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European Center for Not-for-Profit Law

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Input to OHCHR based on resolution 27/24 of the UN Human Rights Council

Best practices in equal participation in political and public affairs 12

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The European Centre for Not-for-Profit Law (ECNL) is actively engaged on European and global level to contribute to the setting of standards and shaping policies that affect CSOs. ECNL collaborates with European and global CSO networks, and is one of the coordinators of a group focusing on global public participation initiatives. ECNL does not only provide technical expertise, but also advocates for shaping of norms in line with universal guarantees for freedom of association and assembly and is of the view that **the time has arrived to develop a set of principles at the UN level which could provide unified guidance to the promotion, protection and implementation of the right to participate in public affairs** in the context of existing human rights law.

In this framework ECNL is glad to share our experience during the consultation launched by OHCHR in the area of the equal participation in political and public affairs. While there is wide ranging and very encouraging practice on the ground in a large number of countries, as demonstrated also by our contribution below, we feel that the lack of authoritative guidance relating to the implementation of Article 25 at the international level, beyond the existing General Comment 25 of the Human Rights Committee, contributes to the uncertainties existing in a number of constituencies regarding the implementation and content of this composite right. Therefore we hope that the study being prepared by OHCHR will identify a set of principles which can be eventually adopted by the UN Human Rights Council and serve as a useful guiding tool for governments in the implementation of the right to participate in political and public affairs.

I. General principles

Participation in decision-making processes means a possibility for citizens, civil society organizations (CSOs) and other interested parties to influence the development of policies and laws which affect them. A number of benefits of public participatory processes have been identified. These include:

- Creating fair policies/laws reflective of real needs enriched with additional experience and expertise;
- Facilitating cross-sector dialogue and reaching consensus;
- Adopting more forward and outward looking solutions;



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- Ensuring the legitimacy of the proposed regulation and compliance;
- Decreased costs, as parties can contribute with own resources;
- Increased partnership, ownership and responsibility in implementation;
- Strengthening democracy - preventing conflict among different groups and between the public and the government and increasing confidence in public institutions.

The underlying role of participatory democracy is not to replace representative democracy, which is based on the separation of powers, multi-party system, and free elections; but rather to supplement it and make it better functioning. Participatory democracy does not suspend constitutional and legal competences possessed by representatives of the executive and legislative powers in the procedure of passing and implementing laws and other instruments of public policies but rather enables authorities to carry out these competencies more efficiently.

To that end, citizen participation serves several important functions:

- a. It provides an opportunity and creates conditions necessary for citizens to engage in political life regularly, and not only during elections.
- b. It creates a framework for citizens to advocate for their legitimate interests and thus contributes to the development of a vibrant democratic society.
- c. It makes the work of public authorities more transparent and brings it closer to their constituencies.
- d. It contributes to the quality of adopted public policy and its smooth implementation. If all stakeholders participate in the process, their legitimate interests will presumably be protected and the costs of implementation of such a policy will be reduced, as they will be less inclined to resort to judicial and other remedies to protect their interests. Citizens are more inclined to embrace public policy if they have an opportunity to participate in the process of its shaping, even if their proposals are not fully taken on board.
- e. It facilitates the watchdog role of CSOs in the implementation of adopted policies.

As for CSOs, they play a twofold role in this process. On the one hand, CSOs are suitable institutional tools, which facilitate citizen participation in public policy. They allow citizens to organize themselves and express and advocate for their legitimate interests more effectively, as well as making the entire process of participation more transparent. On the other hand, CSOs themselves are also a legitimate party to the participatory process at least to the extent which some of the human rights that are composite rights to the right of equal public participation are also extended to CSOs.

Participatory processes can be carried out at several levels:



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- At the highest level where strategies, general approaches and overall concepts are developed (e.g., policy and decrees);
- In planning activities and program development; and □ In concrete projects.

II. Main documents relating to citizen participation in Europe

The importance of public participation in policy and law making has been recognized by intergovernmental organizations that have adopted documents and created models to support and strengthen citizen participation. Although some of these documents are not legally binding, they lay down standards, principles and best practices which should be considered at the global level.

