is an online platform gathering the French public data, developed under the authority of a prime minister. It gather various information, for example, on taxes, budgets, grants, expenditure, land use, unemployment, housing renovation, air quality measures, public services addresses, delinquency and crime, tourism statistics, election results, spending for social Security etc. The platform also aims to serve as a tool available to citizens to allow them to produce, enhance or supplement the data or share data public interest.

The platform offers for four levels of utilization: (1) as a citizen to access the public data; (2) as a producer to take an initiative and create innovative datasets; (3) as a re-user to transform and visualize the data sets available; and (4) as a developer to use the data on his/her own website.

To ensure the functionality of the mechanism, it is essential to continuously update the platform with new data from all areas of public sector.

<sup>129</sup> Open platform for French public data. Available at: <https://www.data.gouv.fr/fr/>.

<sup>130</sup> Open platform for French public data. Available at: <https://www.data.gouv.fr/en/dashboard/>

Key elements:

- Collect data from all areas of public sector;
- Create a simple mechanism that would enable the access of data and their re-use;
- Develop guidelines/detailed guidance for the utilization of the platform.

*Country example no. 13:*

<b>Country</b>	Italy
<b>Name/title</b>	<b>OpenCouncil of Europesione-Monithon online platforms</b>
<b>Participation level</b>	Access to information, Consultation
<b>Institutional level</b>	National, regional
<b>Specific purpose</b>	Enable citizens to track public spending and monitor its impact on the community.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Encourages deeper involvement of citizens in oversight of public spending and its effectiveness;</li> <li>• Helps build trust of people in the management of public funds;</li> <li>• Contains information on spending of public funds by 98 636 subjects and almost 800 000 projects, available for everyone. More than 50 citizen project reports were developed by August 2015 based on the available data and further investigation.</li> </ul>

The OpenCouncil of Europesione-Monithon was created to address the challenge of slow implementation of the cohesion policy and lack of understanding on whether investment projects respond to local demand. It aims to increase the transparency and accountability in spending of public funds and enable citizens to monitor agencies in charge of the funds.

The mechanism is composed of two national-level web platforms: OpenCouncil of Europesione<sup>131</sup> and Monithon.<sup>132</sup> Data are published on OpenCouncil of Europesione in order to promote greater public participation and enable citizens to evaluate whether the resources were employed effectively. The published data are further re-used by Monithon, a platform that encourages citizens to actively engage in the monitoring of cohesion policy. The platform offers a wide range of possibilities from studying the history of selected project, exploring its progress, writing a report based on the available data up to organizing a group of friends that would be interested to monitor spending of EU funds in a specific territory. Monithon is also carried out within OpenCouncil of Europesione School project,<sup>133</sup> aiming to engage high school students in the initiative.

The sustainability of the mechanism relies on the availability of good quality data and existing tools for the promotion of active involvement among citizens, for example, through the engagement of students within school projects.<sup>134</sup>

Key elements:

- Introduce a mechanism for institutional collaboration for the exchange of data;
- Ensure that the data gathered are of a good quality and comply with agreed standards;
- Organize promotional campaigns to secure citizen participation.

<sup>131</sup> OpenCouncil of Europesione. Available at: <http://www.opencoessione.gov.it/>

<sup>132</sup> Monithon. Available at: <http://www.monithon.it/>.

<sup>133</sup> OpenCouncil of Europesione School project. Available at: <http://www.ascuoladiopencoessione.it/>.

<sup>134</sup> For more information about the OpenCouncil of Europesione-Monithon: <https://joinup.ec.europa.eu/community/opengov/case/opencoessione-monithon-italy>.



## 2.2 Increasing understanding and monitoring implementation

Efforts should be made to develop the capacity and skills of public authorities so that they may be actively involved in policy formulation, project development and participation. Capacity-building can include training seminars to improve the understanding of the reciprocal roles of NGOs and public authorities in this engagement, as well as exchange programmes to facilitate the understanding of each other's realities.

In addition, countries may organize monitoring of the implementation of participation regulation, to evaluate how useful and practical the implementation of such measures is. These monitoring tools also help increase awareness of public officials of the importance and substance of implementing the existing measures.

