



A Decade of Consultation Law in Albania

Call for Reform

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Authors: **Megi Reçi, Besjana Kuçi**

Reviewed by: **Prof. Assoc. Dr. Nadia Rusi**

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LIST OF ACRONYMS

ASCS	Agency for Support to Civil Society
ASPA	Albanian School of Public Administration
CoE	Council of Europe
CoM	Council of Ministers
CSO	Civil Society Organisation
ERNPC	Electronic Register for Notification and Public Consultation
EU	European Union
GAPP	General Analytical Program of Project
GRECO	Group of States against Corruption
IDM	Institute for Democracy and Mediation
IDP	Commissioner Information and Data Protection Commissioner
IPSI	Integrated Planning Information System
NPEI	National Plan for European Integration
OECD	Organization for Economic Cooperation and Development
PMO	Prime Minister's Office
RIA	Regulatory Impact Assessment
SIGMA	Support for Improvement in Governance and Management

SUMMARY OF FINDINGS

LEGAL AND REGULATORY FRAMEWORK FOR PUBLIC CONSULTATION

Despite being in line with European standards, the implementation of Law no. 146/2014 on Public Notification and Consultation over nine years has revealed numerous shortcomings. Various stakeholders, including the government, independent bodies, civil society, and business associations, have raised concerns about the need for amendments to the Law on Notification and Public Consultations. There is a consensus that a discussion on reforming the law is overdue.

The law covers draft laws, strategies, and policies of public interest. While the law specifies the criteria for documents excluded from public consultation, it lacks definitions for terms like 'strategies' and 'policies of public interest.' This lack of clarity allows institutions to exclude documents subjectively. It also does not explicitly include decisions made by the Council of Ministers (CoM) in its scope. While draft laws and policies must be published on the institution's website and online public consultation portal, the use of alternative consultation methods like public meetings or email communication is not explicitly mandatory, potentially limiting accessibility and inclusivity.

Public institutions are required to provide feedback on recommendations and comments received during consultations, but the law lacks specifics on modalities and deadlines for this feedback. Annual reports on transparency are mandatory but the required content is strictly statistical, offering limited analysis of the process.

The discretionary powers of the authorities on "if, when, whom, and how to consult" (for example regarding early-stage consultations), risk for certain consultations to fall into the blurred boundaries with the unregulated area of lobbying. This affects trust, creating a perception that certain decision-making is tailored to favor private interests.

A Guideline for public consultation was introduced in 2021 to address some gaps and improve the consultation process, but their legal enforceability is questionable. Moreover, the guideline only applies to central government institutions, leaving out the local government which is also a subject of the public consultation law.

INSTITUTIONAL ENVIRONMENT AND COORDINATION

Public bodies are required by law to appoint consultation coordinators responsible for coordinating the notification and public consultation process. The notion of public body is very wide, and in practice, it is not clear which institutions are obliged to appoint a consultation coordinator, as not all perform policymaking functions. In addition, the law does not provide clear guidance on the duties of consultation coordinators. There is a lack of internal regulations within institutions that define the division of duties and roles among various departments, subordinate agencies, and consultation

coordinators. Job descriptions for consultation coordinators are often missing, leading to unclear accountability and control. Consultation coordinators typically hold other primary duties within their institutions, making the additional responsibilities related to public consultation burdensome. This can lead to retention issues within the public administration.

A positive development is the introduction of a dedicated training module for public administration officials on public consultations in 2022. However, challenges persist in ensuring that public servants have the necessary knowledge and training.

The public consultation coordinators sometimes face challenges in interacting with higher-level officials who may not fully understand or prioritize the importance of public consultation. Therefore, the process often depends on the political will of superiors. Many interviewees suggested that consultation coordinators should hold higher-level positions and have a legal background to navigate the internal environment effectively.

The guideline recommends using the Integrated Planning Information System (IPIS) as an interaction platform to facilitate coordination and approval of consultation reports. This could be considered as a centralized platform for storing documents related to public consultation that is needed to preserve institutional memory, track processes, analyze practices, and ensure accountability. However, the system is not yet being used for these processes, leading to coordination challenges. The lack of storage platforms has led to the loss of important documents, especially during the cyberattack on the government.

PLANNING OF PUBLIC CONSULTATIONS

Public authorities are required by law to prepare and publish annual plans for public consultations, as well as individual consultation plans for each document undergoing public consultation. However, these plans are rarely and inconsistently published and often lack essential information. This makes it difficult to monitor and participate effectively in the consultation process.

Consultation plans are based on various sources, including the General Analytical Program of Project-acts and other strategies, policies, or other government's priorities. This often makes it challenging to track the origin of specific laws and policies. Additionally, consultations may take several years to complete, but they are reported in the year they occur, causing confusion about the timing of the process. Prolonged inter-institutional consultations can lead to significant changes to draft documents after public consultations have taken place. This can invalidate earlier stakeholder contributions and create legal uncertainty.

The guideline provides criteria for document evaluation, emphasizing indicators of high public interest and active stakeholder engagement. However, these provisions are not consistently applied in practice when designing annual plans. Justifications for excluding certain documents from public consultation are not provided in annual plans and reports.

The number of acts undergoing public consultation has decreased in recent years, as reported by the EU Commission and GRECO.

Early consultations, which allow for stakeholder input before the drafting of a document, are rarely conducted. There is no formalized procedure, and the decision to hold early consultations varies by institution. Stakeholders emphasize the importance of early consultations, as they provide a greater opportunity for incorporating changes.

The minimum deadline of twenty days for submitting contributions is generally followed, with a 90% compliance rate in 2022. The complexity of draft documents is rarely considered when determining the sufficiency of the deadline or the need for an extension, as prescribed by the law. The duration of consultations can vary significantly, with some lasting 2-3 years, indicating a lack of proper planning.

Simultaneous consultation of multiple documents by the same institution is a common practice, which affects the quality of the process and opportunities for contribution.

INCLUSION OF STAKEHOLDERS

Meaningful consultation should include all relevant and affected actors, not just those routinely engaged with the institution. Efforts to enhance inclusivity and accessibility, particularly for vulnerable or marginalized groups in remote areas, are needed.

The selection of the consultation methods should consider the nature, specific needs, and level of organisation of the targeted groups. A Stakeholders' Analysis Matrix is provided in the guideline, but it is not widely applied by institutions. Civil society organizations (CSOs) report varying degrees of inclusivity in public consultation processes, with some ministries not always representing diverse interest groups, for example, informal groups of activists. Instances of fictitious consultations have also been reported.

Efforts to improve inclusivity include creating and updating institutional databases with contact information for interest groups.

The electronic register is the primary method of public consultation and is mandatory. In 2022, 95.2% of consulted documents were published on the ERNPC. Currently, the ERNPC has limited use and recognition among the public and stakeholders. Stakeholders find the ERNPC to be an unfriendly tool due to various reasons, including its less-than-intuitive user interface, the requirement for registration through e-Albania, limited feedback options, and challenges in terms of accessibility for users with disabilities. The interviewees consider the ERNPC more as an information channel than a space for interaction with institutions. Efforts to introduce automatic notifications on the ERNPC have been made, which can help address some concerns related to short-notice notifications. To ensure inclusivity, accessibility, and non-discrimination, the ERNPC should be combined with other methods.

Public meetings, publication on institutional websites, and email communication are other commonly used consultation methods. In person meetings are perceived as more effective by stakeholders. Nevertheless, they need to be targeted, otherwise, they may serve as a mere formality.

Diversification of public consultation methods is recommended to adapt to the nature of the project act and the characteristics of the target group. Moreover, awareness campaigns, surveys on stakeholder satisfaction, and upgrades to the ERNPC are recommended to improve the inclusiveness of the public consultation process.

TRANSPARENCY OF CONSULTATION DOCUMENTS

Transparency and the timely provision of supporting documents, including consultation plans, regulatory impact assessment (RIA) reports, and explanatory reports, are crucial for informing the public about proposed decision-making. In addition, supporting

documentation should be understandable, easily readable, reusable, and in open data format. In practice, this is lacking particularly when presenting tables, voluminous documents and, statistical data.

Explanatory reports for draft laws are consistently published, but other supporting documents are often missing or published after the completion of the consultation process (such as plans or RIA). Very few documents are accompanied by a regulatory impact assessment. Even fewer are the cases when the RIA is reviewed as a result of the consultation process.

Transparency of documentation falls short even when proactively required (by citizens, CSOs, and journalists) when it carries political sensitivity or could expose cases of corruption. Such information usually concerns public procurement contracts or construction projects deemed harmful to the environment or cultural heritage.

Transparency issues were also raised regarding external expertise and working groups responsible for drafting documents, which are not always made public, while key stakeholders can be excluded from the process.

A dedicated rubric on public consultations, recently introduced on the website of ministries, is seen as a positive effort to improve the transparency of consultations, also utilizing other tools in addition to the ERNPC.

REPORTING ON THE CONSULTATION PROCESS

Reports on the results of the consultation process provide limited evidence on the influence of non-state actors on the outcomes of government-led consultation processes. Proper reporting is essential for demonstrating the impact of public consultations and building trust with the public.

Individual reports on consultation results are not always published for each consulted document and lack disaggregated information on (all applied) methods, stakeholders (public and nonpublic, other subcategories) feedback received, and the acceptance or rejection of feedback. Individual reports should be actively disseminated to participants and contributors, but in practice, they are only published.

The ratio of acceptance of feedback during public consultations varies but needs to be more transparent. Reports should provide a clear legislative footprint and show how stakeholder input influenced policymaking. This exact part of the report shows if the consultations have been meaningful and if they have had any impact.

INSTITUTIONAL FEEDBACK

Lack of trust is a discouraging factor for engagement in consultation processes, as the data show that only a small percentage of citizens believe that their input is taken into consideration. In practice, there is an inconsistency in how institutions respond to comments, with varying levels of engagement and a lack of standardization. Stakeholders, particularly civil society organizations and the business community perceive a lack of responsiveness from policy-making authorities, leading to diminished trust and interest in consultations. Additionally, stakeholders often face limitations in their capacity and understanding of consultation procedures, emphasizing the need for increased

knowledge. Effective engagement is more likely when stakeholders provide qualitative contributions, while concerns arise over the inclusion of foreign expertise that may not represent local opinions. Overall, there is a critical need to improve accountability and feedback mechanisms, while institutions often lack internal procedures on these matters.

PERFORMANCE ASSESSMENT AND INTERNAL MONITORING

While there is a monitoring system in place, it primarily focuses on quantitative data and lacks qualitative insights into the effectiveness and impact of consultations. The performance reports need to evolve from being process-oriented to results-based, with enriched analysis and reflections on lessons learned. Performance reports should allow comparability of overall performance from year to year, as well as comparability of performance between institutions. Quality control, particularly in terms of content rather than process, is considered a priority, and the government has committed to strengthening quality assurance processes.

