



ENGAGING IN PUBLIC CONSULTATIONS

Toolkit for civil society on consultative and advocacy efforts during law and policy making processes



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I. INTRODUCTION

1. The Toolkit and its Purpose

1. This toolkit was prepared in order to provide an overview of international and domestic standards and principles on public consultations, and advocacy efforts during law and policy making processes within the Government. Its central aim is to provide guidance to civil society on how to engage in consultation processes in Kosovo, following especially the adoption of the Government Regulation 5/2016 on Minimal Standards for the Public Consultation Process, on 29 April 2016 (hereinafter as “Government Regulation No. 5/2016”).

2. Definition of Public Consultations

2. One of the first things to determine in this context is what public consultations are. While there is no international definition that would be applicable to all countries and situations, public consultation processes are generally understood to be any interaction between the bodies responsible for law and policymaking and parties that are likely to be affected by or are interested in the regulation or policy in question,¹ including the general public.

3. In Kosovo, Article 3, par 1.1 of Government Regulation No. 5/2016 setting out minimum standards for public consultations describes the public consultation process as

“The participation of interested parties and the public in the decision making process of public bodies, upon the announcement made by the responsible public body.”

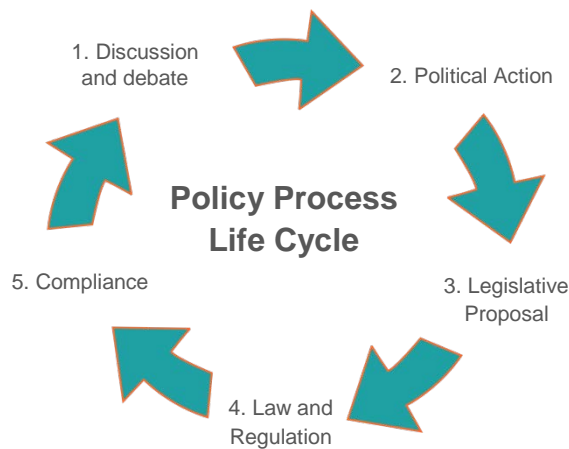
4. Both definitions demonstrate that the notion of public consultations is quite wide and includes many different means and types of consultations. The important element here is communication between public bodies preparing policies and laws, and stakeholders and the wider public, in whichever shape or form.

3. Public Consultations in Policy and Lawmaking Processes

5. Public consultations are an important element of processes whereby governments, and other public institutions that draft policies and laws plan, prepare, debate, consult and eventually adopt policies or laws.

¹Mandelkern Group on Better Regulation (set-up on 7 November 2000 by EU Ministers in charge of Civil Service and Public Administration), *Final Report*, November 2001, page 26, available at http://ec.europa.eu/smart-regulation/better_regulation/documents/mandelkern_report.pdf.

6. This process is a continuous one – once a policy or law has been adopted, its evaluation may lead to the discussion of a new, or amended policy or law. The diagram below demonstrates the circular nature of policy discussions:



7. In this process, public consultations are essential at the outset, when different options for resolving an issue are being debated, but also once a legislative proposal is on the table. Throughout the policy cycle, stakeholders, experts and the general public need to be informed, and have the chance to have their say. It is also important to involve the public and key stakeholders in discussions on how adopted policies/legislation are being implemented and whether there is a need for amendments or new policies/laws.

II. INTERNATIONAL STANDARDS

1. Article 25 ICCPR

8. The International Covenant on Civil and Political Rights (ICCPR) is one of the main human rights treaties, with the widest scope in terms of applicability. In Kosovo, this Covenant is directly applicable pursuant to Article 22 paragraph 3 of the Constitution, which also states that these international instruments take precedence over a Kosovo law or act of a Kosovo public institution.²

Article 25 of the ICCPR states that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; [...]

² This essentially means that if a law or government action says something different from what is written in the international instruments listed in Article 22 of the Constitution, then the wording of the international instruments will need to be followed regardless – the domestic law will need to be changed, and the government action will not be valid.

9. Thus, in countries that ratified the Covenant, every citizen shall have equal rights and opportunities to take part in domestic public affairs, either directly, or via the Government or Parliament.

10. Public affairs imply any matter that has to do with political power – citizens may thus participate in activities of the Government (including any public administrative office), and Parliament. This right also extends to public affairs at the local/municipal level.³ Ideally, these rights should be written clearly into the Constitution and relevant legislation.⁴

11. The direct participation in the conduct of public affairs essentially means that the rights of citizens to participate are not limited to voting – they also have the right to try and influence actions of the Government, or policies and laws that are passed by participating directly in discussions, either as individuals, or as associations,⁵ e.g. NGOs or interest groups. This does not mean that every citizen will be able to impact the work of the Government and Parliament – in representative democracies, the will of the majority, or a form of *Realpolitik* may prevail. However, citizens need to have the opportunity to participate, and public representatives, be they Government officials or MPs, need to support all citizens equally in this.