1. European Union

The European Commission developed the **White Paper on European Governance** in 2001 which, among others, aimed to reinforce the culture of consultation and dialogue at EU level and thereby increase the legitimacy of the decisions. The paper highlights five principles of ‘good governance’: openness, participation, accountability, effectiveness and coherence, which not only “underpin democracy and the rule of law in the Member States, but they apply to all levels of government – global, European, national, regional and local.”

The White Paper recommended changes in a number of areas, and obliged the European Commission to undertake action to implement them. As a result, in 2002 the European Commission adopted the **General principles and minimum standards for consultation of interested parties by the Commission** (EC Principles and Minimum Standards). It emphasizes the importance of providing clear consultation documents, consulting all relevant target groups, leaving sufficient time for participation, publishing results and providing feedback.

The participatory approach to policy and law making at the EU level and in the member states was enshrined in the **Lisbon Treaty** as well. Specifically, **Article 10** 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.” Even more importantly, the European Parliament adopted a **Resolution on the perspectives of Developing Civil Dialogue under the Treaty of Lisbon** in 2009. The resolution reinforces the significance of consultation and calls on EU institutions to adopt binding guidelines concerning the appointment of civil society representatives, methods for organizing consultations and their funding, and calls on them to maintain registers of active CSOs. Furthermore, the resolution also calls on EU institutions



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and Member States to make full use of legal provisions and best practices to “step up dialogue with citizens and CSOs”, especially in those regions and sectors where it is not fully developed. The resolution also acknowledges that dialogue with citizens at all levels requires certain financial resources, and therefore calls on the stakeholders and responsible bodies to ensure that such dialogue is adequately funded.

2. Council of Europe

The issue of participation is addressed in several recommendations of the Council of Europe. **Recommendation CM/Rec (2007) 14** states: “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 cooperation should be facilitated by ensuring appropriate disclosure or access to official information. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.”

Recommendation CM/Rec (2010) 5 specifies that: “Member states should ensure that non-governmental organizations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.”

Recommendation Rec (2001) 19 highlights the 13 basic principles of a local democratic participation policy. In the light of the principles the Recommendation identifies specific steps and measures to encourage and reinforce citizens’ participation in local public life.

In terms of local participation the other fundamental document is the **European Charter of Local SelfGovernment (1988)** which is the first internationally binding treaty that guarantees the rights of communities and their elected authorities and establishes the principle of subsidiarity. By signing the European Charter, states undertook to respect a core of basic principles, inter alia, the right of citizens to participate in managing public affairs.

Although it does not have a mandatory character, the **Code of Good Practice for Civil Participation in the Decision-making Process (2009)** is also worth mentioning. It defines a set of general principles, guidelines, tools and mechanisms for civil participation with the intent that it will be implemented at local, regional and national levels.

3. Organization for Security and Co-operation in Europe (OSCE)



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The OSCE has produced a number of **Public Hearing Manuals** in the countries it is present, including Kosovo and Bosnia and Herzegovina. The manuals provide support for the work of parliamentary committees, in their legislative work. The manuals describe the types of public hearings, practical issues to consider when organizing them, and even sample questionnaires that had been sent to participants of earlier public hearings in preparation for the meeting. The manuals give legislators a practical guidance tool on conducting public participatory processes and involving citizens and CSOs in their work in a sensitive and considerate manner.

4. Organization for Economic Co-operation and Development (OECD)

In 2001, the OECD issued a **Handbook on Information, Consultation and Public Participation in Policy Making**, which offers government officials practical assistance in strengthening relations between government and citizens. It combines a brief review of basic concepts, principles, concrete examples of good practice, tools (including new information and communication technologies) as well as tips from practice. The approach and activities showcased in the handbook support and complement formal institutions of democracy, and strengthen the democratic process.