### Country example no. 14:

<b>Country</b>	Croatia
<b>Name/title</b>	<b>Monitoring of Code on Consultation with the interested public in procedures of adopting laws, other regulations and acts (2009)</b>
<b>Participation level</b>	Information, Consultation
<b>Institutional level</b>	National public authority
<b>Specific purpose</b>	Enhancing the effectiveness of consultation with NGOs organisations and public in procedures of adopting laws and other regulations
<b>Key/innovative features</b>	Overarching instrument for sustainable participation -systematic monitoring and education. Increase of public authority level consultations from 2011 - 2014 by 1,033%.
<p><i>System of regular monitoring of the implementation of the Code of Consultation</i> Based on the Code on Consultations and relevant guiding documents, each public authority ministry that is included in drafting legislation needs to appoint a person to serve as consultation coordinator. These coordinators are responsible for organizing, conducting and reporting on consultations for their respective institutions. One institution - Government's Office for Cooperation with NGOs - is tasked to address issues of education of coordinators and monitoring of consultation implementation through compiling annual reports. The Government's Office for Cooperation with NGOs is also tasked with publishing an annual report on the implementation of consultation with the interested public. The Office collects and processes the reports of ministries, public authority offices and state administrative organisations, public authority offices, agencies on their consultation process carried out within a year, pursuant to the Code on consultation. The report includes identification of challenges and recommendations for improvement of implementing consultation. For 2014, a total of 544 public consultations on draft laws and other regulations were conducted. This is 45% more consultations compared to 2013 when 374 were carried out. Compared to 2012 when state bodies conducted 144 public consultations, this is an increase of 277%, and compared to 2011 when they conducted 48 consultations, it is an increase of 1,033%. The report estimates that the improvement in the number of consultations carried out, but also a greater public interest in participating in the process of shaping public policy, is a result of the successful promotion of the Code on consultations and systematic education of relevant public authority officials on the implementation of the Code.</p> <p><i>Module of training for coordinators or civil servants for the effective application of the Code of Consultation</i> The Government's Office for Cooperation with NGOs has developed a one-day educational module on the implementation of effective consultation with the interested public in procedures of adopting laws and other regulations. The module is included in the curriculum of the National School of Public Administration. In addition, the Government's Office for Cooperation with NGOs held over forty</p>	

workshops for training of civil servants for effective use of e-consultations during 2015.

Permanence of existing structures, such as appointed coordinators for consultation in relevant institutions and systematic monitoring and education have contributed to sustained consultation practices. Consultation has become "business as usual" on national public authority level, less dependent on changes of the authority agenda.

Key elements:

- Ensure political decision to establish a permanent and sustainable structure for consultation;
- Provide a timely feedback to the public and organisations submitting online comments to facilitate their interest and further deepen their engagement;
- Adopt legislative framework to help implement the model;
- Task specific institution with implementing and monitoring all steps;
- Designate specific persons in relevant institutions with a clear job description regarding consultation requirements;
- Invest time in increasing understanding of persons who will conduct consultation in practice.

### 2.3 Structures for cooperation

In order to facilitate the relationship between public authorities and NGOs, a number of countries have developed different coordinating bodies. These may include public authority bodies such as a contact person for NGOs in each ministry or a central coordination body, participation coordinators or facilitators in each ministry, joint NGOs-public authority structures as multi-stakeholder councils or committees, joint working groups of experts and other advisory bodies on different public authority levels. Their main advantage is offering continuing, deeper and engaging dialogue among different stakeholders, giving them the sense of ownership and increasing the willingness to implement or facilitate implementation of the adopted measures. In Bosnia each institution must designate a Coordinator for Consultation responsible to coordinate all consultative processes within the institution, and in addition a separate official may be designated for particular consultation process.