However, it is noted that none of the ministries conduct internal monitoring of public consultations, leaving the responsibility solely to the Prime Minister's Office.

COMPLAINT MECHANISMS AND OVERSIGHT

A need for more effective internal complaint mechanisms in public consultations is highlighted, as institutions have not established internal systems for managing citizens' complaints, and there is a lack of clarity regarding accountability for violations.

Additionally, challenges associated with the legal mandate of the Information and Data Protection Commissioner (IDP Commissioner) are identified. While the law allows for complaints to be submitted, both before and after the approval of draft documents, it was found that institutions lack internal systems for managing citizens' complaints, leading to a lack of clarity regarding accountability. The IDP Commissioner's role in monitoring and addressing complaints is limited due to a lack of legal mandate to interfere before the approval of the draft or with its own initiative while lacking sanctioning powers. While there are discussions among experts about the effectiveness of introducing punitive measures, it is commonly agreed that the law should ensure control over administrative discretion and effective complaint mechanisms. In the case of Albania, enabling independent oversight would also address the existing gap in the consultations of the local government, which are currently left unmonitored. Modalities of regulation vary among different countries and are tailored to the context.

In addition, the report emphasizes the importance of strengthening parliamentary oversight to ensure that all legal initiatives submitted to the Parliament have undergone proper public consultation and are supported by evidence-based documentation, underlining the parliament's significant role in the consultation process.

INTRODUCTION

In a democratic society, consultations between public authorities and citizens are essential for the transparency, accountability, credibility and legitimacy of the decision-making. The level of implementation of public consultations is interconnected to citizens' participation in public decision-making and the existence of an enabling environment for civil society. Circumventing the consultation process often affects the quality of laws and policies as much as the public trust. It increases the frequency of potential legal amendments resulting in overproduction of laws and jeopardizing the principle of legal security. It also affects the implementation itself and enforcement costs, as the experience of Albania has also shown (e.g., tax legislation).¹ In addition to the questionable quality of decision-making that is not based on evidence, the integrity of the process itself can be jeopardized when public scrutiny is lacking. A manifestation of the latter is the phenomenon of tailor-made laws, a malign product of grand corruption identified in Albania. Tailor-made laws legalise state capture by establishing regulations that favour private interests at the expense of the public interest, while they are typically approved without prior public consultation.²

Albania, similarly to other countries with an authoritarian past in central and eastern Europe³, has a limited tradition of civic engagement. This is attributed largely to the historical background of an era where government control overshadowed public involvement. Additionally, in such contexts, low social cohesion and prevalent corruption hinder the development of effective deliberative practices. Consequently, the civil society sector struggles to gain momentum due to weak mobilisation power, while institutional and interpersonal trust is low and individualism, apathy and polarisation of citizens are growing.⁴ These truths also apply to Albania.

Studies of local organisations show that despite having mechanisms of public consultation in place, civic engagement in Albania has diminished since 2016 - a worrying indicator of democratic backsliding and shrinking civic space.⁵ The lack of opportunities to consult with the government has undermined CSOs' advocacy initiatives⁶, while policy initiatives dedicated to enhancing citizens engagement and supporting or cooperating with CSOs

- 1 Foreign Investors Association Albania (2021) White Book Albania 2021 <https://fiaalbania.al/wp-content/uploads/2021/10/WhiteBook202-2025.pdf>
- 2 Transparency International and Institute for Democracy and Mediation (2021) Deconstructing State Capture in Albania 2008 – 2020 <https://idmalbania.org/deconstructing-state-capture-in-albania/>
- 3 Institute for Danube Region and Central Europe (2023) Citizens Engagement in Central and Eastern Europe - In Search of Systemic Solutions <https://www.idm.at/en/idm-pps-1-2023-citizens-engagement-in-central-and-eastern-europe-in-search-of-systemic-solutions/>
- 4 Ibid.
- 5 Institute for Democracy and Mediation (2021) Democracy Decline and Shrinking Civic Space – How to reverse the trends? <https://idmalbania.org/9081-2/>
- 6 USAID and Institute for Democracy and Mediation (2021) Civil Society Organizations Sustainability Index <https://idmalbania.org/2021-civil-society-organizations-sustainability-index/>

are mainly donor-driven and not effectively implemented in practice.⁷ During 2021-2022, 40% of CSOs reported to have been involved in public consultation, the lowest on record compared to previous years.⁸ Business associations also report similar challenges and 41% of them think consultation is a formal process that does not aim to take recommendations from stakeholders.⁹

An IDM opinion poll¹⁰ reveals that some of the main reasons behind the low level of citizens' participation in public consultations in Albania are lack of trust that participation would have an impact, the expectation that others should participate, and the belief that there are no consultation mechanisms or processes in place. From the perspective of civil society, among the main reasons for not being involved in consultation processes are lack of notifications and information on the organization of consultations by the responsible institutions, the impossibility of staff to participate due to time/other commitments and limited human resources, the lack of attention from the institutions to the problems in the focus of the organization's activity, or the non-implementation of the existing legal framework on these issues.¹¹ Business associations share similar perceptions to those of CSOs when it comes to the limited trust in the process.¹²

The reports of the European Commission for Albania refer to public consultations in the country as formal exercises.¹³ While SIGMA's monitoring report for 2021 highlights the lack of a proactive approach of the institutions in the involvement of interest groups in these processes, focusing on the procedural aspects more than the results of the consultations and the lack of quality control and genuine monitoring.¹⁴ GRECO further calls for more accessible and user-friendly consultation methods.¹⁵

Among other factors, the prevailing lack of trust and engagement seems to be attributed to a culture of ticking the box.

Public consultation process at the central government level is at the focus of this research report. These processes are of great importance since the Council of Ministers is the main institution from which originates the overwhelming number of draft laws that are reviewed and approved every year by the Parliament of Albania. During 2022, 70% of the legislative initiatives submitted to the Parliament came from the government¹⁶. This research report

- 7 UNCAC Coalition and Institute for Democracy and Mediation (2022) Civil Society Report on the implementation of Chapter II & Chapter of the United Nations Convention Against Corruption in Albania <https://idmalbania.org/civil-society-report-on-the-implementation-of-prevention-and-asset-recovery-of-the-united-nations-convention-against-corruption-in-albania/>
- 8 National Resource Center for Civil Society in Albania (2023) Evaluation Report: Assessing the capacities and needs of CSOs in Albania <https://resourcecentre.al/sq/publication/raport-vleresimi-i-kapaciteteve-dhe-nevojave-te-oshc-ve-ne-shqiperi/>
- 9 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue
- 10 Institute for Democracy and Mediation (2023) Opinion Poll 2022 Trust in Governance <https://idmalbania.org/publication-of-the-10th-edition-of-trust-in-governance-annual-public-opinion-poll-in-albania/>
- 11 National Resource Center for Civil Society in Albania (2023) Evaluation Report: Assessing the capacities and needs of CSOs in Albania
- 12 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue
- 13 European Commission (2022) Albania Report https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022_en
- 14 SIGMA (2021) Albania Monitoring Report <https://www.sigmaweb.org/publications/monitoring-reports.htm>
- 15 Council of Europe / GRECO (2022) Compliance Report Albania <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680aa6125>
- 16 The Parliament of Albania (2022) Annual Report on the Activity of the Parliament <https://web-api.parlament.al/Files/202308310938234462Raport%20vjetor%202022.pdf>

primarily addresses the need for intervention in the legal and regulatory framework, as well as the need for increased accountability and public engagement, which are the main long-term challenges.

The report aims to provide an assessment of the current state of play, analyzing all phases of the consultation process including planning and designing; implementation; follow-up and response; reporting; internal and external evaluation; complaint administration. The examination is done through the lenses of public consultations principles such as efficiency, transparency, accessibility, proactivity, and non-discrimination.

The first section of the report addresses the legal, and regulatory framework for public consultation processes at the central level, identifying gaps and challenges. Further, the (internal) institutional environment for public consultations is examined, analysing the implementation approach of public consultations by the central government institutions.

The next section is dedicated to the engagement of stakeholders in the consultation processes, including civil society organizations, the private sector, and citizens, effectiveness of consultation methods, and the challenges that hinder access, participation, and impact. Other sections cover planning, transparency of consultation documents, reporting on results, internal monitoring, central performance assessment, and independent oversight.

The report provides examples of good practices from Albania where applicable, modalities of regulation regarding public consultations from various countries, as well as a set of tailored recommendations.

METHODOLOGY

The research methodology for this report relies on both primary and secondary sources, employing a qualitative analysis. Secondary sources encompassed a thorough examination of legislation and the regulatory framework, which included legal and sub-legal acts, institutional rules of procedure, and guidelines. Reports from local and international organizations were also reviewed, as well as reports focused on Albania from the European Commission, SIGMA/OECD, and GRECO.

Moreover, the research team conducted a comprehensive review of the institutional websites, particularly the transparency programs section, and the Electronic Register for Notification and Public Consultation (ERNPC) for the period spanning from 2020 to 2022. All publicly accessible documents, such as institutional public consultation plans, periodical and annual reports, and performance assessment reports conducted by the Prime Minister's Office (PMO) were reviewed. Furthermore, the decisions and recommendations made by the IDP Commissioner regarding violations of public consultation, annual reports from the IDP Commissioner, parliamentary activity reports, and court decisions were examined.

The desk research aimed to map available information on public consultation processes, provide an overview of the institutional and legal context for these processes, and identify gaps and systemic challenges that have arisen over the years. Through desk research, international best practices were identified to tailor recommendations.

Additionally, this research report builds upon a Needs Assessment Report conducted by the authors in 2022. This assessment analyzed the current procedures and capacities of central government institutions involved in public consultation processes and identified training and expertise needs for six institutions: the Prime Minister's Office, Ministry of the Interior, Ministry of Justice, Ministry of Education and Sports, Ministry of Health and Social Protection, and Ministry of Infrastructure and Energy. Its primary purpose was to design and pilot a dedicated training module for the central administration's public consultation processes¹⁷. Furthermore, the needs assessment identified several longer-term challenges, prompting this in-depth research to support future advocacy efforts and inform decision-making.

To enrich and contextualize the data collected from desk research, fifteen key informant interviews were conducted. These interviews included representatives from various entities, such as civil society experts, legal experts, representatives of interest groups engaged in consultation processes, SIGMA experts, and representatives from relevant public institutions, including the IDP Commissioner and the Agency for Support to Civil Society. The research team tailored open-ended questions for these interviews based on the interviewees' backgrounds.