2. European Union

12. Even though Kosovo is not a member of the European Union (EU), it has signed a Stabilisation and Association Agreement with the EU, and thus needs to ensure that its laws and policies are in line with EU requirements and documents. The Treaty on European Union obliges EU institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”; this presupposes an open, transparent and regular dialogue with representative associations and civil society.⁶ This would imply that also EU member states, and those striving to become members one day, should try and follow similar standards on public consultations, openness and transparency.

3. Other International Documents/Guidance

13. A number of other international organizations have developed guidance and tools on conducting public consultations, notably the Council of Europe (CoE), the Organization for Economic Co-operation and Development (OECD), and the Organization for Democracy and Co-operation in Europe (OSCE).

³ See General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), adopted by the UN Human Rights Committee on 12 July 1996, par 5.

⁴ Ibid. In Kosovo, the contents of Article 25 of the ICCPR are reflected in part in Article 45 of the Constitution, see especially par 3: “State institutions support the possibility of every person to participate in public activities and everyone’s right to democratically influence decisions of public bodies.”

⁵ General Comment No. 25, par 8.

⁶ See Article 11 pars 1 and 2 of the Treaty on European Union.

14. At the Council of Europe level, Kosovo is also a member of the European Commission for Democracy through Law (Venice Commission). That means that a designated Kosovo representative takes part in Venice Commission meetings and activities, and that its draft legislation may, upon request, be reviewed by Venice Commission experts (who look at domestic legislation's compatibility with international treaties). While Venice Commission opinions are simply advisory in nature, they have, over the last few years, increasingly noted the importance of public debate prior to passing legislation, and have included recommendations to states to engage in further debate when preparing legislation.⁷

15. Some useful documents prepared by the above organizations may provide additional guidance on public consultations:

- the CoE Code of Good Practices for Civil Participation in the Decision-Making Process (2009);
- the OECD Handbook on Information, Consultation and Public Participation in Policy-Making;
- the OECD Guidelines for Online Public Consultations;
- the EU Guidelines on Stakeholder Consultation; and
- Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (2015) prepared by civil society experts with the support of the OSCE Office for Democratic Institutions and Human Rights.

III. THE LEGISLATIVE FRAMEWORK IN KOSOVO

1. The Constitution

16. In the Constitution, the freedom of election and participation is set out in Article 45.

Article 45 par 3 of the Constitution states that:

“[s]tate institutions support the possibility of every person to participate in public activities and everyone’s right to democratically influence decisions of public bodies.”

17. As opposed to Article 25 of the ICCPR, this provision in the Kosovo Constitution does not explicitly speak of a right to participate in public activities, but rather of a right to “democratically influence decisions of public bodies”.

⁷ See, as a recent example, Venice Commission Opinion on the draft Law of Hungary on the Transparency of Organisations Receiving Support from Abroad, CD-AD(2017)015, adopted by the Venice Commission at its 111th plenary session (16-17 June 2017), pars 25-28.

This right shall apply to everybody, not only to citizens (as opposed to the right to vote, which Article 45 par 1 grants only to citizens).

18. At the same time, the first part of Article 45 par 3 of the Constitution obliges public institutions to support the possibility of every person to participate in public affairs, which presumably means that public bodies shall not only allow all persons to participate, but shall assist them in this, to ensure that every person has equal opportunities to participate.

19. The public activities mentioned in Article 45 par 3 also include policymaking and lawmaking. According to Article 79 of the Constitution, 10 000 citizens may initiate a draft law (next to the President, the Government and deputies of the Assembly), as provided by law, which is another means of direct participation in public affairs. With respect to the legislative process itself, the basis for participation, including public consultations, would again be Article 45 par 3 of the Constitution.

2. Law on Legislative Initiative

20. The Law on Legislative Initiatives specifies the procedures for initiating legislation to implement Article 79 of the Constitution. With respect to the right of 10 000 citizens to initiate legislation, Articles 10-21 provide more detail on the different steps that need to be taken.

21. According to Article 10 of the Law on Legislative Initiative, any citizen may initiate such a legislative initiative, and has equal rights in this context. There are two types of legislative initiatives –citizens may draft the law themselves, or they may propose the drafting of a law to the Assembly (Article 12). In both cases, the representative of the initiative announces the intention and objective of the future law to the Assembly (Article 13); following this announcement, within six months the requisite amount of 10 000 signatures need to be collected, and the initiative submitted to the Assembly (Article 14). If the Assembly accepts the initiative, then the usual legislative process will follow. If not, then the representative of the initiative may appeal against this decision before the competent administrative court (Article 19).

22. In these instances, the respective citizens launching the initiative will also need to consult with the wider public and key stakeholders – both when drafting their initiative (and possibly their draft law), and in order to collect the necessary amount of signatures. The principles set out below in Section IV, which also include information as to the roles and obligations of the authorities initiating policies and laws, will apply to them accordingly.

3. Rules of Procedure of the Government and the Assembly and Government Regulation No. 5/2016

23. Both the Government and the Assembly follow specific Rules of Procedure that set out their work processes. While the focus of this toolkit is law and policymaking processes within the Government, a brief introduction to Assembly Rules of Procedure has been included as well, to demonstrate its role in the legislative cycle.