*Country example no. 16:*

<b>Country</b>	United Kingdom
<b>Title/name</b>	<b>Neighbourhood Planning</b>
<b>Participation level</b>	Active involvement (partnership), dialogue
<b>Institutional level</b>	Local level
<b>Specific purpose</b>	Supporting the public to make planning policies and shape their communities through neighbourhood planning
<b>Short summary</b>	<ul style="list-style-type: none"> <li>• Stimulating stronger neighbourhood identity;</li> <li>• Fostering participation and building local social capital;</li> <li>• By end 2015, around 270 communities have published full draft neighbourhood plans and over 100 neighbourhood-planning referenda have been held with success, with over 198,430 people participating in voting.</li> </ul>

Neighbourhood Planning<sup>135</sup> is a tool that gives communities local buy-in from the public in planning what should be built and where, in accordance with the legal regulation.<sup>136</sup> In order to prove that public engagement was carried out fairly and meaningfully, it requires a statement on the conducted consultation to accompany a completed Neighbourhood Development Plan.<sup>137</sup> Communities are advised to create an Engagement Strategy, as a list of activities and desired outcomes from each event with clear goals, target audience, methods of recording (or capturing) data, a timescale, etc. In addition, they are encouraged to invite voluntary sector organisations to provide access to hard-to-reach groups that rarely engage with authorities. Public can voice their opinion and discuss options through series of workshops organized by their local councils or participating in local neighbourhood plan steering group or planning committees. This enables them to decide what type of development is needed and what infrastructure should be provided.

Each council needs to decide how to engage the public, either through establishing local planning committees or steering groups (as more permanent structures), or via informal consultation workshops. In addition, there is a need for technical support for neighbourhood planning groups which can be obtained from Planning Aid England. Local council staff needs to be engaged in preparations and conducting of the planning process. Resources on how to organize planning, how to engage the public, reports and many other documents are available via online portal developed by Planning Aid England.<sup>138</sup> A Roadmap to Neighbourhood Planning was produced by Locality (a network of community-led organisations). In addition, the national public authority's Department for Communities and Local Public authority has made funding available to provide support and grants to communities and groups wishing to engage the public. The existing legal framework combined with financial incentives, online experience exchange and resources and promotional campaigns have contributed to sustained practices.

Key elements:

- Invest financial resources and time of staff to conduct successful planning process with public participation;
- Introduce financial incentives to increase community engagement and ownership;
- Organize a mobilization campaign which will raise awareness of the process;
- Arrange for a well-coordinated effort from both national and local level authorities, associations and communities;
- Ensure that legal requirements are fully respected;
- Secure a national authority's decision to support a structure for local level consultation.

### 3. Remedies in case participation principles are not followed

Feedback by public authorities and remedies in case guarantees on participation are not respected or followed are one of the key elements that can ensure trust in the participatory systems. Documents that set out clear guidance and framework on how to provide feedback and remedies for non-compliance can help in supporting the legal environment and facilitate the practice of participation. Indeed, as a good practice, countries prescribe measures in case

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<sup>135</sup> Forum for Neighbourhood Planning. Available at: <http://www.ourneighbourhoodplanning.org.uk>

<sup>136</sup> Planning is based on the *Localism Act* that obliged local planning authorities to give advice and assistance to communities preparing neighbourhood plans. After the neighbourhood plans pass at referendum and enter into force, they become a part of the statutory development plan. Communities with a neighbourhood plan receive 25 percent of the funds raised from developers to spend on their chosen priorities.

<sup>137</sup> The statement must include: (1) details of the persons and bodies consulted about the proposed neighbourhood development plan; (2) explanation how they were consulted; (3) summary of the main issues and concerns raised by the persons consulted; (4) description how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.

<sup>138</sup> Latest Resources. Forum for Neighbourhood Planning. Available at: <http://www.ourneighbourhoodplanning.org.uk/resources>

the authorities do not respect the procedures. For example, the Bosnia and Herzegovina Rules for Consultations in Drafting of Legal Regulations prescribe that the Council of Ministers may return the draft law to the institution to comply with the rules on consultation if it has not done so before submitting the law. Similarly, the Croatian Public authority's Standing Orders Procedure request an explanation on the consultation process for every draft law submitted to the public authority session.<sup>139</sup> In Romania, any person may launch a complaint according to the administrative procedure in case of infringement of rights under the law; the complaint or appeal are considered under emergency procedure and are exempt from taxes. Public servant may be penalized if s/he “does not allow the access of individuals to the works of the public sessions or prevents the interested parties from getting involved in the elaboration process of public interests regulations, under the conditions of the present law.”<sup>140</sup>