III. Legislative relating to public participation in some European countries

1. Austria

The standards of public participation are laid down in a non-binding document in Austria. The so-called **Standards of Public Participation- Recommendation for Good Practice** were developed by an interministerial working group with the participation of 20 Austrian authorities (e.g., ministries and chambers) and adopted by the Austrian Council of Ministers on 2 July 2008. 41 institutions commented on the draft of the Standards of Public Participation. The Standards of Public Participation aim to help administrative staff of the federal government in the concrete conduct of high-quality participation processes. They are a contribution to good governance in Austria. A checklist on preconditions and quality criteria for participation was also developed to help the authorities to ensure the success of the participation process. Besides the Standards of Public Participation there are binding rules for participation regulated in sectoral laws (e.g., Environmental Impacts Assessment Act, Water Statute, Industrial Code) which shall be applied by the authorities. See more: http://www.partizipation.at/standards_pp.html

2. Bosnia and Herzegovina

In Bosnia and Herzegovina (BiH), citizen participation is governed by the **Rules on Consultations in Policy Making** (2006). The Rules govern the enactment of general legal acts which are adopted by the BiH Council



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of Ministers and other institutions at the state level. The types of legal instruments encompassed by public consultations are laws and other general regulations. Private actors that may participate in public consultations include groups of citizens and private legal entities (i.e., legal entities that are not part of the government structure).

The Rules prescribe the minimum level of consultations between those bodies and the public, legal entities, and groups of citizens which do not belong to the government structure. Minimum consultations include the obligation of the relevant body to post a draft of regulations on their website, the possibility of providing comments to a draft by interested parties via the Internet, as well as solicitation of comments by persons who are on the consultation list of the relevant institution. The deadline for submission of comments may not be shorter than 21 days (minimum consultation) or 30 days (legal provisions with a significant impact on the public).

Significantly, the obligation for minimum consultation is not subject to any exceptions. However, the Rules do not envisage any specific sanctions for violation of the consultation procedure. In such cases, the Council of Ministers may (but is not obliged to) refuse to put the draft on its agenda. If so, the Council's Chief Secretary shall return the draft to a responsible body and request that it complete the process of consultation within a prescribed deadline, before the draft is reintroduced to the Council for its consideration. Exemptions from mandatory consultations in the case of broader consultations include extraordinary circumstances, unforeseen international obligations or court's annulment of a law or part thereof. See more: http://www.mpr.gov.ba/web_dokumenti/EJ%20Pravilnik%20za%20konsultacije.pdf

3. Croatia

Croatia has an extensive regulatory and institutional framework for citizen participation.

3.1. Laws

The first level of public participation is provided for by the **Right to Access to Information Act**. Government bodies of the Republic of Croatia and other persons onto whom public authority was transferred, directly managed or controlled by the government bodies of the Republic of Croatia are also obliged to comply with the regulations and allow access to the requested information or deny in specific cases.

The Act stipulates 5 ways of providing information: i) regular disclosure of certain information ii) providing information directly to the person who requested it iii) allowing access to documents iv) delivering the documents including the requested information directly to the person who requested it v) in other ways. Government bodies shall also ensure direct access to their activities, meetings or sessions, and the agenda, application procedure and number of people that may be present shall be published in advance. Furthermore, they are obliged to nominate a responsible person to provide information, process request of applicants and administer a catalogue of information.



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Besides, the **Croatian Constitution** is one of the very few constitutions which explicitly includes the right to local participation. According to Article 133: “citizens may directly participate in the administration of local affairs through meetings, referenda and other forms of direct decision making in compliance with law and local ordinances.”

3.2. Code

The general principles, standards and measures for conducting consultations are regulated by the **Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts** (Code). The Code was adopted in 2009 as a result of outlining this objective in the Operational Implementation Plan for the National Strategy for the Creation of an Enabling Environment for Civil Society Development 2007-2011. The Code applies to draft laws, regulations and other acts (e.g., strategy, resolution, declaration, programs) of state bodies. Furthermore, according to chapter IX it “shall be applied by the bodies of local and regional self-government units and legal entities vested with public authority in the procedures of adoption of general acts regulating matters within their scope of work which directly meet the needs of citizens, or other matters of interest for the public benefit of citizens and legal entities within their territory or within the field of their activity”.

The Code applies to the interested public, which is defined broadly as: “citizens, CSOs (informal civic groups or initiatives, associations, foundations, funds, private institutions, trade unions, associations of employers), representatives of the academic community, chambers, public institutions and other legal entities performing a public service or who might be affected by the law, other regulation or act which is being adopted, or who are to be included in its implementation.”