3.1 The Government

24. For this purpose, the Government adopted *Regulation No. 9/2011 stipulating its rules of procedure*. This Regulation governs the work and decision-making procedures of the Government, the rules and procedures of drafting legislation and policy recommendations by the Government and ministries, and the organization of Government meetings and work of ministerial committees.

25. Within Chapter IV of the Regulation on Rules Governing Policy Development and the Policy Analyses Process, there is also a special provision on public consultations (Article 32), in addition to Article 7 governing prior consultations in Chapter II.

26. Further, Article 69 generally requires the Government to cooperate with different stakeholders, including NGOs and other associations. According to par 2 of this provision, the Government “shall, in particular, debate their opinions and initiatives, take a position on them, inform them of its positions and measures and, where necessary, invite their representatives to attend the meetings of the working bodies of the Government, and organize other forms of cooperation”.

27. In addition to the Rules of Procedure of the Government and its provisions on public consultation and cooperation with civil society, the Government recently adopted *Regulation No. 5/2016 on Minimum Standards for the Public Consultation Process*. According to Article 1 of this Regulation, its aim is to promote and ensure inclusive public consultation processes between public authorities and interested parties and the public, and to increase transparency and accountability of public bodies. In this context, Government Regulation No. 5/2016 sets out minimum standards, principles and procedures of public consultation processes in the drafting of policies and legislation (Article 1 par 2). These shall apply to all public bodies and to all documents that require public consultation.

3.2 The Kosovo Assembly

28. Same as the Government, the Assembly Rules of Procedure also contain provisions on public consultations. These Rules of Procedure determine the inner organization and working method of the Assembly.

29. Article 66 of the Assembly Rules of Procedure states that, in order to obtain information on a subject matter that is under debate, the responsible Assembly committee may hold public hearings of experts, public organizations, representatives of interest groups, and other persons. In this way, any committee may enter into a general discussion with the respective person furnishing additional information, insofar as this is necessary to clarify the facts.

IV. HOW TO TAKE PART IN PUBLIC CONSULTATION AND ADVOCACY PROCESSES IN KOSOVO – SOME GUIDANCE

30. Based on the above legal framework, in particular the relevant Government regulations, this section aims to provide some guidance on how civil society and the wider public can exercise the right to participation in Kosovo in practice. This part of the toolkit does not pretend to be complete, and may be adapted and updated as needed.