Additionally, data gathered from nine comprehensive interviews conducted for the



17 Institute for Democracy and Mediation (2023) Training Module on Public Consultations at the Central Government level <https://idmalbania.org/sq/modul-trajnimi-konsultimi-publik/>

needs assessment report with senior representatives of ministries, the Prime Minister's Office, and public consultation coordinators were also utilized for this report. The data obtained from two consultative roundtables held to validate the training module on public consultation were also integrated for the same purpose.

However, it is important to acknowledge several methodological limitations in the analysis of consultation processes, the influence of non-state actors, and the outcomes of public consultations in Albania. Firstly, the analysis at this level does not consider the content of the inputs submitted. This omission is significant because it fails to distinguish between technical inputs, which address the technical aspects of the proposal, and substantial inputs, which seek to make substantial changes to the policy direction. Secondly, there is a limitation related to the absence of statistical data regarding individual responses from citizens and interest groups, both before the approval of the law on public consultation and before the adoption of the 2021 guideline on public consultation. This lack of data makes it challenging to make meaningful year-to-year comparisons.

Lastly, the research report's methodology primarily focuses on the stage of public consultations that occur after the initial draft has already been created. It does not encompass the previous stage of legislative or policy drafting, where inputs from certain state and non-state actors may have already been incorporated into the draft before it is submitted to the online consultation portal.

1. LEGAL FRAMEWORK

The public consultation process in Albania is regulated by Law no. 146/2014 "On Public Notification and Consultation" (hereinafter, "the law"), relevant bylaws¹⁸, and other regulatory acts¹⁹. Certain sectoral laws also provide dedicated provisions for public consultations, such as those regulating environmental decision-making, local financing and budgeting. Even political documents or strategies, sometimes undertake explicit commitments of public consultations. Nevertheless, this report focuses on the implementation of Law no. 146/2014 "On Public Notification and Consultation", as the principal legal document guiding public decision-making processes at a national level.

Despite the fact that the law is generally in line with European standards, the ninth-year experience of its implementation has pointed out many shortcomings that allow different interpretations at the cost of circumventing the public consultation process.

The law governs the consultation process for various types of documents, including draft laws, national and local strategic documents, and policies of high public interest - while in the national legal framework, a definition of strategies and policies is lacking. Further, the law does not explicitly include decisions of the CoM in its scope (bylaws/secondary legislation). The procedure for drafting and approval of the latter is regulated by the Rules of Procedure of the CoM. The Rules do not guarantee the prevention of approval of draft documents for which public consultations were unduly evaded, in contrast for example, to the stricter requirements provided for ensuring compliance with EU acquis²⁰. Furthermore, for draft acts aiming at the harmonisation with EU legislation, the rules consider it optional to provide information on the inclusion of civil society or international expertise, despite the crucial role civil society organisations should play in such processes, according to the government's own policy²¹. The meetings of the CoM in Albania are held behind closed doors and not accessible to CSOs, while in some countries CSOs are allowed to apply to attend government meetings and may also be given the opportunity to make a statement²².

The law outlines several exceptions from consultation, such as matters related to national security, international relations, administrative acts, and emergencies, while it fails to provide a comprehensive list of cases where public consultations are mandatory. By not

- 18 Decision of the Council of Ministers, no. 828/2015 "On the approval of the rules for the creation and administration of the electronic register of announcements and public consultations"; Decision of the Council of Ministers, no. 584/2003 "For approval of the Regulation of the Council of Ministers".
- 19 Order of the Secretary General of the Council of Ministers, no. 3/2021, "For the approval of the guide for the process of public consultation"; Prime Minister's Office "Methodology for Regulatory Impact Assessment (2018)".
- 20 The decision of the Council of Ministers no. 584/2003 "On the approval of Rules of Procedures of the Council of Ministers"
- 21 The decision of Council of Ministers no. 539/2019 On the approval of the road map for the government policy towards a more enabling environment for civil society development 2019-2023. <http://www.amshc.gov.al/web/doc/Udherrefyesi-2019-rishikuar.pdf>
- 22 SIGMA Consultation – a Key Tool for Better Regulation in Europe and Romania <https://www.sigmaweb.org/publicationsdocuments/41838190.pdf>

defining the criteria for evaluation of “high public interest” on a given policy, it allows for the avoidance of consultation for matters that could be wrongly perceived as of low interest, without ensuring accountability or a consistent measure of public interest.

The publication of draft laws and policies on the Electronic Register for Notifications and Public Consultations (ERNPC), a dedicated government website, is legally required. The National Agency of the Society of Information (AKSHI) is responsible for hosting the ERNPC, ensuring continuous operation, maintenance, and protection responding to the development needs of the register²³. The use of other consultation methods, such as public meetings, hearings, email communication, or surveys is optional, even though these are more user-friendly and accessible methods. This risks the disregard of important factors like the target audience and the potential need for reasonable accommodation while employing accessible consultation methods (aligning with the principle of anti-discrimination outlined in the consultation law). The decision to employ alternative consultation methods is left to the discretion of the public institution, making them optional, without providing how necessity should be evaluated. For example, the decision to hold public meetings is solely determined by the institution based on its judgment of the document's importance and the potential level of public interest it may generate.

The same counts for early-stage consultations, for which the law does not specify when they should be conducted, stating that they are held in special cases or when deemed necessary, allowing room for subjectivity. These preliminary consultations typically take place before the formulation of policies or laws, enabling early stakeholder involvement and a greater opportunity to influence decision-making processes.

Such broad criteria can lead to misinterpretation and may restrict citizens' access to public consultations. Since Albania is lacking legislation on lobbying, such discretionary power on “if, when, whom and how to consult” risks being in the blurred and unregulated area of lobbying while being considered as public consultations. One of the interviewees also highlighted this risk: “Sometimes businesses lobby and bypass the chambers or associations to get directly in touch with the institutions. These practices have a bad effect on trust because it can seem as if a certain law was tailored to serve a certain influential actor²⁴.” Open and inclusive consultations are seen as an ideal instrument for addressing the danger of unrestricted lobbying²⁵.

To ensure accountability, institutions are required to provide feedback on the recommendations and comments received during the public consultation process. However, the law does not specify the modalities or deadlines for providing this feedback. It is crucial to follow up on public consultations by providing feedback on the input received from other stakeholders, as this demonstrates consideration and recognition of their role in the consultation process.

The law establishes the obligation of public institutions to draft and publish annual reports on transparency in the decision-making process. The data required to be published are of a statistical nature, therefore they do not provide a complete overview of institutional

23 The decision of the Council of Ministers no. 828/2015 "On the approval of the rules for the creation and administration of the electronic register for notifications and public consultations"

24 Interview conducted by the authors with a representative of International Chamber of Commerce in Albania on 16/2/2023.

25 Transparency International and Institute for Democracy and Mediation (2021) Deconstructing State Capture in Albania 2008 – 2020

accountability in decision-making, e.g. the report is required to provide the number of recommendations and comments received, accepted, and rejected, but it is not required to provide the reasoning behind the rejection; it is required to provide the number of documents approved by the institution in the given year, but it is not required to provide the number of documents consulted, the number of documents not consulted, and the reasoning behind the lack of consultation of the latter. The proactive and consistent disclosure of these reports aligns with the legal obligations of public institutions as stated in both the Law on the Right to Information and the Law on Notification and Public Consultation.

Coordinators for public consultation should be appointed by all public bodies, as institutional focal points. The provided notion of public body is very wide, including central and local governments, as well as public or other entities that perform administrative functions. In practice, it is not clear which institutions shall appoint consultation coordinators, as not all institutions perform policymaking functions. Additionally, the law does not further elaborate on the concrete duties of the coordinator and other technical departments within the institutions. Further, the law designates the minister responsible for technology and information with the overseeing of the public consultation law, but it does not provide further information on the role of this institution. However, the CoM decision, which governs the operations of the ERNPC, assigns this minister the responsibility for the creation, operation, administration, and monitoring of the register. The Minister for Innovation and Public Administration held this responsibility until 2017 when the ministry was dissolved due to government restructuring. Currently, the PMO conducts the overseeing of public consultation processes at the central government level. Nevertheless, these changes and the corresponding roles assigned to each implementing institution are not reflected in the legal framework.

The IDP Commissioner is assigned to handle complaints related to violations in public consultations. Nevertheless, its authority is significantly restricted. In contrast to similar laws, such as the Law on the Right to Information and the Law for the Protection of Personal Data, which fall under the jurisdiction of the same Commissioner, the law on public consultation fails to grant this institution the power to impose administrative sanctions, such as fines, on individuals or institutions responsible for the violations. The IDP Commissioner can only recommend that the institution take administrative measures against the responsible person/persons, according to the applicable civil service legislation. There is a lack of clarity on how the responsible person is identified in practice, due to consultation responsibilities being shared between the coordinator, technical structures of the institution, and high-level officials. Moreover, the IDP Commissioner is not authorized to initiate an administrative investigation on their own initiative (*ex officio*) unless prompted by a formal request. Its mandate is limited in terms of timing as well, allowing the IDP Commissioner to take action only after the approval of the disputed act, offering no substantial solution. For documents that are not yet approved, complaints can be submitted only to the institution responsible for the consultation itself.

Furthermore, the law does not grant individuals the right to file a lawsuit for violations of public consultation. Although one can refer to the Constitution and the Code of Administrative Procedures when claiming this right before a court, explicit regulation within the law would provide clarity on procedural steps and deadlines, particularly in

cases where the IDP Commissioner has not taken a formal decision on the matter²⁶. These gaps in the legal framework discourage the pursuit of accountability, as evidenced by the minimal number of complaints filed over the years.

In efforts to improve the regulatory environment and the quality of public consultation processes, the guideline for public consultation was approved via Order No. 3 on 29.01.2021 of the Secretary General of the Council of Ministers²⁷. The guideline attempts to fill some of the above-mentioned gaps and increase the effectiveness of public consultations, and targets line ministries and central institutions under the subordination of the Prime Minister. They address all stages of consultation, providing reporting obligations, and assigning monitoring, evaluating, and quality control responsibilities to the Regulatory and Compliance Department and the Development and Good Governance Department of the PMO. As a result, all ministries and central institutions under the Prime Minister must report on their public consultation processes on a six-monthly and annual basis to the PMO. The latter drafts the annual performance report for public consultations based on the reports of ministries and other central institutions.

However, the guideline's legal enforceability is questionable since the Secretary General of the CoM, does not have the authority to issue orders (to ministers) according to Law no. 9000/2003 For the Organisation and the Functioning of the CoM. This suggests the need to incorporate them into the national legal framework for binding compliance by ministries, other relevant institutions, and local government units. The latter for instance, as an independent level of governance, naturally cannot fall under the scope of the guideline or report to the PMO, but are amongst the institutions obliged to implement the law on public consultations. For the same reason, the consultations carried out by the local government units are currently left unmonitored, and such a gap can be addressed by empowering the IDP Commissioner, as an independent institution with oversight powers over all levels of government.