Furthermore, the Code highlights the importance of involving experts in the procedure of drafting the laws and other regulations and the monitoring of their implementation. It puts down criteria which should be taken into account when members of expert working groups are appointed: expertise; previous public contributions to the subject-matter in question; other qualifications relevant to the matter regulated by the law/regulation/act.

CROATIA: Minimum standards and measures for conducting consultations with the interested public According to the Code

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

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



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

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

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

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

4. Feedback information about the effects of the consultations conducted

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

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

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

3.3. Institutions

The institutionalization of the cooperation between the government and CSOs has started with the establishment of the **Office for Cooperation with NGOs** in 1998 and further enhanced with the setting up of the Council for Civil Society Development in 2002. The Office for Cooperation with NGOs aims at creating an enabling environment for civil dialogue by the following means:

- Drafting, wide consultation process and implementing the Code



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- Developing and implementing the Guidelines for the implementation of the Code
- Educational activities for nominated coordinators for conducting consultations
- Strengthening the capacities of public administration bodies for the implementation of European standards and methods for conducting consultations with the interested public
- Educating civil servants at the national, local and regional level on models of cooperation with CSOs
- Public database of the 125 government and parliamentary advisory bodies involving around 800 representatives of CSOs.

The **Council for Civil Society Development** is an advisory body to the Government acting towards developing cooperation between the Government and civil society organizations. The Council is a joint body consisting of 27 members out of which 12 members are representatives of relevant state administrative bodies and Croatian government offices, 12 members are representatives of nongovernmental, nonprofit organizations and 3 members (1-1-1) are representatives of civil society from foundations, trade unions and employers' associations. The 12 NGO representatives are democratically elected through a public call for proposals and transparent voting procedure. The Council has the power to initiate opinions and statements on draft laws, national programs and plans regarding civil society development. See more on Croatian institutions: <http://www.uzuvrh.hr/defaulteng.aspx>

3.4. Local level charters

Based on the Croatian Constitution Article 133. an increasing number of local governments have been adopting local charters of cooperation between CSOs and local governments (e.g., Rijeka, Šibenik, Sisak, Županja, Beli Manastir).

As an example, in 2008 the Assembly of the town of Sisak also adopted a **Charter for Cooperation of the City of Sisak and Associations**, expressing a willingness and desire to develop an equal partnership with the citizens' associations. In addition to the Charter for Cooperation, Sisak has adopted additional documents that contain provisions on cooperation with civil society organizations such as the needs of public programs and Municipal Action for Youth. The Charter was developed in cooperation with associations from the city and every association can join the Charter at any time. The town actively cooperates with organizations in implementation of projects.



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City of Sisak will develop partnerships with associations of citizens through the following forms of cooperation: counseling; information; financing.

Consultation will take place through:

Developing effective mechanisms that will enable the active participation of citizens, civic organizations and informal civic initiatives in the decision making process and meet community needs;

Considering of proposals and suggestions from citizens' associations in preparing development strategies and programs, as well as the prioritization of the public need;

The involvement of representatives of civic organizations in working bodies to prepare and review proposals for significant development of the community and civil society;

Information is achieved through:

Strengthening dialogue and two-way communication between city government and citizens;

Exchanging of information which is important for the development of local communities and civil society;

Building information systems and related systems that enable and facilitate the realization of the rights of citizens to access of information;

Update links of civic associations on the website of the City of Sisak.

4. Estonia

The rules of participation are regulated in a non-binding document called the **Estonian Code of Good Practices on Involvement for Public Institutions**. The Code was drafted in 2005 on the basis of The **Estonian Civil Society Development Concept (EKAK)** and even though it is not binding, public officials are recommended to follow its principles. The objective of the Code is to harmonize the principles from which the public sector institutions and non-profit organizations can proceed in involving the public and interest groups in decision-making.