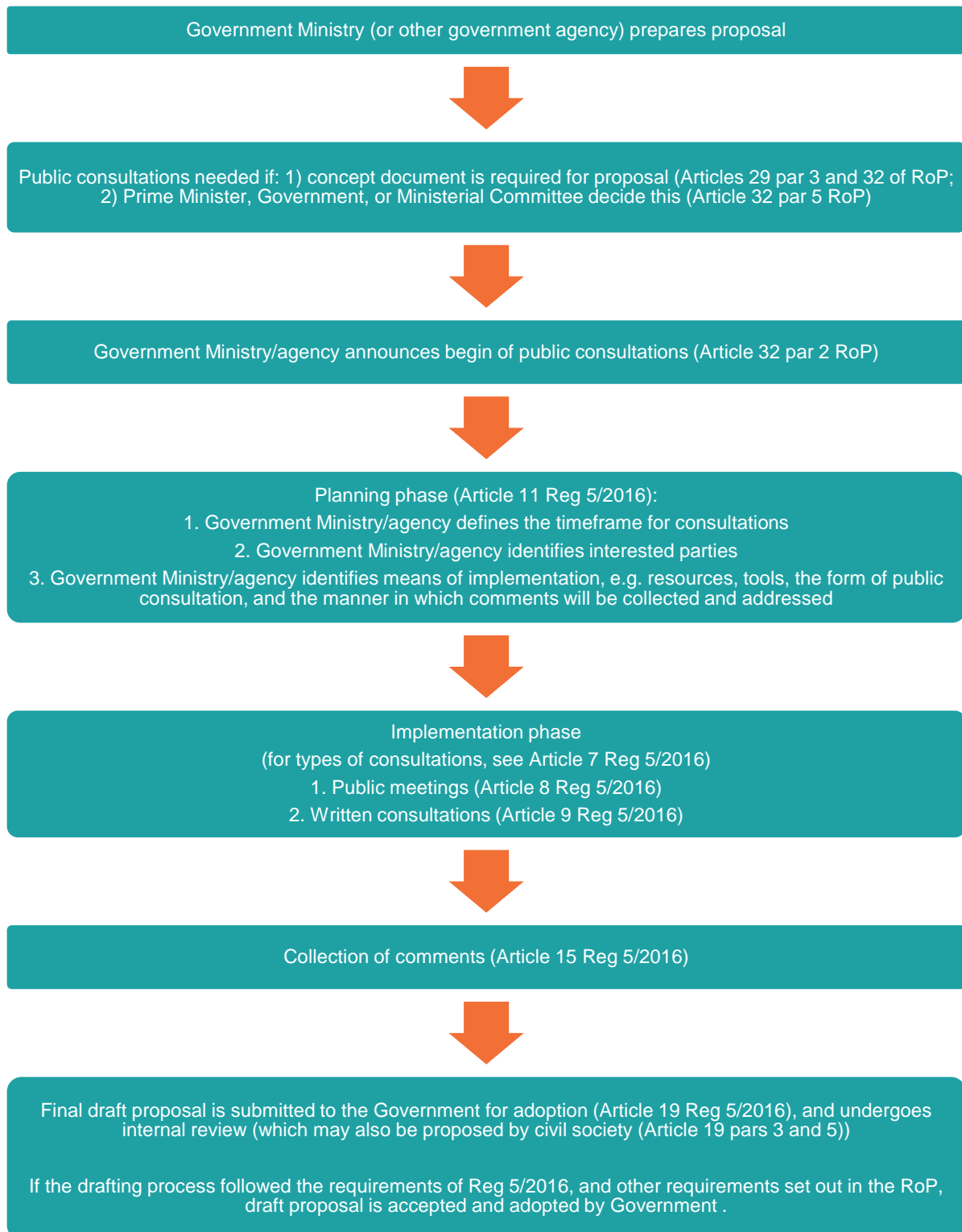
1. The Purpose of Public Consultations

31. Essentially, consulting the public is a means to gather information. When preparing a draft policy, or a draft law, the relevant drafters and policymakers will not always have all information at their disposal. Public consultations are a means of filling these information gaps.

32. Another purpose of public consultations is to ‘test the waters’ – in cases where public institutions are preparing a new policy or new law, it is important for them to know whether the measures imposed by the policy/law will be accepted by all, or at least large parts of the society. Public consultations are a tool to inform the public about planned measures early on, so that possible concerns can be taken into account already at the initial stage. Also, public consultations help ensure that legislation can be implemented properly in the end – by asking relevant stakeholders, experts and the public, errors in drafting can be avoided, and the final adopted law or policy will be adequately adapted to the reality on the ground.

2. General Procedural Overview

33. Public consultations are part of the wider policy and lawmaking process within the Government. The diagram below outlines the main stages of this process as set out in the Government’s Rules of Procedure and Regulation No.5/2016.



3. Obtaining the Necessary Information before and During Consultations

34. In order to participate in public consultations, the first important step is to obtain information on the current draft policies and laws that are being discussed. This is best done by accessing the online consultation platform

created by the Office of Good Governance within the Office of the Prime Minister: <http://konsultimet.rks-gov.net>

35. This website offers information on ongoing consultations, as well as on the legislative framework, and annual work plans of the Government (including annual legislative plan and list of strategies). Relevant consultations may be searched by ministry/public office, and ongoing ones are listed under 'latest consultations' – information on the consultations includes uploaded documents relevant to the process and contact details of the responsible official within the ministry/office.

The screenshot shows the website's header with the logo of the Republic of Kosovo and navigation links: Home, News, About platform, Institutions, Consultation standards, Documents, Contacts, Login, Register. The main content area features a welcome message: "Welcome to the Platform of Public Consultations - Make your voice heard" with a megaphone icon. Below this are three sections: "About Platform" with a photo of a building and text about Regulation No. 05/2016; "148 Public Consultations launched through Online Platform" with a bar chart showing consultation counts by category: UDHËZIME (73), RREGULLORE (35), PLANE VEPRIMI (12), LIGJE (8), and KONCEPT DOKUMENTE (1); and "Latest Consultations" with an illustration of people connected by lines.

The website also contains statistics on the number of consultations that have been undertaken since the platform was launched in February 2017, which are updated regularly. In order to participate in public consultations of a certain ministry/office or thematic area, civil society organizations and members of the public can sign up for the registry, also via the platform.

36. The requirement to set up such a platform is found in Article 12 of Government Regulation No. 5/2016. According to Article 12 pars 4 and 5, the public and interested parties shall express their desire to participate in public consultations on the Government's online platform on an annual basis, or when the workplans of public bodies are being amended or supplemented, by identifying the government unit/project that they want to get involved with. The online platform may also include platforms by which the public/interested parties and the relevant public authority may communicate (par 6). When signing up for a user profile, individuals are asked to submit some basic information. Article 12 pars 8 and 9 stress that no additional information may be requested, and that the information provided may not be used to discriminate against, or exclude any stakeholder or member of the public.

37. In practice, to obtain information on upcoming public consultations, it would probably be best to consult the annual work plan of the Government, annual legislative strategy, and list of concept documents, and to then request information on specific planned draft policies or laws set out therein from the

responsible ministries. According to the Government Rules of Procedure (Article 29 par 3), all draft policies and laws requiring concept documents or explanatory memoranda shall undergo public consultations. Government Regulation No. 5/2016 is even more explicit and lists, in its Article 5, the documents that shall undergo public consultations (see par 45 above). Exceptions are made for non-public, classified documents, international relations and bilateral and multilateral agreements, parliamentary proceedings in the Assembly, procedures involving the approval of presidential decrees, and individual administrative acts (unless specified otherwise in law) (Article 17 of the Regulation).

38. Once a consultation process has begun, the interested parties/members of the public involved should receive additional documents/information on public meetings from the organizing public body. Additional information may be sought from the official listed as responsible for the public consultation.