The need for amendments in the Law on Notification and Public Consultations has been raised over the years by various stakeholders including the IDP Commissioner²⁸, civil society²⁹, businesses and their representative bodies³⁰, as well as the government itself in the 2022 Annual Performance Report on Public Consultations³¹.

- 26 Res Publica (2017) Commentary of the Law on Notification and Public Consultation <https://www.publeaks.al/wp-content/uploads/2017/11/Res-Publica-Komentari-i-ligjit-per-njoftimin-dhe-konsultimin-publik.pdf>
- 27 Order No. 3 on 29.01.2021 of the Secretary General of the Council of Ministers for the Approval of the Guideline on Public Consultation <https://www.adisa.gov.al/wp-content/uploads/2021/03/URDHER-Nr.-3-Dt.-29.01.2021-compressed.pdf>
- 28 Information and Data Protection Commissioner (2018) Report on the Assessment of Capacities of Coordinators of the Right to Information and Consultation
- 29 Institute for Democracy and Mediation (2021) Ticking the box on public consultations – enablers, repercussions, solutions? https://www.thinkforeurope.org/wp-content/uploads/2022/02/WeBER2.0_Reci-Angjeli_Ticking-the-box-for-public-consultations_brief_IDM_12.2021_final-1-1.pdf
- 30 Albanian Chamber of Commerce (2022) Investment Council relies on AmCham's recommendations on public consultation effectiveness <https://amcham.com.al/investment-council-relies-on-amchams-recommendations-on-public-consultation-effectiveness/>
- 31 Prime Minister's Office (2023) Annual Performance Report on Public Consultations 2022 https://konsultimipublik.gov.al/documents/reports/Raporti%20Vjetor%20i%20procesit%20t%C3%AB%20konsultimit%20publik%20p%C3%ABr%20vitet%202022_Qendra%20e%20Qeverisjes.pdf

Some of the interviewed experts³² were skeptical about the effectiveness of giving the law a punitive approach, based on previous experience. Nevertheless, they all agreed on the need to clarify institutional roles and available instruments. As international good practices indicate, the law should ensure control over administrative discretion and effective oversight mechanisms. Modalities vary among different countries and are tailored to the context. A common denominator among experts' opinions was also the need to change the approach and understanding of the public administration on the consultation process, in order to see it as a process that benefits and improves their work first and foremost. **After almost a decade of weak implementation, an open discussion on amendments to the law on public consultations is long overdue.**

32 Interviews conducted by the authors with two representatives of Albanian Investment Council on 6/2/2023; Interview with a representative of Res Publica conducted by the authors on 2/2/2023; Interview with a representative of the Agency for Support to Civil Society conducted by the authors on 6/2/2023.

2. INSTITUTIONAL REGULATORY AND ADMINISTRATIVE SETTING

The law assigns the consultation coordinator as a point of contact responsible for the coordination and general administration of the work for the guarantee of the right of notification and public consultation. In practical terms, coordinators share their duties with technical departments depending on the structure and nature of the institution. These usually include legal departments, policy and acts departments, subordinate agencies, etc. The guideline on public consultation prescribes the role of the consultation coordinators, assigning them with the preparation of consultation plans and reports, collecting and structuring the comments, assisting responsible officials in the carrying out the process, and publishing documents in the ERNPC. Whilst the analytical work is the responsibility of the respective technical departments in charge of drafting the document that is being consulted. This would include deciding on the documents that will undergo consultation, identification of stakeholders and tools, preparation of supporting documentation (explanatory reports or assessments), analysing the feedback, and preparing the response. The modality through which these departments and the coordinator interact and support each other throughout the consultation process is not pre-defined and depends on the structure and nature of each institution.

For example, in Poland, different ministries have set up their own internal procedures to handle public comments, indicating the internal departments that decide whether the remarks are justified and need to be inserted into the draft³³.

IDM's needs assessment found that the internal regulations of the institutions did not provide for the division of duties and roles among the various technical departments of the institutions, subordinate agencies, and the public consultation coordinator. In addition, in most of the cases, institutions had not approved internal acts of appointment for the consultation coordinators or job descriptions. Job performance evaluations of employees did not cover additional tasks, such as the task of the consultation coordinator, affecting accountability and internal control. Overall, the consultation process was not reflected in the current framework, and interviewees³⁴ suggested the drafting of Standard Procedures of Action customized for each institution according to its internal structure and specificities. This is a typically used internal document for public administration that regulates different processes, covering the entire chain of action, separation of tasks,

33 SIGMA Consultation – a Key Tool for Better Regulation in Europe and Romania

34 Two consultative roundtables held by the authors with (14) representatives of line ministries and the Prime Minister's Office during 9-10 February, 2023.

documentation management, control, and accountability³⁵. For instance, this would also designate the process of identifying the official/s responsible for the violation of the public consultation - when a recommendation is given by the IDP Commissioner for taking an administrative measure; or internal management of complaints – processes that were unclear even to the representatives of institutions.³⁶ (see section 5)

For all public consultation coordinators, this duty comes as an additional task, without additional remuneration. In practice, they also hold other primary duties within the institution, mainly in the position of a specialist within the legal or policy acts departments – an entry level position in public administration. In this regard, their workload sometimes becomes problematic, making tasks related to public consultation be perceived as a burden. This was particularly relevant for ministries with a wide area of responsibility and many subordinate institutions. This context is not incentivizing for many consultation coordinators, while staff retention in public administration as a whole is already a challenge. To address this, parallels can be drawn to the situation of coordinators for the right to information who also perform their duty as an additional task. Some recently proposed legal amendments suggested an additional remuneration to their salaries³⁷.

Staff retention also harms institutional memory and causes a loss of knowledge and training gained. In this regard, during 2022, there was a positive development aiming to ensure the availability of sustainable training by piloting of a dedicated training module for public administration officials on public consultations³⁸. The module was based on the guideline on public consultation and endorsed by the PMO and Albanian School of Public Administration (ASPA). Ensuring continuous training in this regard is also in line with the commitments of the Open Government Partnership Action Plan 2022-2024³⁹ and the recommendations of the 2020 Annual Performance Report on Public Consultations.⁴⁰

A centralized platform for storing documents and coordination of the parties in the process of public consultation would also serve the preservation of institutional memory and allow the tracking of all chains of the process. This would facilitate the collection of data to allow for analysis of institutional practice over time, accountability seeking when violations occur, and would also be extremely useful for newly appointed staff. In practice, many communications within different structures of administration are delivered informally and are impossible to track. In the absence of such a system, institutions fall short in archiving documents related to public consultation. By way of illustration, the interviewees reported that many unsaved documents were lost and not restored following the cyberattack against the government in 2022⁴¹.

35 Two consultative roundtables held by the authors with (14) representatives of line ministries and the Prime Minister's Office during 9-10 February, 2023.

36 Ibid

37 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/528>

38 Institute for Democracy and Mediation (2023) Training Module on Public Consultation for the Central Government

39 Open Government Partnership Albania Action Plan 2022-2024 https://ogp.gov.al/uploads/2023/3/20230307134529_open-government-partnership-new-action-plan-2022-2024-draft-06-march-2023.pdf

40 Prime Minister's Office (2021) Annual Performance Report on Public Consultation 2020 https://konsultimipublik.gov.al/documents/reports/Raporti%20Vjetor%20i%20Procesit%20t%C3%AB%20Konsultimit%20Publik%20p%C3%ABr%20vitin%202020_Qendra%20e%20Qeverisjes.pdf

41 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

In addition, to the unregulated and bureaucratic environment, it is often a challenge for coordinators to interact and seek accountability from superiors or technical directories, from an entry-level position. Higher level officials often have little understanding and awareness of public consultation, or lack political will, hampering interaction and cooperation. Some coordinators reported not being included in technical working groups created to work on a certain draft that would be consulted, due to being entry level staff. There have also been cases when coordinators were completely uninformed about the process of drafting and learned about its approval after it had taken place. Positive examples from two ministries where coordinators held higher positions were identified, where coordinators were regularly included in the working groups in the phase of drafting⁴². Nevertheless, due to the workload they often needed to delegate and share consultation-related tasks with their dependents. In order to have more access to navigate the internal environment effectively, the majority of interviewees suggested that the coordinators hold higher level positions, in addition to having a background in law which is also seen as crucial.⁴³ The OGP 2022-2024 tackles this, committing to guaranteeing the sustainability and authority of consultation coordinators, by ensuring this role to be exercised by civil servants of middle or high-level management.

Overall, representatives of institutions see the consultation process as widely dependent on political will, or the individual will and vision of a current superior – which is beyond the technical work of consultation coordinators and other staff involved. A need for raising awareness is noted at the management level, to help shape a perception of public consultations as a tool that benefits the amelioration of the policymaking processes, instead of being perceived only as a process that opens the institution up to public criticism⁴⁴.

To ensure institutional coordination regarding public consultation processes, the guideline envisages the use of the Integrated Planning Information System (IPSIS) as an interaction platform. This system is intended to facilitate, among other processes, the preparation of consultation reports and their approval at the determined decision-making levels within the structures of the institution, as well as in relation to the PMO (inter-institutional). However, this system is not yet usable, and coordination between central government institutions continues to present challenges⁴⁵. The 2022 EU Commission Report also highlights: “Albania remains in need of strengthening inter-institutional coordination mechanisms for comprehensive strategic policy planning and its capacities to ensure the efficient implementation of reforms”.

Inter and intra-institutional coordination, and documentation storing, need improvement, to serve good planning, standardization of public consultation processes, and, above all, improving their quality.

42 Two consultative roundtables held by the authors with (14) representatives of line ministries and the Prime Minister's Office during 9-10 February, 2023.

43 Ibid.

44 Two consultative roundtables held by the authors with (14) representatives of line ministries and the Prime Minister's Office during 9-10 February, 2023.

45 SIGMA (2021) Albania Monitoring Report

3. IMPLEMENTATION OF PUBLIC CONSULTATIONS

3.1 PLANNING AND DESIGNING CONSULTATIONS

Planning and designing public consultations are the primary phases of the process and are crucial to ensuring effective implementation. Even though each institution has to prepare and publish its annual plan of public consultations, in practice they are not consistently published in the ERNPC, as required by law⁴⁶. Such lack of transparency makes it difficult to monitor public consultation and limits timely and effective participation⁴⁷.