The Code includes eight recommended principles, which place great importance on the clarity of goals, openness of relationships, and dedication to goals. The Code is expected to be applied by administrative agencies in the preparation of at least the following documents (strategic documents):

- Draft laws and their amendments;
- Draft regulations and directives of the government;
- Draft Ministers' decrees;
- Documents, concepts, policies, development plans, and programs that are important to the country's development;



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- Drafts legislations of European Union institutions and other strategic documents (i.e. green and white books);
- Instruction and procedures for rendering public service;
- Conventions and international agreements, as well as the documents that are worked out within their framework, and that influence the society.

The eight recommended practices are the following:

1. Clarity of the goals of engagement

The initial assignment shall state the expected result and projected effect briefly, clearly and simply without unnecessary terminology and with clear expression of the expectations regarding the engaged parties. The initial assignment shall include an analysis of the alternative solutions for achieving the result of the engagement. Additionally, an analysis of the influences shall be prepared.

2. Engaged parties

The agency/organization initiating the engagement shall determine the parties whom to consult in the given field and take their wishes, needs, and distinctive features into consideration. They shall organize the registration of interest groups in order to guarantee that all affected parties are informed. When determining the parties to be engaged, the registered interest groups and possible additional interest groups affected by the resolution shall be taken into consideration. The rights

Several studies have shown that civil servants have an increased awareness about the need for civil society involvement in Estonia. A study conducted in 2006 showed that 92% of civil servants find CSO involvement to be necessary for better results in lawmaking. A more recent qualitative study by Tallinn University showed that civil servants who have permanent contacts with CSOs view the cooperation much more positively, while the lack of experience gives rise to unrealistic expectations, disappointment and prejudice.

and restrictions of the engaged parties need to be defined and clarified.

3. Engagement at the early stages

The parties shall be involved in the preparation of the draft as early as possible and engaged throughout the entire course of the process. This could be preceded by informing and consulting on an informal basis to provide the parties with an idea of the problems. When the participation of the engaged parties in the activities of the working group is decided, the specific needs shall be taken into account. Consultations should generally last for a minimum of four weeks and the exceptions when consultations may be shortened shall be determined. The length of consultations may be shortened if consultations have already been held in connection with the draft of the same resolution and/or if, during the final period of the preparation of the material being consulted on, positions on only a few amendments are



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called for. The length of consultations must be extended in the case of very voluminous and substantial drafts, as well as in connection with state holidays and vacations.

4. Detailed plan for engagement

The preparation of an engagement plan is recommended including the participants and stages, the start of the consultations, length, final deadline, form of engagement, methods, information channels, and the assessment of the interim summary and final results. The chosen form of engagement shall correspond to the content of the draft resolution, the potential effect, needs, opportunities, and other conditions of the parties. The leading coordinator for the engagement is determined with public contact details shared. If necessary, the coordinator shall advise the engaged parties, analyze and summarize the course of the consultations.

5. Smooth communications

It shall be ensured that the public, interest groups, and those possibly affected by the strategic document are informed. From the beginning of the engagement, the documentation related to engagement shall be made public and easily available through electronic information channels (preferably, on the website of the initiating organization), and if necessary, through alternative information channels and the public shall also be informed through mass media. Translation from the state language into foreign languages and vice versa is recommended in the case of drafts affecting the foreign-languages speaking population or in case of significant strategic documents.

6. Interim summary of the course of the engagement

If necessary, an interim summary should be compiled in the form of a verbal presentation, brief written report, written analysis, recorded decision, or alternative mapping to analyze the process and the feedbacks and correct the particulars of the process. The compilation of the interim summary and the securing of its availability shall be fixed in the engagement plan or agreed upon by the parties during the course of the work process. Based on the interim summary, it shall be decided if supplemental forms or methods of engagement need to be implemented, if experts need to be called, or the circle of parties need to be expanded.

7. Announcement of the results

The engaged parties shall be informed of the results. All parties shall receive a summary answer including all the proposals that have been presented (both the accepted and the rejected ones). The rejection of proposals shall be explained. The summary answer shall be forwarded to the engaged parties no later than 30 days after the end of the consultations. The summary answer shall be made available on paper and on the Internet (and if necessary, through mass media), as a complete text and/or as references to a complete text.