39. The outreach conducted by the Government appears to consist largely in publishing information on the website; there is no indication of additional outreach programs to try and reach members of the public, and smaller, less well-known civil society organizations outside of the capital and larger towns. NGOs and individuals thus need to search and find the relevant information on the online platform, and sign up for additional participation. NGOs may themselves assist in reaching out to other parts of civil society/the public by creating networks and their own discussion platforms (see sub-section 9 below). At the same time, advocacy efforts may also focus on raising awareness of the need for further outreach, and encouraging ministries and other public offices to conduct more proactive outreach to people and organizations who/which are disadvantaged due to their lack of know-how or their geographical whereabouts.

4. The Right to Participate in Public Consultations in Practice

40. According to the legislation applicable in Kosovo, anyone may seek to democratically influence the decisions of public authorities, and shall be supported in this by public authorities. That means that public authorities need to make sure that every person or group of persons can take part in public consultations, and may not hinder or prevent anyone from doing so, or advantage/disadvantage certain parties. This right to public participation is set out in Article 45 of the Constitution.

41. The right to take part in public consultations also means that information on upcoming draft policies and laws needs to be understandable to the wider public, as should their possible impact on individuals and certain groups. This information should be available in all official languages of Kosovo (see Article 4 of Regulation 5/2016). Officials responsible for organizing public consultations need to obtain sufficient and regular training and advice to be able to adequately fulfill their tasks. The same applies to the designated

officials within ministries and other public offices responsible for coordinating public consultations (see Article 20 of the Regulation).

42. These public bodies shall publish draft proposals on their websites, but may also use other forms of communication to inform the interested parties and the public (Article 4 par 2 of Government Regulation No. 5/2016). Additionally, public bodies shall see to it that interested parties and the public are able to comment on the draft proposals early on in the process (par 3 of the same provision).

43. Government Regulation No. 5/2016 contains quite specific provisions on involving interested parties and the public in the drafting of annual work plans of public bodies, and of policies and laws (see Article 13 pars 2 and 3). This means that every interested organization or individual has the right to take part in these exercises; at a minimum, such consultations shall involve public meetings, during which the main elements of the draft work plans, policies and laws will be discussed, and interested parties/members of the public may submit their opinions and suggestions

5. Which Types of Documents Undergo Public Consultations in Kosovo?

44. As a minimum standard, the following documents shall undergo public consultations (Article 5 of Government Regulation No. 5/2016):

- Public bodies' draft annual plans
- Draft annual plans of strategic documents
- The Government's draft legislative program
- Draft plans of sub-legal acts for the respective year
- Draft lists of concept documents for the respective year
- Draft concept documents of proposals for policies or laws
- Draft normative acts
- Draft governmental strategies
- All other documents that need to be accompanied by a concept document or explanatory memorandum

45. With respect to the last point on concept documents and explanatory memoranda, the need for proposals to be accompanied by concept documents is set out in an annual instruction of the General Secretary of the Office of the Prime Minister (see Article 29 par 3 of the Government's Rules of Procedure). Concept documents set out the key issue being addressed by a proposal, its objectives and different options for resolving the issue (along with the consequences and fiscal impact of each). This document then outlines the option that is being proposed, along with the respective rationale, and key elements of the proposed policy (Article 29 par 5), as well as information on whom the proposal was consulted with, and the input received (Article 29 par 5 (9)). This would include summaries of the results of public consultations, and

of consultations with affected NGOs (Article 32 par 3 of the Government's Rules of Procedure).

46. Explanatory memoranda, on the other hand, are similar documents that explain the rationale for preparing a draft policy or law, but do not require detailed information on different options (including those that were not followed) (Article 30 par 2). Explanatory memoranda need to be attached to any document that does not require a concept document, unless it is of a minor nature (par 5 of the same provision).

47. In addition to the requirements mentioned above, the Prime Minister, the Government meeting or a Ministerial Committee may require a Minister to undertake public consultation on any other issue (Article 32 par 5).

48. In exceptional circumstances set out in Article 16 of Government Regulation 5/2016, a draft policy or law will be adopted following an accelerated procedure, and will then not undergo public consultations. This will only happen in emergencies, or where other exceptional situations are defined by law. The reasons for applying the accelerated procedure will be communicated to the public via the means of notification set out in the Regulation. Also, under Article 17, the Regulation, and thus the requirements and procedures for public consultations, will not apply in relation to non-public, classified documents, international relations and bilateral and multilateral agreements, parliamentary proceedings in the Assembly, procedures involving the approval of presidential decrees, and individual administrative acts (unless specified otherwise in law).

6. How to Engage in Public Consultations?

6.1 Types of Public Consultations

49. Article 7 of Government Regulation No. 5/2016 lists several types of consultation forms and techniques (but notes that public consultations need not be limited to these):

- Written and electronic consultations
- Publication of the respective draft proposal on the government/ministry's website
- Public meetings
- Conferences;
- Meetings with interest groups
- Workshops
- Interviews / one on one meetings
- Opinion surveys
- Discussion voting
- Panel (discussions) with citizens
- Stands in the street

50. As explicitly set out in Article 7, public authorities may also initiate other forms of public consultations, e.g. working groups, online consultations (including webcasts, online seminars), debates via media or social networks, town hall meetings (perhaps more adapted to the municipal context), or crowdsourcing.