Country example no. 17:

<b>Country</b>	Albania
<b>Name/title</b>	<b>Public consultations under the Law on Public Notification and Consultation</b> <sup>141</sup>
<b>Participation level</b>	Information, Consultation
<b>Institutional level</b>	National, Local
<b>Specific purpose</b>	To improve quality of policies and judicial acts in general through public consultation of the project laws, national and local strategies, as well as policies with high public interest. Article 1 (3) of the Law: “ <i>This law aims to promote transparency, accountability and integrity public authorities.</i> ”
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Introduces a transparent process of consultations, where all collected opinions are made public;</li> <li>• Provides a possibility for redress if the legal regulation on consultations is not respected;</li> <li>• The Law was adopted only recently, the actual impact is yet to be determined.</li> </ul>

In 2014, the Law on Public Notification and Consultation was adopted by the Albanian Parliament, regulating the obligation to consult draft laws, strategies and policies with defined interest groups. According to the Article 9 of the Law, all stakeholders (public bodies, Albanian citizens and foreign natural persons with permanent residence in Albania) are entitled to: (1) request information about public consultation- this includes the access to the draft law; (2) propose public authorities to initiate procedure for drafting and adoption of a new act, and (3) submit comments and recommendations on the draft. Everything is facilitated through an online platform maintained by the Ministry of Innovation and Public Administration.<sup>142</sup>

The Law further regulates the manner of notification and receipt of comments and recommendations, together with specific deadlines. In case of a breach of the legal provisions, the Law establishes a complaints procedure. Article 21 stipulates that if stakeholders consider that public authorities violated their right to notification and public consultation they may complain at the head of the public body responsible for the specific notification and/or consultation before the approval of the draft or at the Commissioner for Freedom of Information and Data Protection within 30 days from the adoption of the Act.

<sup>139</sup> Art. 30.4, Standing orders of Croatian Government

<sup>140</sup> Art. 14, Law 52/2003 on the *Decision-Making Transparency in the Public Administration*

<sup>141</sup> Law No. 146/2014 on *Public Notification and Consultation*, available at: [www.elbasani.gov.al/previewdoc.php?file\\_id=5701](http://www.elbasani.gov.al/previewdoc.php?file_id=5701).

<sup>142</sup> Konsultim Publik. Ministry of Innovation and Public Administration. Available at: <http://www.inovacioni.gov.al/al/legjislacioni/konsultim-publik>.

As for the implementation of the legal provisions, the Law introduces an obligation for each public body to appoint a coordinator of public notification and consultation procedures that is responsible for overall coordination and administrative work around the process.

Key elements:

- Introduce legally binding guarantees for public notification (information) and consultation;
- Create a well-functioning and maintained online platform;
- Designate responsible public servants to coordinate the process of notification and consultation;
- Design a procedure for appeal in case the rights of notification and consultation are not properly implemented.

Country example no. 18:

<b>Country</b>	Romania
<b>Name/title</b>	<b>Transparency of decision making in public administration</b> <sup>143</sup>
<b>Participation level</b>	Information
<b>Institutional level</b>	National, Local Administration
<b>Specific purpose</b>	a) Enhance the accountability of public administration for the citizens, and the beneficiaries of administrative decisions; b) stimulate active participation of citizens in administrative decision-making and in the process of drafting the regulations; c) increase the degree of transparency in the whole public administration.
<b>Key/innovative features</b>	<ul style="list-style-type: none"> <li>• Provides a firm framework for transparent decision-making in public administration</li> </ul>

Romanian Law on Transparency of Decision Making in Public Administration sets minimum standards for administrative procedures to ensure decisional transparency on a national and local level.<sup>144</sup> Article 2 sets principles of the Law: (1) provision of before-hand information on the matters of public interest on national and local level public administration and on draft legislation; (2) consult citizens and associations with legal personality about process of decision-making; (3) active participation of citizens in administrative decision-making and in the process of drafting legislation.