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8. Assessment of the engagement and results

The engagement and the applicability of its results shall be assessed by the initiator of the engagement and the engaged parties. The initiators of the engagement shall ask for feedback from the engaged parties for the assessment of the process and the results. In the course of the assessment the performance of the initial assignment of the engagement, the productivity of the used forms and methods, the motivation of the parties to participate, the efficiency of the administrative work and the feedback and the satisfaction of the target group shall be analyzed. With regards to the results, the following shall be analyzed: the correspondence of the results to the initial assignment; whether alternatives were considered; the applicability of the results to the subsequent development of the topic being consulted on; etc. The results of the assessment shall be considered in the planning and implementation of the next engagement processes.

See more on Estonian best practice: <https://www.siseministerium.ee/29949/>

5. Latvia

In Latvia, the basic principles and cornerstones of citizen participation are laid down at the level of the Parliament. The **Declaration about the Development of Civil Society in Latvia and Cooperation with Nongovernmental Organizations** (Declaration) was adopted by the Saeima in 2006 with the aim of expanding cooperation with CSOs. According to the Declaration, the Saeima considers CSOs as equal partners and acknowledges that the participation of CSOs provides an essential contribution in the process of initiating, preparing and assessing laws. See the original: http://www.saeima.lv/faktulapas/05_Sadarbiba_NVO.pdf

The Saeima decided on the following:

- „1) regularly assess the cooperation between the Saeima and NGOs and facilitate the exchange of experience of the Saeima committees by promoting the creation of a unified method for involving these organizations in the process of preparing laws;*
- 2) provide for the Saeima in general and for each Saeima committee a coordinator responsible for cooperation with NGOs;*
- 3) continuously improve the Saeima website and other mechanisms in order to inform NGOs and society about the work of the Saeima and its committees, as well as to facilitate educating the non-governmental organizations about participation in the process of preparing laws;*
- 4) involve, according to a specific procedure, representatives of NGOs in the work of the Saeima committees and, within the framework of these committees, hear the opinions and suggestions of NGOs and society about the issues within the competence of the relevant committee;*
- 5) arrange, according to a specific procedure, consideration of proposals for improving draft laws and draft decisions;*



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6) *organize, not less than once a year, a meeting between the Saeima, along with the chairmen of its committees, and representatives of NGOs, i.e., a forum which assesses the results of existing cooperation and works out an agenda for further cooperation;*

7) *ask the forum to create a cooperation institution whose aim is to administer and coordinate the cooperation between the Saeima and NGOs, as well as to gather and review proposals for developing a civil society and improving cooperation between the Saeima and NGOs.”*

6. Romania

Romania addresses consultation procedure in a separate law, the **Law on Transparent Decision-Making by State Bodies and Local Governments** (2003), the so-called Sunshine Law. The Law obliges state administration and local governments to consult with citizens and their associations in the course of adopting general legal acts within their respective purviews. The Law defines the right to consultation as an enforceable rather than declaratory right, pursuant to the rules governing the administrative procedure. However, it appears that the scope of this protection is somewhat limited, as it is very likely that the process of consultation will be brought to a conclusion before the administrative procedure for the alleged violation of the Law is brought to a conclusion.

The procedure for public consultation is via a public announcement of preparation of a draft and is made by one or more ways as prescribed by law (Internet, announcement through local or national media, etc.). A draft is submitted to all persons that had expressed interest.

The relevant administrative body issues an announcement on drafting at least 30 days before a draft is opened for public debate. The announcement must state a deadline for submission of comments in writing, which may not be shorter than 10 days.

Exemptions from mandatory public consultations include extraordinary circumstances to which an expeditious promulgation procedure applies. State and municipality officials that breach provisions of the Law are subject to disciplinary liability, pursuant to the labor law and regulations governing civil servants.

7. United Kingdom

The UK is champion of good practices in both legally binding and not binding tools on civil participation. As an example for legally binding documents, the provisions for the disclosure of information held by public authorities are laid down in the **Freedom of Information Act 2000**. The Act highlights the general right to access information according to which any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the requested public



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information and if that is the case, to have that information communicated to him. The public authority shall comply with these promptly but not later than the 12th day following the date of the receipt unless the request is vexatious. In case of refusing the request the public authority shall also give the applicant a notice which states the fact, specifies the exemption in question and states why the exemption applies.