The type of consultations selected will depend on the topic of the draft policy or law, and which organizations or groups will need to be involved in discussions. If one of the aims of the consultation exercise is to consult with youth, for example, then intensive discussions should be possible via the Internet and social media; if it is important to discuss with the elderly, then other, offline ways of reaching them should be envisaged, including door-to-door surveys, radio, or television debates.

51. The Regulation largely distinguishes between two main forms of consultations – public meetings and written consultations.

6.1.1 Public Meetings

52. Public meetings organized in the context of public consultations shall be made known to all potential participants at least 7 calendar days beforehand (Article 8 par 1 of Government Regulation No. 5/2016). The public body organizing the event shall give the interested parties and the public sufficient time to prepare. The invitation to the event shall at least contain the draft proposal and adequate information on it, as well as time and location of the meeting, and the name of the contact point (par 2 of Article 8). The public body shall lead the meetings, and take minutes of discussions (par 3) – after a meeting, the public body shall prepare a summary of discussions and conclusions, which will be circulated to all participants (par 4).

53. According to Article 22 par 1, public consultation meetings shall be open to all interested parties, regardless of who was invited to attend – confirmation shall only be required for logistical reasons (but not to exclude potential participants). The lack of physical space shall never be a reason to exclude an interested party.

54. Interested parties and members of the public participating in consultation meetings or working groups shall have equal access to all information, materials and data as everyone else involved in drafting the respective policy/law (Article 22 par 2). Their representatives shall be free to inform the parties and public that they represent about the work done and their contributions. These representatives may also freely present and defend their positions, as well as all other suggestions and comments raised by the public and other interested parties; if they are part of a working group, they may also use other channels to advocate or promote views that are not in compliance with the views of the working group.

55. When public bodies are preparing their work plans for the following year, they shall allow interested parties and the public to participate in this (Article 13 par 2), at least by holding public meetings during which the proposals in the draft work plan will be discussed, including at least the policy programs, strategies and legislation planned for the following year. The public bodies shall also publish the final work plans for the coming year, along with any changes made.

56. Where public bodies are preparing draft (policy and/or legislative) proposals, they shall also involve interested parties and the public (Article 13 par 3), by at a minimum organizing a public meeting before the actual drafting of the document starts. During this meeting, the main elements of the planned proposal will be discussed, along with reasons for them, and the organizing body will ask interested parties and the public to provide their initial opinions on the planned proposal. Once a first draft of the proposal has been prepared, and following consultations with other public bodies, a wide written procedure will be organized to collect comments on the contents of this document.

6.1.2 Written Consultations

57. Where the public body decides to organize written consultations, it shall give interested parties and members of the public sufficient time to submit their comments (at least 15 working days) from the date when the start of the consultation period was announced (Article 9 par 1 of Government Regulation No. 5/2016). The time for submitting comments may be extended for up to 60 calendar days in total for draft proposals that are particularly complex or important. The invitation to participate in written public consultations has the same content requirements as for public meetings (see previous sub-section), with additional requirements added such as the destination address and information on the timeline (Article 9 par 2).

58. The invitation to written consultations shall also include a consultation document, which is made up of a summary of the contents, a brief problem depiction, the purpose of consultations, and a list of main issues that are part of the document – details are set out in a template contained in Annex 1 to the Regulation.

59. According to Article 14, the timeframe for conducting written consultations may be extended, or the consultations repeated, if the nature of the materials require a longer consultation period, or if the proposing body was not satisfied with the quality of the comments received. The same shall apply where the comments or recommendations received raise significant new issues that were not part of the initial consultation.

6.2 How to Engage?

60. Once relevant information on ongoing and future public consultations has been obtained, the relevant information needs to be analyzed. With respect to planned policies and laws, it is important to ask oneself some key questions, e.g.

- What is the draft policy/law about?
- What will it change? Will it change current policy documents/laws?
- Who will be affected by these changes?
- Will any person/group of persons be disproportionately affected (positively or negatively)?

For more detailed questions, please see Annex 1 to this toolkit.

61. When discussing draft work plans, the questions to be asked will revolve more about whether new legislation is really needed in the specified area, or whether the prioritization of issues makes sense.

62. When engaging in public consultations, it is important that stakeholders and members of the public have sufficient time to review a draft proposal and related documents, and formulate input. The seven days' notice period ahead of public meetings set out in Article 8 of Government Regulation No. 5/2016 may not always allow for proper preparation time, especially if consultations concern lengthy and complex draft policies/laws. If possible, it is important to prepare for such situations as well, e.g. by, if one knows that a public meeting will be coming, already reading up on the existing relevant legislation and international standards that one assumes will be affected in advance.