Institutional annual consultation plans are mainly based on the General Analytical Program of Project-acts (GAPP) – the government’s annual plan of draft laws and policies. Nevertheless, consultation plans may include other documents originating from the National Plan for European Integration (NPEI), other strategies and policies, government’s priorities, or documents retained and delayed from previous years. However, the monitoring shows that a considerable part of the acts planned for consultation during a given year are not provided for either in the GAPP or in the NPEI. Oftentimes, this makes it difficult to track the origin of certain laws and policies. By way of illustration, according to the 2020 Performance Report on Public Consultation, out of 93 approved acts that had to be submitted for public consultation, 36 acts (38.71%) were not planned either in the GAPP or in the APEI. A study by Transparency International and IDM which identified 9 tailor-made laws in Albania (cases of grand corruption), found that in addition to other irregularities or violations, these laws were not planned in the GAPP.⁴⁸

In addition, the drafting, inter-institutional consultations, and approval of some acts may continue for several years after the public consultation has taken place. According to the 2020 Annual Performance Report on Public Consultations, there are cases of unreasonably prolonged processes, lasting for 2-3 years. Nevertheless, the consultation is reported in the same year it actually takes place. For example, in the annual public consultation plan for 2022, 77 acts were planned, of which only 28 were approved in the same year. This makes it difficult to track the timeframe of the process for certain laws and policies. According to the 2020 Performance Report on Public Consultations, the extremely long duration of consultations of some ministries shows a lack of public consultation planning. Among its main recommendations is the improvement of planning and the predictability of the duration of public consultations.

46 Monitoring of the Electronic Register of Public Consultations conducted by the authors during the period of March–May 2023 covering years 2020, 2021, and 2022.

47 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

48 Transparency International and Institute for Democracy and Mediation (2021) Deconstructing State Capture in Albania 2008 – 2020

On the other hand, extensive and prolonged inter-institutional consultations often mean that substantial changes could be made to the initial draft of the document that was publicly consulted, potentially invalidating the contribution of stakeholders given earlier.

According to representatives of the PMO, there have been cases when 60% of the documents have been changed after inter-ministerial consultations, which ideally would require a repetition of public consultation⁴⁹. Such practices are almost inexistent, while sporadic examples are identified, such as the case of the Law on Arbitration, when the Ministry of Justice decided to repeat the consultation of the reviewed draft due to the high interest encountered⁵⁰. In another case, stakeholders brought to attention the amendments to the legislation on investments, which were not approved for several years, and they were unable to check if their contributions were taken into account. In addition, it was added that such situations create legal uncertainty and discourage investments.⁵¹

To prepare the annual plans of consultation, institutions apply the exclusion criteria provided by the law. While lacking a definition of “strategies”, “policies of public interest”, criteria on mandatory consultations, and an obligation to consult secondary legislation, the decision on the acts that will be included in the consultation allows for subjectivity. Therefore, in practice, there are often cases of draft acts which, although they should be subject to public consultation procedures, are neither consulted nor published - for example, the case of the 2022 Fiscal Package⁵². As there are often cases of consultation of sub-legal acts. Nevertheless, the process is not standardized across institutions, and the criteria and evaluation behind the decision to voluntarily / informally consult the given sub-legal acts remain unclear. According to the Investment Council⁵³, the lack of obligation of institutions to consult drafts of sub-legal character is considered a deficiency. The National Action Plan Open Government Partnership 2022-2024 also identifies the issue of non-consultation of sub-legal acts as a challenge.⁵⁴

The guideline on public consultation⁵⁵ provides for some criteria on draft documents that should undergo the consultation process, putting an emphasis on indicators of high public interest, active engagement of stakeholders, and the expected effect of the act on different target groups. Nevertheless, the guideline provisions are not mandatory and almost never apply in practice when the annual plans are designed. According to the IDM needs assessment⁵⁶, institutions lacked internal procedures and criteria on how the evaluation of documents that will undergo consultation is made. According to their

49 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

50 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

51 Interview conducted by the authors with a representative of International Chamber of Commerce in Albania on 16/2/2023.

52 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

53 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

54 Open Government Partnership Albania Action Plan 2022-2024

55 Order No. 3 on 29.01.2021 of the Secretary General of the Council of Ministers for the Approval of the Guideline on Public Consultation

56 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

institutional practice, draft laws and strategies are regularly consulted, while regarding bylaws, the procedure is not formalized and often depends on the specific directorate proposing or drafting the act. Some other institutions have the decision made by their legal or policy departments. In their perception, the process is heavily dependent on political will⁵⁷. An evaluation template matrix⁵⁸ for the exclusions from public consultations is applied, but does not provide any analysis, other than the article in the law that prescribes the general exclusions from the consultation (state secret, national security, etc.), and is not published.

Justifications for the exclusion of certain documents from the public consultation procedure are lacking in annual plans and annual reports of public consultation. In statistical terms, hundreds of documents are excluded from the consultation process each year, without any rationale provided to the public (see Table 1). The decrease in the number of acts undergoing consultation is noted also by the 2022 EU Commission⁵⁹ and GRECO⁶⁰.

Table 1. Exclusion of acts from consultation

Year	Number of acts planned in the GAPP	Number of acts from the GAPP deemed subject to the public consultation law	Number of acts planned for consultation (annual plan)	Number of acts de facto consulted in the given year
2020	433	49	70	74
2021	303	23	44	29
2022	284	78	49	40

In addition to annual consultation plans, institutions are required to draft individual consultation plans for each document that undergoes public consultation. According to the guideline on public consultation⁶¹, the individual plans should determine the timeframe of the consultations, the targeted audience, consultation methods, necessary resources, the way of collecting contributions, as well as monitoring and evaluation activities. In practice, individual consultation plans are rarely and inconsistently published. For example, the Ministry of Infrastructure and Energy had not published any individual consultation plans during the monitored period (2020-2022).⁶² In other cases, when

57 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

58 Ibid.

59 European Commission (2022) Albania Report

60 Council of Europe / GRECO (2022) Compliance Report Albania

61 Order No. 3 on 29.01.2021 of the Secretary General of the Council of Ministers for the Approval of the Guideline on Public Consultation

62 Monitoring of the Electronic Register of Public Consultations conducted by the authors during the period of March-May 2023 covering years 2020, 2021, and 2022.

institutions published individual consultation plans (otherwise referred to as explanatory notes), it was noticed that they lacked basic logistical information such as the date and time of the meetings (e.g., the draft decision "On the approval of the Strategy against Organized Crime and Serious Crimes 2021-2025 and the Action Plan 2021-2022"⁶³), or contacts of the person responsible (National Action Plan of Open Government Partnership 2020-2022).⁶⁴ The targeted groups are often not clarified by the consultation plans, and oftentimes, inter-ministerial consultation (a separate obligation deriving from the Regulation of the Council of Ministers), is counted as public consultation. Another common practice is for the plans to be written in the past tense, in the form of a report on the activities that have already been carried out (not as a plan), implying that they were published after the closing of the consultations, therefore not serving their purpose.

At the planning stage, the institution also decides if it will hold early-stage consultations. As mentioned above, early-stage consultations are optional but are considered a very effective method, since they allow institutions to measure the perceptions and gather suggestions before the drafting of the document. At this stage, it can be easier to incorporate changes, compared to when consultations are held after a consolidated draft is prepared. Nevertheless, in practice early consultations are rarely applied.⁶⁵ There is no formalized procedure in this regard and the decision for early consultation varies on a case-by-case basis, depending on the institution or its specific unit proposing or drafting the act. Additionally, early consultations are not reported on, therefore even when they are held, they are difficult to monitor. Some practices of early consultations were identified regarding the Law on Arbitration and National Strategy Against Corruption, led at the initiative of the Ministry of Justice.⁶⁶

According to the Association of Investors Foreign in Albania, the negative experience with tax legislation in Albania indicates a need for early consultations of interest groups: *"Frequent changes in tax legislation, often contradictory to each other, also implemented without proper consultation with the interested groups, have created a chaotic legal framework which creates additional administrative burdens and financial costs for taxpayers, but also, in many cases, violates the constitutional principle of legal security."*⁶⁷

One of the interviewees highlights that if not consultations are not conducted at an early stage, they have limited impact since the draft is already consolidated: *"...at a later stage, the draft is tight on their (institutional) side and the room for change is very small."*⁶⁸

63 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/313>

64 Ibid.

65 Institute for Democracy and Mediation (2023) National Public Administration Reform Monitor Albania 2021/2022 <https://idmalbania.org/national-par-monitor-albania-2021-2022/>

66 Interview conducted by the authors with a representative of International Chamber of Commerce in Albania on 16/2/2023.

67 Foreign Investors Association Albania White Book Albania 2021.

68 Interview with a representative of Together Foundation conducted by the authors on 27/1/2023.

3.2 TIMEFRAME OF PUBLIC CONSULTATIONS

The minimum deadline of twenty days for submission of contributions is generally applied as a standard – for example during 2022 it was respected for 90% of the documents.⁶⁹ The complexity of the draft document is rarely taken into account as a criterion for determining the sufficiency of the deadline or the need for an extension of up to forty days, as prescribed by the law.

As an example, an interviewee brought to attention voluminous documents such as the Electronic Communications Law (a draft law of 138 pages), which aimed the transposition of the EU Electronic Communications Code.⁷⁰ They highlighted: *“Due to its complexity, it took some EU member states over 5 years to adopt this act and some others have not implemented it yet, while in Albania it was rushed in a few months.”*⁷¹ Even though a report on the results of the consultation of this law has not been published, according to the ERNPC, the consultation of this document lasted for a month – the standard length.⁷²

Another practice noticed in this regard is that of institutions consulting several documents simultaneously or during holiday periods. This hinders the participation of potential stakeholders willing to follow several consultations, not allowing enough time for consulting all the documents. In addition, even from the perspective of the institution, simultaneous consultation can be overburdening and affect quality. For example, during the period of 04.12.2020-30.12.2020, the Ministry of Interior has consulted 6 acts, among which 4 strategies and 2 important draft laws in the field of security, organized crime, and anti-terrorism. From 26.03.2021 to 22.04.2021, 6 acts in the field of security and weapons were simultaneously published for consultation. Whilst out of 8 acts consulted in 2022, 4 were consulted during December 2022-January 2023.⁷³ On the other hand, the Ministry of Health and Social Protection, during the month of June 2022 consulted 2 laws and a draft decision in the field of drugs, pharmaceutical services, and biocidal products. One of the laws aimed at guaranteeing the process of control, monitoring of the cultivation, processing of the cannabis plant, and the production of its by-products, intended for medical and industrial purposes and was faced with public criticism.⁷⁴ Similarly, among the 56 legal acts published by the Ministry of Environment and Tourism for online consultation, 44 of them underwent consultation during the summer period from July 16, 2021, to August 10, 2021.⁷⁵

The 2020 Annual Performance Report on Public Consultations highlights the need for better planning of consultation processes, indicating the timeframe of consultations should be clear, and they should not be unreasonably prolonged.