Public authorities shall set up a publication scheme which needs to be approved by the Data Protection Commissioner. Public authorities shall publish information in accordance with this publication scheme. The State Secretary shall issue a code of practice including guidance to public authorities about practice which would be desirable to follow. If it appears to the Commissioner that the practice of the public authority does not conform with the code of practice he may give recommendations to the authority and specify the steps which ought to be taken for promoting such conformity.

Additionally, the United Kingdom has numerous non-binding tools (compacts, codes, programs, workbooks, implementation plans, case studies, guides etc.) and a wide range of practices articulating the necessity of involving the civil sector in the decision-making process both on national and local level. Most importantly, the **Compact on Relationships between Government and the Voluntary and Community Sector** (Compact) – an agreement between the government and the third sector – was launched in 1998 at national level and was deemed as instrumental in moving many issues from the margins of government policy to becoming expected practice (e.g. 12 weeks consultation periods).

On the basis of the experiences a new national Compact was adopted in December 2009. According to the foreword by Simon Blake, the National Compact should provide a framework to drive Local Compact action, ensuring productive relationships at all levels. Following the adoption of the Compact, the Government issued the **Compact Code of Good Practice on Consultation and Policy Appraisal** in 2000 which sets out how consultation exercises are best run and what people can expect from the Government when it has decided to run a formal, public, written consultation exercise. The Code applies to central Government departments, including Government Offices for the Regions and 'Next Steps' Executive Agencies in the UK, however, it does not have a legal force. Even those departments which undertook to adopt the Code may decide not to conduct formal consultation exercises, however, they are encouraged to be clear about the reasons why the methods being used have been chosen. In the past 10 years the Code was further elaborated and the third and currently effective version was signed in July 2008.

According to the Code the seven consultation criteria, which shall be reproduced in consultation documents, are the following:

1. *When to consult: Formal consultation should take place at a stage when there is scope to influence the policy outcome.*
2. *Duration of consultation exercises: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*



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3. *Clarity of scope and impact: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*
4. *Accessibility of consultation exercises: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*
5. *The burden of consultation: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.*
6. *Responsiveness of consultation exercises: Consultation responses should be analyzed carefully and clear feedback should be provided to participants following the consultation.*
7. *Capacity to consult: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

See full text: <http://lx.iriss.org.uk/sites/default/files/resources/consultation%20code.pdf>

The Compact and the related Codes played a very important role as compass for adoption of Local Compacts. They serve as model and inspiration for local governments to follow national trends and apply them on local level in accordance to the needs of the community.

At present, 100% of local areas in England are committed to better partnership working between local government, local public bodies and local voluntary and community organizations through Local Compacts. Local Compacts are living documents that regularly include detailed provisions for the consultation procedure.

The regular review of the Local Compacts is important in order to evaluate the success of their implementation. In East Sussex, the Compact group uses a survey designed by NCVO32 which is sent out to people in both the public and the civil sector. The Compact group evaluates the answers, represents the result and proposes actions to the LSP. All in all, England shows remarkable realization of true partnership between the national government, local governments and the CSOs – in the sense that its mechanisms have seen successful implementation as a result of commitment and dedication of all parties.



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The Local Compact of Buckinghamshire

Consultation:

Both sectors recognize that consultation is a two-way process which, in many cases, is influenced by the Government. Both sectors agree to do the following:

- *Build on, co-ordinate, develop and improve existing consultation methods to make sure they include everyone.*
- *Assess relevant new initiatives, consultation papers, policies and procedures, particularly at the developmental stage, to identify implications for both sectors.*
- *Recognize the importance of involving the same representatives in consultation and partnership work, and that the representatives have the appropriate authority.*

A good practice guide will be jointly developed by both sectors to support this work.

Consultation timescales:

As most management committees in the voluntary sector will only meet every two to three months, the statutory sector will aim to follow Government recommendations of allowing 12 weeks for written consultations. However, both sectors recognize the time restrictions they work in and, if shorter timescales are necessary, they will consider alternative methods and approaches to make sure good quality, effective consultations are held.

Both sectors will aim to co-ordinate the timing of consultations and, where appropriate, share resources to help prevent too many consultations.