According to the Chapter III of the Law, any person may launch a complaint in accordance with the administrative procedure in case of violation of rights guaranteed under the Law. The complaint and the appeal are considered under emergency procedure and are exempt from taxes. Public servant commits a disciplinary offense if s/he “*does not allow the access of individuals to the works of the public sessions or prevents the interested parties from getting involved in the elaboration process of public interests regulations, under the conditions of the present law.*” The sanctions are applied according to the Law no. 188/1999 regarding the statute of civil servants.

Key elements:

- Provide a sound legal framework that guarantees transparency of decision-making in public administration;
- Ensure the guarantees are respected through a provision of complaints mechanism.

<sup>143</sup> Law 52/2003 *on transparency of decision making in public administration*, available at: [http://www.euroavocatura.ro/legislatie/1125/Legea\\_52\\_2003\\_Republicata\\_2013\\_privind\\_transparenta\\_deciziunala\\_in\\_administratia\\_publica](http://www.euroavocatura.ro/legislatie/1125/Legea_52_2003_Republicata_2013_privind_transparenta_deciziunala_in_administratia_publica).

<sup>144</sup> Other regulations related to transparency of the public institutions in Romania include: Law 544/2001 on free access to public information and Public authority Decree 775/2005 for approving the regulation on procedures for drafting, monitoring and evaluation of public policies at central level.

Country example no. 19:

<b>Country</b>	Republic of Moldova
<b>Name/title</b>	<b>Transparency of the decision-making processes<sup>145</sup></b>
<b>Participation level</b>	Information, Consultation
<b>Institutional level</b>	National, Local
<b>Specific purpose</b>	Ensure transparency in decision-making within the central and local public administration authorities, other public authorities.
<b>Key/innovative features</b>	<ul style="list-style-type: none"><li>• Legal sanctions for authorities if not applying the rules on transparency.</li></ul>
<p>Moldovan Law on Transparency of the Decision-Making Process regulates the right of citizens, associations with legal personality and other stakeholders to participate the decision-making processes and their relation to public authorities. The Law lists the main steps to ensure transparency, including provision of regular information and access to documents to the public in relation to the decision-making; consulting them and examining their recommendations.</p> <p>The Law also provides an obligation for the public authorities to draft annual reports about transparency in decision-making and make them publicly available. The reports should include the number of decisions taken by the respective authorities, the number of recommendations, consultative meetings, public debates and cases when public authorities violated the provisions of the Law and were challenged by the stakeholders. According to Article 16<sup>1</sup> of the Law on Transparency of the Decision-Making Process in the Republic of Moldova (2008), the non-application of the rules on transparency constitutes a disciplinary misdemeanour. It is sanctioned according to the Labour Code and Law No. 158 on The Public Function and Status of Civil Servants.</p> <p>Key elements:</p> <ul style="list-style-type: none"><li>• Ensure that legal framework provides guarantees for transparency and consultations;</li><li>• Include in legal framework provisions for complaints mechanism in case of infringement.</li></ul>	

## VII. GENERAL FINDINGS AND CONCLUSIONS

International and European standards for civil participation in decision-making processes have evolved considerably in the last years, with the aim to strengthen guarantees for participation. The right to participation has been emphasised in numerous binding and non-binding documents, and the international standards clearly reinforce the notion that participation is a right that should be regulated and implemented, rather than left to the whim of decision-makers. In addition, the documents provide for a broad range of issues that need to be addressed by countries in order to facilitate participation: e.g. access to information, equality of all individuals, acknowledging the essential role of the NGOs in participation, enabling participation of disadvantaged groups, specifics of participation in environmental decision-making and a favourable legal framework for meaningful participation.

Further, on the global and specifically European level, the right to take part in public affairs, i.e. to participate, is clearly elaborated for *everyone*, without distinctions or unreasonable restrictions. Moreover, any interested individual, directly or through an organisation should be able to contribute to development of policies and legislation.

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<sup>145</sup> *Law on Transparency of the Decision-Making Process in the Republic of Moldova*, 13 November 2008, No. 239, available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=329849&lang=1>.

Participation of individuals and NGOs in policy and decision-making process is not the same as taking part in political activities. They should be distinguished in law and, in that way, limit any situation where participation in decision-making process will be restricted under the umbrella of political activities definition.