69 Prime Minister's Office (2023) Performance Report on Public Consultations 2022

70 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

71 Interview with a representative of Vodafone company conducted by the authors on 10/2/2023.

72 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/540>

73 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Institucioni/114>

74 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Institucioni/47>

75 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Institucioni/111?page=2>

3.3 STAKEHOLDERS' ACCESS AND INCLUSION TO PUBLIC CONSULTATION

For the consultation process to be meaningful, it should be inclusive of the relevant and affected actors, and not only be sufficed with actors the institution usually cooperates with. It should include the communities that will be affected by the new policy, and other relevant nonpublic actors, including more specialized groups such as academia, civil society organizations, and private sector associations.

For this purpose, a Stakeholders' Analysis Matrix was provided by the public consultations guideline to guide institutions in the process of identifying interest groups depending on the nature of the act subject to public consultation. The template takes into account the influence certain stakeholders have and their interest in the given policy. Nevertheless, it is yet little known and applied by the institutions.⁷⁶ It is noticed that aspects that require more proactivity or analysis on the side of institutions or are of a somewhat more technical nature, turn out to have not been consistently and fully respected by government institutions, in contrast to standardised processes (such as annual reporting)⁷⁷ addressed in the sections below.

The needs and specificities of the targeted groups should also indicate the choice of consultation methods, to make it accessible. Enhancing the inclusivity of consultation processes to vulnerable or marginalized groups, particularly in remote areas, remains a significant challenge within the context of diversifying public consultation methods. From the perspective of CSOs, 17% maintain that relevant ministries often or always ensure that diverse interest groups are represented in the public consultation processes, 39.6% maintain that it happens sometimes, and according to 35.8% it rarely or never happens⁷⁸.

On the accessibility of consultation, in relation to the level of organisation of a certain group, the representative of an organization working on Roma and Egyptian rights said: *"Ministries would invite to consultation senior organisations that were not active anymore, while we (as an informal group of activists at the time) were not on the Ministry's contact list. We learned about consultations informally, utilizing our sources. Eventually, we formalized (as an organization) to have a greater impact."*⁷⁹

A representative of an organisation on disability rights, highlighted that the process would benefit from the inclusion of the affected communities, noting: *"It is to the advantage of the institutions to get the experience of the community because they are practical people because they had to go through things themselves"*⁸⁰.

Sometimes even more specialized actors such as academia and public entities are not guaranteed inclusion in consultation of acts concerning their area of work and expertise. In this context, the representative of the Order of Pharmacists highlighted: *"The working*

76 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

77 Ibid.

78 Institute for Democracy and Mediation (2023) National Public Administration Reform Monitor Albania 2021/2022

79 Interview with a representative of Center for Social Advocacy conducted by the authors on 27/1/2023.

80 Interview with a representative of Together Foundation conducted by the authors on 27/1/2023.

group responsible for the law on medications was not made public, and key stakeholders like the Order of Pharmacists and the University of Medicine were excluded from drafting the law in its early stages. This lack of transparency creates an atmosphere of distrust and raises questions about the legitimacy of the consultation process."

When it comes to the inclusion of local communities affected by the decision-making, a representative of an environmental CSO noted: *"These consultations (on construction projects with environmental impact) take place because they are legal obligations for the private company (procured contractor) and the National Environmental Agency. Nevertheless, we have seen consultation processes that received no reaction, while the local communities have been vocal against a certain construction process, (through media appearances and protests). Receiving no reactions during the consultation, in these cases means that it was not the local (affected) community who was consulted"*⁸¹.

With regard to the decision-making of environmental concerns, there have also been reports of fictive consultations⁸². For example, there were cases of reporting in the lists of participants to the consultation, individuals that were no longer alive⁸³ or even employees of the contracted company⁸⁴. In one identified case, a criminal lawsuit for forgery of consultation signatures regarding the construction of hydropower plants in Valbone was filed by local communities and CSOs, but it was withdrawn with the reasoning that the criminal offense was time-barred⁸⁵.

In the case of 9 tailor-made laws identified in Albania, as laws that favoured private interests at the expense of the public interest, it was found that they all fell short of inclusiveness and consultation of interest groups⁸⁶.

A positive example of efforts to improve the proactive and inclusive approach of the institutions is the undertaking of creating or updating the institutional databases of line ministries with contacts of interest groups. During 2022, the majority of institutions (mainly ministries) have published the lists of targeted stakeholders in the ERNPC, with the exception of the PMO, its subordinate institutions, and some other central agencies.⁸⁷ Such databases of contacts should be reviewed, and updated continuously, and not applied by default in each case regardless of the nature of the document being consulted. Another positive development involved the central institutions disseminating an instructive video that demonstrates the proper utilization of the ERNPC, with the goal of fostering increased engagement from stakeholders.

81 Interview with a representative of EDEN organisation conducted by the authors on 24/1/2023.

82 Interview with a representative of BIRN Albania conducted by the authors on 25/1/2023.

83 Citizens Channel (2021) HPPs in Valbona do not stop, the Supreme Court's order continues to be ignored <https://citizens-channel.com/2021/09/27/hec-et-ne-valbone-nuk-ndalen-vijon-injorimi-i-urdhrit-te-gjykates-se-larte/>

84 Reporter.al (2017) 'Refinery not perfumery', residents around 'Metallurgic' raise their voices against pollution <https://www.reporter.al/2017/11/03/rafineri-jo-parfumeri-banoret-rreth-metallurgikut-ngrejne-zerin-kunder-ndotjes/>

85 Reporter.al (2018) HPPs in Valbona, Appeal "prescribes" forgery of signatures <https://www.reporter.al/2018/12/04/hec-et-ne-valbone-apeli-parashkruan-falsifikimin-e-firmave/>

86 Transparency International and Institute for Democracy and Mediation (2021) Deconstructing State Capture in Albania 2008 – 2020

87 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/>

3.4 CONSULTATION METHODS

Despite growing expectations from the use of various methods of public consultation, there is still limited evidence on the influence of non-state actors on the outcomes of government-led consultation processes in Albania.

When it comes to consultation methods, institutions widely rely on the electronic register, which is the only mandatory method. For example, 95.2% of all consulted documents during 2022 were published in the ERNPC.⁸⁸ Existing literature suggests that increased reliance on e-consultations can lead to a decline in the use of other public consultation methods, particularly in-person meetings.⁸⁹ While it is premature to definitively confirm this trend, current performance reports indicate a decrease in the use of alternative public consultation methods from 2020 to 2022 when compared to the ERNPC. The application of other methods such as public meetings, surveys, roundtables, and working groups depends on the will of the institutions. Public meetings, publication on the website of the institutions and e-mail communications seem to be the (other) most used methods of consultation and are generally better received by stakeholders compared to e-consultation. Nevertheless, when it comes to public meetings, stakeholders highlight they should be targeted in order to be effective, otherwise, they rather serve the aim of box ticking. In this regard, interviewees brought examples of consultation meetings on legislation on medications when stakeholders of different backgrounds dealing with production, import, service provision and professional regulation were brought together ineffectively.⁹⁰ Similarly, concerning the amendments to the data protection legislation, the meetings were not targeted and big data processors such as telecommunication companies responsible for the personal data of over one million citizens, were jointly consulted with touristic agencies and other groups.⁹¹ However, the available data do not facilitate an in-depth analysis of the efficacy of these consultation methods.

For consultations to be effective, consultation tools should be adapted to the issue at stake as well as to the individual characteristics of the targeted stakeholders. While e-consultations are widespread due to their easy use, cost-effectiveness, and broad outreach, their limitations and accessibility should also be taken into account. For public authorities, the use of e-consultations significantly reduces the possibility of a simplified presentation of proposed solutions, and for the public, there is a demand for a time-consuming written response.⁹² Therefore, the use of e-consultations is recommended to be combined with other methods to ensure inclusivity, accessibility, and non-discrimination - which are among the guiding principles of the public consultation law.

In light of this, the guideline on public consultation offers methodologies to be applied by institutions when selecting consultation tools, encouraging them to take into account the

88 Prime Minister's Office (2023) Performance Report on Public Consultations 2022

89 Vidačak, Igor. (2022) "Beyond Usual Suspects? Inclusion and Influence of Non-State Actors in Online Public Consultations in Croatia <https://doi.org/10.3390/socsci11100436>

90 Interview with a representative of the Order of Pharmacist conducted by the authors on 31/1/2023.

91 Interview with a representative of Vodafone company conducted by the authors on 10/2/2023.

92 Council of Europe (2018) Regulatory Impact Assessment and Public Consultations: Comparative Models, Lessons Learned & Recommendations for Belarus <https://rm.coe.int/belarus-regulatory-impact-assessment-and-public-consultations-recommen/16808e3002>

advantages and limitations of each tool. In addition, when deciding to combine different consultation methods it should be ensured that the comments and feedback gathered through different tools are treated and analysed with the same care. The guideline on public consultation also requires written minutes to be kept during consultation meetings and to be included in the individual consultation report along with the justification for their refusal, if refused.

Despite being the main tool applied by public institutions, the ERNPC has proved not to be sufficient for an effective consultation process, as its use and recognition by the public are very limited. According to a national poll, only 18.1% of citizens have used the ERNPC in 2022.⁹³ This seems to be the case also for more organized and resourceful groups such as business associations, 73% of which were not aware of the ERNPC.⁹⁴

However, the stakeholder's interviews reported limited experiences with the portal and expressed a preference for traditional forms of public consultation over the electronic portal. This preference stemmed from issues such as the platform's less-than-intuitive user interface, the requirement for registration via e-Albania (e-government platform), limited feedback options, features for users with disabilities, the lack of consistency of publicly available documentation for each legal act, the impossibility of submitting comments on specific articles or issues (rather than on the entire document) and use of non – machine-readable documents.

The 2022 EU Commission Report on Albania also highlights the lack of use of the ERNPC, bringing the unsuccessful example of the e-consultation of the Economic Reform Programme 2022-2024. According to the Council of Investments, e-consultation is seen as an opportunity for institutions to avoid direct confrontation with groups of interest, affecting trust and public perception.⁹⁵

The majority of interviewees considered the ERNPC more of a public information channel, but not as a suitable space to interact with the institutions. The figures provided in the government's open data portal also confirm this, showing that during 2021-2022, the ERNPC reached 123,116 views, while receiving only 69 comments.⁹⁶

Table 2. Passive and active users of the ERNPC

Year	Number of views in the ERNPC	Number of comments in the ERNPC
2021	24,210 views	1 comment
2022	98,956 views	68 comments
Total	123,116 views	69 comments

93 Institute for Democracy and Mediation (2023) Opinion Poll 2022 Trust in Governance

94 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

95 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

96 See Government's Open Data Portal: <https://opendata.gov.al/statistika-mbi-konsultimet-publike/data/statistika-mbi-konsultimet-publike->

According to the 2020 Performance Report on Public Consultation, the apparent difference between the number of passive participants and the number of active participants that contribute to public consultations indicates a need for greater efforts from government bodies towards improving responsiveness to contributions received and general communication strategy. This report recommended carrying out awareness campaigns to improve participation of stakeholders; carrying out a survey on the satisfaction of stakeholders related to the quality of the public consultation process; and upgrading of the ERNPC to enable more effective generation of statistics on the public consultations conducted.