63. While the 15 days set out for written procedures in Article 9 of Government Regulation No. 5/2016 is not long, it is important to remember (and advocate) that this is a minimum period. Public authorities may, if they wish, impose a longer deadline, and should at times perhaps be encouraged and reminded to do so. Importantly, if the given deadline is perceived as being too short to allow for a proper review and assessment of a draft proposal, work needs to start immediately, but the responsible public body may still be approached with regard to a possible extension. With respect to format, the Government template annexed to the Regulation also contains some basic information on the individual information that interested parties and members of the public seeking to contribute to discussions on a draft policy or law are required to submit.

7. When to Engage in Public Consultations?

64. Public authorities may decide to organize public consultations at any point of the policy or lawmaking process, depending on when they believe that they will be most useful. This may be at the very beginning, when the draft policy/draft law is being drafted, or later, once the policymakers or lawmakers

have developed more specific questions for discussion, or more than once, at several different stages during the process of preparing policies/laws.

65. For stakeholders and members of the public, experience shows that it is best to try and engage in discussions on a certain document (draft policy or law) as early as possible, to have a maximum impact. If comments are provided too late in the drafting process, then the responsible public body will not be willing to open up topics that have already been agreed with other stakeholders, and will not be likely to accept criticism of an already well-developed text. The wording of Government Regulation No. 5/2016 also reveals an attempt to involve interested parties and the public at a relatively early stage of discussions.

8. Feedback, Oversight and Reporting

66. After consultations have taken place, the proposing body reviews the collected comments, and decides whether to accept or reject certain comments (Article 15 of Government Regulation No. 5/2016). The proposing body may then decide to amend the draft policy or law based on the comments and will publish this new version of the draft proposal on its website, along with an updated final report of the consultations held. This final report shall base itself on the comments received during consultations, and the manner in which they were addressed. If certain comments were not taken into account, then the report should outline, at least briefly, why not.

67. Once the report is published, it is important for all participants in the public consultations to consult the report, to see whether the comments and input that they provided during consultations have been addressed. This type of feedback is an essential element of public consultations, and helps ensure the transparency and efficiency of the process. It also helps build trust between the public and the authorities. While it is natural that not all (often conflicting) comments received during public consultations can be incorporated into the draft policy or law under discussion, the bodies and individuals involved at least need to be able to see that their concerns were looked at, and discussed.

68. Tracking the impact of one's work will be easier with written comments, as one can easily compare the document drafted during consultations with the text of the report issued. It will be more difficult to track comments and input given during a public meeting or other event – in these cases, it may be helpful to send written comments following the oral input given during the meeting. Even if minutes are taken by the public body organizing the event, statements may be shortened or misrepresented, so these type of 'props' may help ensure that none of the comments and input given will be lost.

69. The officials responsible for organizing public consultations within public bodies are essentially those who drafted a policy or law. The manner in which they organized and implemented public consultations is overseen by the legal departments from the same public body (Article 19 par 1 of Government

Regulation No. 5/2016). The department responsible for policy and European integration shall do the same for draft concept documents and draft strategic documents (Article 19 par 2).

70. Once the draft proposal has been submitted for adoption by the Government, the competent offices within the Office of the Prime Minister shall review whether, within their scope of work, the draft policy/law complied with minimum standards of public consultations. If they found that public consultations were not held in compliance with the Regulation, these offices may reject the draft proposal, and ask the respective public body to review the matter, and implement minimum standards for public consultations (this would presumably mean that the public consultation would need to be repeated) (Article 19 par 3).

71. If interested parties, or members of the public believe that the public body that organized public consultations has violated their right to public consultations in accordance with Government Regulation No. 5/2016, they may file a written request to the competent monitoring body,⁸ and ask it to undertake appropriate action in conformity with the Regulation (Article 19 par 5 of the Regulation).

72. With respect to general reporting, the official responsible for coordinating public consultations within the public body shall prepare an annual report on how his/her respective public body conducted public consultations in that particular year, which is submitted to the Office of Good Governance of the Prime Minister's Office. This report will be based on the reports prepared for each public consultation exercise. The Office for Good Governance shall, based on reports received from all public bodies, create a final annual report that will provide information on all public consultations conducted by the various public bodies within the respective year, which it shall publish by 31 March of the following year.

73. Ideally, such a final report could be a good starting point for discussions on how public consultations were conducted in the previous year, and whether they were prepared and undertaken in an effective, open, and transparent manner. Any general concerns regarding the public consultation of draft proposals could be debated publicly at this time, with a view to ensuring that public consultation processes conducted in the next year will be better in terms of participation, contents and outcome.

⁸.While Government Regulation No. 5/2016 does not specify this procedure, persons or NGOs wishing to submit a complaint under Article 19 par 5 could do so by contacting the official responsible for the respective public consultation via the Government's online consultation platform (see par 34 of the toolkit), or, if this does not work, by contacting the Office for Good Governance within the Prime Minister's Office directly.

9. Creating Networks and Coalitions to Enhance Impact

74. In order to enhance the public impact on draft policies and laws, it may be helpful to create networks, coalitions, informal platforms or partnerships of different civil society institutions, and parts of the public with respect to specific thematic areas, or draft proposals. This could help ensure that different civil society organizations working on the same topics would be equally informed and involved, which would greatly benefit the quality and diversity of discussions.