Government consultation:

Both sectors agree to do the following.

- *Give each other notice of possible future consultations from central Government and other agencies where possible.*
- *Share views and co-ordinate responses where it is helpful to provide a 'Buckinghamshire' view or opinion.*
- *Work together to encourage the Government to provide early notice of consultation timetables and realistic timescales.*

Consultation information:

Both sectors agree to do the following.

- *Explain what the consultation is about and whose views are being sought.*
- *Explain why they have chosen the particular consultation method being used.*
- *Wherever possible, provide a summary of the consultation and say where the full version is available.*
- *Use simple language without any unnecessary jargon or, if this is not possible, with specialized terms explained.*
- *Explain how and when information gathered during the consultation will be used.*
- *Provide information on those who took part in the consultation and the result of it.*
- *Make consultation documents available in a variety of formats, where appropriate.*
- *Make a joint response where appropriate.*

The statutory sector will do the following:

- *Make clear where a consultation exercise can result in change.*
- *State how many stages of consultation there are going to be and who is being consulted*



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- *Make clear why a particular voluntary or community group is being consulted on a particular issue (for example, as a service provider, as a representative of the community or volunteers, as a representative of the VCS, as a campaigning organization and so on).*

The VCS will do the following.

- *Provide and publicize information about consultations where appropriate.*
- *Use its network of organizations to encourage and support appropriate participation in consultation.*
- *Make clear whether it is responding as a service provider, a representative of the community or volunteers, a service user or a campaigning organization.*
- *Make clear whether their responses are based on consultation with members or their own experience and knowledge.”*



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Bibliography

Hadzi-Miceva-Evans, K, Comparative Overview of European Standards and Practices in Regulating Public Participation, in “Transparency and public participation in law-making processes”, October 2010, OSCE, MCIC and ECNL, available at <http://www.icnl.org/research/resources/ngogovcoop/compover.pdf>

Hartay, E, Citizen Participation – Best Practices in the Western Balkans and the European Union, Kosovar Civil Society Foundation, October 2010, available at http://www.kcsfoundation.org/repository/docs/03_03_2014_3974014_KCSF_2011_Best_practices_on_Citizen_Participation_in_WB_and_EU.pdf

Operating Model for Inclusive and Participatory Policy Dialogue and Integrated Democracy Support, INSPIRED Handbook, EIDHR, available at <http://capacity4dev.ec.europa.eu/public-governance-civilsociety/document/inspiring-democracy-operating-model-inclusive-and-participatory-policy-dialogue-0>

Golubovic, D., An Enabling Framework for Citizen Participation in Public Policy: An Outline of Some of the Major Issues Involved, International Journal of Not-for-Profit Law/ vol. 12, no. 4, November 2010.; available at http://www.icnl.org/research/journal/vol12iss4/art_2.htm

Golubovic, D., Velat, D., Citizens’ participation in the process of preparation and implementation of laws and other public policy instruments. ECNL. 2009;available at <http://www.civilsocietylibrary.org/CSL/111/Citizens-Participation-in-the-Process-of-Preparation-and-Implementation-of-Laws-and-Other-Public-Policy-Instruments>

Council of Europe Code of Good Practice for Civil Participation in the Decision-Making Process, October 2009, available at http://www.coe.int/t/ngo/Source/Code_English_final.pdf

European Union White Paper on European Governance, 2001, available at http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l10109_en.htm

European Parliament Resolution on the Perspectives for Developing Civil Dialogue under the Treaty of Lisbon, 2009, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0007+0+DOC+XML+V0//EN>



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OSCE Public Hearing Manuals, for Kosovo: <http://www.osce.org/sr/kosovo/32330> ; for Bosnia and Herzegovina: http://www.oscebih.org/documents/osce_bih_doc_2010122016042890eng.pdf ; for Macedonia:

<https://www.ndi.org/files/Service%20and%20accountability%20Public%20Hearing%20Manual.pdf>

OECD Handbook on Information, Consultation and Public Participation in Policy-Making, November 2001, http://www.oecd-ilibrary.org/governance/citizens-as-partners_9789264195578-en