Representatives of CSOs interviewed for this research highlighted the fact that the ERNPC does not allow the uploading of supporting documents, charts, or other data. The latter has proven to be a challenge even for the institutions themselves, as in one case the Ministry of Justice when responding to the comments it had received on the ERNPC on the Draft Law on the Registration of Non-Profit Organizations, wrote: "Since the comments you provided are numerous and the format of the public consultation page cannot support the format we wish to upload (in the form of a table), the evaluation will be forwarded to you by email..."⁹⁷

Oftentimes CSOs must engage their limited human resources to monitor the ERNPC in order not to miss the publication of new draft laws and policies, while some confirmed to have received e-mail notifications connected to the ERNPC, during a testing performed by the PMO and AKSHI during 2022 aiming to introduce automatic notifications. As a result of this initiative, according to the 2022 Annual Performance Report on Public Consultations, 773 citizens signed up for the option "Receive notification" and 8352 automatic notifications were sent. This will facilitate some concerns related to the short notice notification of interest groups and provide them with adequate time to elaborate comments and feedback.

The concerns on inclusivity addressed in this section, have also been reflected upon in the Open Government Partnership Action Plan 2022-2024, which suggests that the methods of public consultation must be diversified, to adapt to the nature of the project act object of consultation and the characteristics of the targeted group, applying the criteria provided by the guideline on public consultation.⁹⁸ Such a need is highlighted also in the 2020 Annual Performance Report on Public Consultations.

3.5 TRANSPARENCY OF CONSULTATION DOCUMENTS

The publication of the draft document undergoing consultation, should be accompanied by supporting documents such as the consultation plan (often referred to explanatory note, containing all the logistical information for participation in the process); regulatory impact assessment report (RIA); explanatory report (for laws); individual public consultation report (published after the process is finalized); compatibility table for documents aiming harmonisation with EU legislation; other relevant documents. In addition, supporting documentation should be understandable, easily readable, reusable,

97 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/272>

98 Open Government Partnership Albania Action Plan 2022-2024

and in open data format. The monitoring found that in practice, this is lacking particularly when presenting tables, voluminous documents, and statistical data – even when it comes to the government’s own open data portal.⁹⁹

Transparency and the timely provision of supporting documents is crucial to provide the public with the necessary information on the proposed decision-making. This allows citizens and other stakeholders to be able to form an informed opinion and to receive practical information on how they can participate and contribute.

While explanatory reports of draft laws seem to be published consistently¹⁰⁰, other supporting documents are rarely published in a complete, consistent, and timely manner. For example, in many cases at the initial stage of the consultation process, the explanatory note and RIA are missing, or they are published in the ERNPC after completion of public consultation procedures.¹⁰¹ This can be attributed to an underestimation of these processes or the insufficient financial and human resources to prepare them.¹⁰² In addition, it is not clear how/if the time of publication of these documents is monitored.

The lack of transparent supporting documents is also noted in the decision-making carrying environmental concerns. Environmental impact assessments and other documents, crucial for public information, are often missing according to stakeholders. By way of illustration, in the case of the decision to revise the map of environmentally protected areas, the maps of the revised borders of the protected areas, and reports on the affected species of those areas were missing. A representative of an environmental CSO said: *“Environmental impact assessment reports are always partial, justified by the fact that a non-technical summary is enough for the public. The public can also be a specialized organisation, it can be a research institute that can make a substantial contribution to the consultation. They cannot even contribute if there is no technical report”*¹⁰³.

Studies show that transparency of documentation falls short even when proactively required (by citizens, CSOs, and journalists) when it carries political sensitivity or could expose cases of corruption. In these cases, it is practice for the government to delay its release to the point of losing its value, or to deny it even after the intervention of the IDP Commissioner. Such information usually concerns public procurement contracts or construction projects deemed harmful to the environment or cultural heritage¹⁰⁴.

Proactive and consistent transparency makes a legal obligation for institutions deriving both from the law on the right to information and the law on notification and public consultation and is of crucial importance to ensure informed participation and strengthen trust.

99 See Government’s Open Data Portal: <https://opendata.gov.al/statistika-mbi-konsultimet-publike/data/statistika-mbi-konsultimet-publike->

100 Monitoring of the Electronic Register of Public Consultations conducted by the authors during the period of March–May 2023 covering years 2020, 2021, and 2022.

101 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

102 Ibid.

103 Interview conducted by the authors with a representative of Eco Albania on 17/2/2023.

104 UNCAC Coalition and Institute for Democracy and Mediation (2022) Civil Society Report on the implementation of Chapter II & Chapter of the United Nations Convention Against Corruption in Albania <https://uncaccoalition.org/uncacparallelreportalbania/>

Following GRECO's recommendation¹⁰⁵, during 2023, most ministries introduced a dedicated section on their website¹⁰⁶ for public consultations, which allows filtering through search and selection of the given year. The rubric contains documents undergoing consultation, consultation plans and reports, and the legal framework. This is seen as a positive effort to improve the transparency of consultations, also utilizing other tools in addition to the ERNPC.

3.6 REGULATORY IMPACT ASSESSMENT

Processes like RIA are crucial to ensure evidence-based policymaking, as well as give out information to support the consultation process.

While obtaining high-quality data is a challenge for RIA, without reliable data, RIA will contribute relatively little to good policymaking. In this regard, consultation with stakeholders is one of the most cost-effective ways of obtaining data to support RIA.¹⁰⁷

Since 2018, the government has adopted a methodology for conducting regulatory impact assessments¹⁰⁸. Nevertheless, while the process of RIA is being slowly embedded in the policy-making process in Albania, it is rarely utilized during the consultation process.

By way of illustration, according to the Performance Reports on Public Consultation, during 2020-2022, very few documents (only draft-laws), are accompanied by regulatory impact assessment. Even fewer are the cases when the RIA is reviewed as a result of the consultation process.

Table 3. Inclusion of RIA in the public consultation process

Year	Number of consulted documents	Number of draft laws consulted	Number of draft laws consulted with RIA	Number of RIA reports reviewed after the consultation process
2020	74	46	38	10
2021	29	18	11	4
2022	40	21	21	4

In this context, an expert of SIGMA highlighted: *"You can use the consultation stage to collect information and evidence you lack (for RIA), but which can help you make the decision. If public officials understand this and if they think in a similar way about the public consultation, it kind of becomes natural and not something you do because you must tick the box, but because you want to make a better policy."*¹⁰⁹

¹⁰⁵ Council of Europe / GRECO (2022) Compliance Report Albania

¹⁰⁶ See Electronic Register for Notification and Public Consultation <https://mb.gov.al/konsultime/>

¹⁰⁷ Council of Europe (2018) Regulatory Impact Assessment and Public Consultations: Comparative Models, Lessons Learned & Recommendations for Belarus

¹⁰⁸ Prime Minister's Office (2018) "Methodology for Regulatory Impact Assessment (2018)"

¹⁰⁹ Interview with a representative of SIGMA conducted by the authors on 26/1/2023.

3.7 REPORTING ON THE RESULTS OF CONSULTATIONS

The reporting process on public consultations indicates the institutional reaction and the real impact of public consultations. Lack of trust is among the discouraging factors for engaging in consultation, as only 39.2% of citizens believe that the suggestions of civil society organizations and interest groups are taken into consideration.¹¹⁰

To gain the public's trust and support for the policy at hand, institutions should register, analyse and provide feedback on all received contributions. Stakeholders should also be informed if significant changes to the draft are made during the process. Such exercise will result in a clear legislative footprint and will help ensure that interest groups' influence on policymaking is not disproportionate and that undue influence and state capture are prevented¹¹¹.

Without proper feedback on the received inputs and adequate integration of evidence into the policy process, public participation cannot be considered truly meaningful and can only result in an ever-growing public distrust of the government.¹¹²

In practice, individual reports on the results of public consultation are the mechanism to enable such accountability and should be published for each consulted document. These reports are designed to provide information on the timeframe, methods applied, stakeholders involved, the feedback received, and the ratio of feedback acceptance/refusal. They are crucial to display accountability and consideration for stakeholders' contribution in the public consultation process. In addition to being published, these reports should be actively disseminated to participants and contributors to the public consultation process, according to the guideline on public consultation. This is particularly important because institutional proactivity and responsiveness can have a direct impact on stakeholders' willingness to continue participating. Nevertheless, no cases of proactive dissemination were identified in practice, except for publication.

According to the Annual Performance Report on Public Consultations, during 2022, individual reports of consultation were provided in 75% of the cases, a slight deterioration compared to the previous years. The ratio of acceptance of the received feedback during public consultations for the same year was 68.61%. Of the 497 comments received, 286 were fully accepted, 55 were partially accepted, and 156 were rejected.

It should be noted that the reported comments do not represent exclusively those submitted by nonpublic stakeholders, as there is no disaggregation of stakeholders based on their nature, level of organization, expertise, etc. Due to the lack of such disaggregation of stakeholders, consultation reports also include the feedback provided by public institutions and oftentimes contain only comments coming from institutions.

In addition, consultation reports do not include or desegregate data on all methods of consultation applied. For example, in some cases, the number of views received on ERNPC

110 Institute for Democracy and Mediation (2023) Opinion Poll 2022 Trust in Governance

111 Regional Cooperation Council Western Balkans - Recommendation on Public Participation in Policy-Making Process <https://www.rcc.int/docs/402/western-balkans--recommendation-on-public-participation-in-policy-making-process>

112 Vidačak, Igor (2022) Beyond Usual Suspects? Inclusion and Influence of Non-State Actors in Online Public Consultations in Croatia

was counted as the number of participants (744 participants).¹¹³

The figures provided by the reports do not reflect all consultation processes held during a given year – as not all of them are registered. For example, reports do not include non-mandatory/informal consultations held by the institution at its own initiative, consultation of acts that were not published in the ERNPC, early-stage consultations, or consultations held by the institution's private contractors procured for a strategic investment project – this kind of consultations are not reported on and therefore impossible to monitor¹¹⁴.