75. In particular, this could help raise awareness of certain issues also outside urban areas, and may facilitate public participation of individuals and organizations also from these areas. Moreover, the more organizations and individuals get involved in, and try to influence draft proposals in certain areas, the greater the impact.

10. Diversity and Gender Issues

76. When debating the impact of draft proposals on the public, it is important to also assess the impact that they will have on the lives and activities of individual communities. In some areas, such policies or legislation may impact different communities in a different manner, and it is important to avoid such negative impact on certain communities.

77. Organizations protecting the rights of certain communities should have equal opportunities to participate in such debates, and shall raise concerns if they encounter any situations where they are excluded, or treated differently from other organizations. However, as policies and laws shall not discriminate, it is also important for other organizations to assess them in this context, and raise their voices if such inequality is detected.

78. Draft proposals should also be assessed for any gender inequalities – this means that the different impact of policies/legislation on men and women should also be part of the general review of draft proposals. If, e.g., certain draft proposals contain provisions that treat women differently than men (or vice versa), or that will, directly or indirectly, disadvantage women or men, then this needs to be raised and debated during public consultations.

V. HOW TO ENSURE PUBLIC CONSULTATIONS ON DRAFT LAWS INITIATED BY 10 000 CITIZENS

79. As described under Subsection III of the previous Section, the Constitution and the Law on Legislative Initiatives allow 10 000 citizens to initiate legislation (either by preparing the draft law themselves, or by asking the Assembly to prepare it).

80. As a first step to this, the organizers of the initiative need to find 10 000 persons willing to sign their initiative, which will require a large amount of public consultations and awareness-raising. In particular, the organizers of the initiative will need to begin by communicating to the public the main aims and elements of the planned draft law. They will need to communicate these clearly, and be very explicit in what the new law would change, and why it would be necessary, and should be favoured over other possible courses of action.

81. While these types of initiatives will not happen very often, it is important for the organizers to plan ahead, decide on the best means of consulting with the public and stakeholders, and come up with effective tools to garner support and collect input. The above matters and procedural steps will need to be borne in mind by the organizers.

ANNEX 1:

Possible Questions to Ask When Engaging in Public Consultations on Draft Policies and Laws

Compliance with the Constitution/Legal Framework

1. Does the main subject of the draft policy/law touch on one of the rights and freedoms protected by the Constitution?
2. Does the main subject of the draft policy/law touch on one of the rights and freedoms protected in international instruments that are directly applicable in Kosovo pursuant to Article 22 par 3 of the Constitution?
3. Is the draft policy/law compliant with existing laws (aside from the existing policy/law that it aims to replace or amend)? If not, does the draft policy/law envisage amending them?
4. Do any provisions of the draft policy/law contradict any other provisions of the same document?
5. Do draft sublegal acts remain within the boundaries of what is permissible under existing legal acts?

The Need for the Draft Policy/Law

6. What does the draft policy/law aim to achieve? Is this the best way to achieve it? Or are there other options (e.g. better implementation of existing legislation, awareness-raising campaigns, simply doing nothing).
7. What other options have been assessed to achieve the same aim? Has the option chosen (i.e. the current draft policy/law) been explained, and does the justification for this particular option sound convincing?
8. Are there any other options for achieving the aim that have not been looked at, or not been assessed properly?

Effects of the Draft Policy/Law

9. What are the positive effects of the draft policy/law? What are its negative effects?
10. When balancing the two, do the positive effects outweigh the negative effects?
11. Are certain individuals or groups of individuals particularly affected by the draft policy/law (positively or negatively)? Are people in the same, or

similar situations being treated differently? Can this difference in treatment be justified?

12. Does the draft policy/law affect men and women in the same way? If not, does it have particularly negative effects for women only, or for men only? Have the responsible authorities suggested ways to counterbalance this inequality?
13. Has the responsible public authority outlined the possible effects (positive and negative) during public consultations?
14. What type of costs will the implementation of the draft policy/law realistically entail? Have these been explained to stakeholders/the public and has public money been allocated accordingly? Have the drafters also taken into account possible costs for awareness-raising and/or training?
15. Do final and transitional provisions in the draft policy/law specify how and when it shall take effect?

Language and Structure

16. Is the draft policy/law written in a clear and understandable manner? Do individuals know from the text of the draft policy/law how it will affect them in their daily lives?
17. Does the draft policy/law specify which body/bodies will be responsible for implementing the policy/law?
18. In cases where a draft law contains sanctions, do the respective provisions clearly outline which behavior is not allowed, and which type of behavior will be met with which sanction?
19. Has the draft policy/law been published in all official languages of Kosovo? Are all versions of an adequate, and understandable quality?
20. Does the draft policy/law use gender neutral language?

Transparency and Awareness-raising

21. Are the public and civil society aware of the draft policy/law and its contents?
22. Are the persons who are expected to implement the draft policy/law or who will be affected by the draft policy/law aware of its contents?
23. Has the responsible Ministry/agency conducted any outreach to ensure public/stakeholder awareness of the draft policy/law?
24. Have stakeholders and the public been informed about upcoming public consultations in time? Has the process, and the information that is being sought, been explained?



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