The most relevant principles concerning participation addressed in the reviewed documents include:

- Participation in terms of collecting and channelling views of various members and concerned citizens via NGOs organisations to input the political decision-making process;
- Trust and openness, as honest interaction between actors and sectors;
- Accountability and transparency, from both NGOs and public authorities at all stages;
- Independence and impartiality of NGOs, free to pursue their aims, decisions and activities;
- Non-discrimination, equal treatment of all individuals, including minority, disadvantaged, vulnerable or marginalized persons or groups wishing to participate.

There is a clear connection between the possibility of people and organisations to participate in decision making and the enabling conditions for operation of NGOs. Laws and practices provide for an enabling environment for NGOs (and consequently, participation) when these respect the fundamental rights to freedom of association, freedom of assembly, freedom of expression and the protection of human rights defenders. An enabling legal framework limits the ability of public authorities to interfere with the basic rights of individuals and NGOs, to be established and operate freely or to restrict access to resources. It also supports participation on both country level and in multilateral institutions.

The overview addresses different phases of policy processes, as the intensity and level of participation vary depending on the phases. Three main levels of participation are highlighted: (1) access to information, (2) consultation and (3) active engagement through dialogue and partnership. The 'dialogue' underlines all levels as an active form of participation and a prerequisite for a collaborative relationship. The tools and mechanisms adopted by countries to implement and foster participation differ based on the level of engagement.

In addition, countries regulate and implement a wide range of issues relevant for the participation in decision-making processes. They create a framework for the inclusion of the public and introduce rules which help increase transparency and wider access. Rules and principles are included in different types of documents, as some are legally binding, others not. However, the overview and country examples show that, to ensure successful and effective implementation, it is important to include legally binding guarantees for participation.

The review of the laws from European countries that were analysed reveals that there is a general framework concerning participation, which outlines important elements that can be used as a recommendation for other countries:

1. Everyone should be informed and consulted in the decision making process. Participation should be open to different groups (minorities, people with disabilities, women, seniors, etc.). Appropriate methods should be chosen to help facilitate and encourage involvement of such groups. Some countries have

- effective inclusion policies to enable everyone to take part in the decision-making processes, such as persons with disabilities or senior citizens.
2. NGOs play crucial role in the process; they can facilitate the public participation, represent members and stakeholders' interests and keep informing on the process and the results.
  3. Some countries regulate that clear, concise and timely information should be provided to help ensure that participants understand the issues better and are able to offer more meaningful contribution. For the same reasons, everyone should have access to the draft documents at the earliest stage of their development and in subsequent drafts.
  4. The timeline allocated for participation should be determined to allow for adequate consultation; country approaches provide for at least 10 days period per draft.
  5. Providing feedback to the participants increases trust and strengthens engagement. It also encourages the public to be more committed and take part in future processes.
  6. Some countries use assessment of the process of participation to improve future processes and share experiences for creative models used.
  7. Different tools and mechanisms can be used to support participation at all phases of policy process. The decision on which to use should be made at the beginning of the process to ensure that the most appropriate is selected.
  8. Several measures can be undertaken to help prepare for the process and ensure that it will be executed effectively. For example, some countries assign coordinators who will facilitate the process and serve as contact person for the public and other officials. Others include financial incentives to increase community engagement and support participation.
  9. Different tools should be used to ensure public awareness about the participation process (e.g., campaigns, web sites, etc.).
  10. Authorities use e-participation tools to facilitate the process and engagement. In general, those are designed as a user friendly platform and simple mechanisms that enable the access of data and their re-use, include e-consultation options (with information about the drafting process, space for comments, contact person and other related materials) and have designated teams or persons responsible for continuous updates.
  11. Some countries have developed detailed guidelines for the citizens and/or officials and organize trainings to support implementation of the participation mechanism.
  12. Some countries task specific institution(s) with implementing and monitoring participation mechanisms, such as public consultation.
  13. Countries introduce legally binding guarantees for assessing information and consultation with interested public, including provisions for providing feedback and complaints mechanism in case of infringement.



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