As a result, the reports do not allow a comprehensive analysis of the involvement and impact of different groups in the public consultation process, or the effectiveness of some consultation methods compared to others. In this regard, in addition to collecting and reporting disaggregated data that allow such analysis, the institutions could also survey the stakeholders' experiences in public consultations. The latter was also recommended by the 2020 Performance Report on Public Consultation.

3.8 INSTITUTIONAL RESPONSE TO THE FEEDBACK RECEIVED DURING CONSULTATIONS

The most crucial component of individual consultation reports is the table of comments received from different stakeholders, indicating if they were accepted or not, along with the respective justification for their refusal, if refused. This exact part of the report shows if the consultations have been meaningful and if they have had any impact. According to SIGMA: *"Whatever the consultation procedure may be, it remains formal unless a systematic policy to assess the comments provided by the public, and consider the relevant ones, is applied"*¹¹⁵.

Public institutions lack internal procedures for analysing and responding to the comments and recommendations received during public consultation processes obtained through various methods of consultation¹¹⁶ and such analysis is overall lacking in the reports. Institutional reports also do not provide the comments that did not receive a response or the reasoning behind them.

By way of illustration, the individual report for the strategic document "National Plan for Sustainable Development of Broadband Digital Infrastructure 2020-2025" reports 15 comments but does not present the comments themselves and the justification for their acceptance/rejection. The report also shows that a questionnaire was administered, in addition to roundtables and e-consultation, but there is no information about the findings of this questionnaire. The report does not name the stakeholders/groups of interest included except the consulted institutions¹¹⁷. The latter is a common practice among institutions, whereas they offer vague information on the consulted stakeholders,

113 See Electronic Register on Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/265> and https://konsultimipublik.gov.al/documents/reports/RaportiiPerformancesKonsultimitPublik_CoG_30.07.2021.pdf

114 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

115 SIGMA Consultation – a Key Tool for Better Regulation in Europe and Romania

116 Needs Assessment Report on Public Consultations conducted by Institute for Democracy and Mediation, with the support of National Endowment for Democracy, during August-September 2022 targeting five ministries and the Prime Minister's Office.

117 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/265>

referencing them as "civil societies" and "various economic operators"¹¹⁸. Nevertheless, there are some good practices identified, such as the consultation report for the draft decision "On the adoption of the National Strategy for Gender Equality 2021 - 2030", which is well detailed, contains information on the interest groups and institutions that have contributed, and the table of comments.¹¹⁹ The 2020 Performance Report on Public Consultation also highlights as good practices of results-based reporting the consultation reports for the draft law "On the profession of real estate broker" and the draft law "On foreigners".

When it comes to directly responding to comments on the e-consultation platform, the practice varies and is not standard even within the same institution. For example, the Ministry of Infrastructure and Energy, for the draft law "On the Professional Order of Engineers" has seven comments in ERNPC to which it has not responded, and since there is no individual report for that document, it is not known whether they were taken into account.¹²⁰ The same counts for the draft law "On the Professional Order of Architects" which has one comment with no response and no report.¹²¹ On the other hand, the same ministry responded to a comment received from a citizen on the ERNPC, provided feedback, and offered to hold a meeting with a citizen.¹²² Similarly, in another case it responded to the feedback of CSOs on the ERNPC¹²³.

3.9 STAKEHOLDERS' PERCEPTIONS OF THE INSTITUTIONAL APPROACH

When it comes to how the institutional response is perceived by stakeholders, only 7.6% of CSOs state that policy-making authorities often or always provide them with feedback on their recommendations, while the majority (56.6%) state that ministries rarely or never do so. Moreover, only 13.2% of CSOs state that ministries, in fact, accept their recommendations whereas the majority (41.5%) state that it rarely or never happens.¹²⁴ Similarly, the business community maintains that the final versions of laws and acts regulations do not address their comments and concerns.¹²⁵ According to the Investment Council¹²⁶, 46% of business associations state that they have not received a response from the relevant institutions regarding whether their comments/suggestions are taken into account. This fades the interest and trust of the latter to participate in consultations.

Such lack of trust was evident in the experiences of the interviewees as well. Some of their statements are listed below.

118 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/413>

119 See Electronic Register for Notification and Public Consultation <https://www.konsultimipublik.gov.al/Konsultime/Detaje/347#:~:text=Projektakti%20p%C3%ABr%20%E2%80%9CMiratimin%20e%20Strategjis%C3%AB%20Komb%C3%ABtare%20p%C3%ABr%20Barazin%C3%AB,tyre%20si%20kushte%20drejt%20nj%C3%AB%20zhvillimi%20t%C3%AB%20qendruesh%C3%ABm.>

120 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/441>

121 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/>

122 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/265>

123 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/Detaje/514>

124 Institute for Democracy and Mediation (2023) National Public Administration Reform Monitor Albania 2021/2022

125 US Department of State (2022) Investment Climate Statements: Albania <https://www.state.gov/reports/2022-investment-climate-statements/albania/>

126 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

"We have followed every decision-making regarding persons with disabilities. We are invited to comment in writing and most of the time we are disappointed with the reflection. You participate, you contribute, and you don't get anything back."¹²⁷

Representative of a Civil Society Organisation for Disability Rights

" We contributed to the consultation of the Fiscalization Law and may have been the only stakeholder to produce a 45-page opinion with quality examples - an excellent opportunity for policymakers. They were not taken into account. When the implementation of the law started, the concerns we had raised started to come out, and became a problem. As a result, they had to find tricks such as postponing the implementation of sanctions (fines). This was warned and could have been avoided."¹²⁸

Representative of "Vodafone" company

"The Ministry of Health requires us to send contributions in writing, we send them in writing. And here I am in my office talking to you about the same unaddressed problems. If one checks the public statements of the Order of Pharmacists over the years, it is unfortunate that the Order raises the same problems throughout its existence. We raise the same problems, not because there are no others, but because we have continuously failed to address these."¹²⁹

Representative of the Order of Pharmacists

In addition to the issue of trust, the limited capacities that stakeholders have can also impact their participation. Available data indicate that 31% of CSOs consider it necessary to increase capacities and knowledge on legislation for consultation and public engagement¹³⁰, while 42% of business associations report that they do not know the procedures of public consultation.¹³¹

In light of this, one interviewee highlighted cases when the contributions were considered, especially when they were qualitative and professional:

"CSOs often participate passively or provide generalist or superficial contributions. In the consultations that we participated in, we provided concrete suggestions - arguing what exactly needs to be changed in each article – and in most cases, if there were not any higher interests involved, our recommendations were taken into account."¹³²

Representative of Res Publica

127 Interview with a representative of Together Foundation conducted by the authors on 27/1/2023.

128 Interview with a representative of Vodafone company conducted by the authors on 10/2/2023.

129 Interview with a representative of the Order of Pharmacist conducted by the authors on 31/1/2023.

130 National Resource Center for Civil Society in Albania (2023) Evaluation Report: Assessing the capacities and needs of CSOs in Albania

131 Albania Investment Council (2022) Public Consultation as an Effective Tool for the Improvement of Decision-making and Business -Institution dialogue

132 Interview with a representative of Res Publica conducted by the authors on 2/2/2023.

Whilst, from the perspective of institutions, stakeholders are not informed and the engagement of civil society is weak compared to businesses, which are more active. This could be due to the lack of trust and awareness.¹³³

Also, another issue at stake that was pointed out by the stakeholder interviews was related to the inclusion of foreign expertise in consultation processes and its impact on representing local interests. A representative of a media organization stated:

"A common issue I've noticed in these situations, which often poses a challenge during consultations, is the involvement of foreign expertise. This expertise is frequently provided by international organizations, that aren't non-governmental ones. These organizations typically include the Council of Europe, OSCE, or bilateral expertise offered directly by the EU delegation. I bring this up because the government sometimes justifies its actions by citing the consultation process and the input from these foreign experts, even though these experts don't necessarily represent the opinions of the groups considered as stakeholders. While it's acceptable to provide technical expertise under specific conditions to an institution, it's crucial to clarify that the responsibility for the outcome rests with the institution developing these procedures. It's essential that this institution fully engages in the entire process of public consultation."¹³⁴

The overall need to improve accountability and feedback mechanisms on public consultations is crucial to encourage participation and is acknowledged also by the government and listed among the engagements of the Open Government Partnership Action Plan 2022-2024.¹³⁵

133 Two consultative roundtables held by the authors with (14) representatives of line ministries and the Prime Minister's Office during 9-10 February, 2023.

134 Interview with a representative of BIRN Albania conducted by the authors on 25/1/2023.

135 Open Government Partnership Albania Action Plan 2022-2024

4. INTERNAL MONITORING AND CENTRAL PERFORMANCE ASSESSMENT

Public authorities need to internally monitor participatory processes both in terms of how they are carried out and the quality of their execution. This means monitoring planned activities, timelines, and resource usage, and evaluating the methods used, the suitability of objectives, stakeholder engagement, costs, benefits, and overall impact. Additionally, it is essential to establish a suitable institutional framework for centralized quality control and oversight of participatory processes.¹³⁶

The guideline on public consultation provides a monitoring system for the process consisting of performance indicators aiming to measure the results and impact of public consultation. To assess the overall performance regarding public consultations, in addition to individual reporting per each consulted document (addressed in the section above), institutions are required to draft 6-month and annual reports on their consultation activities. The unit responsible within the PMO drafts general performance reports on public consultations covering all central government institutions, which are also published on a 6-month and annual basis. While such reports have been absent before 2020¹³⁷, not allowing for a comprehensive comparison, an improvement is noted during 2021-2022 regarding their consistent publication. This is attributed mainly to the approval of the public consultation guideline in 2021 which allowed standardization of the process, and so far, reporting may be among the components of the guideline with the highest applicability. Nevertheless, content-wise, statistical information prevails in these reports and does not provide a complete overview of the process.

They fall short in providing qualitative information on the impact and effectiveness of consultation processes or ensuring accountability for when these were lacking. The reports need to be enriched with analysis, have a results-based approach, and reflect on lessons learned, instead of being process-oriented and serving as a merged version of individual reports. Moreover, performance reports should allow comparability of overall performance from year to year, as well as comparability of performance between institutions.

136 Regional Cooperation Council Western Balkans - Recommendation on Public Participation in Policy-Making Process

137 See Electronic Register for Notification and Public Consultation <https://konsultimipublik.gov.al/Konsultime/InstitucionReports/121>

The need to strengthen quality control of public consultations to focus on content rather than on process is highlighted by the EU Commission as well.¹³⁸ Moreover, quality assurance of the public consultation process was rated 1/3 (lowest of indicators), by the SIGMA 2021 Report.¹³⁹ Through the Open Government Partnership Action Plan 2022-2024, the government committed to strengthening quality assurance processes, and developing comparative and analytical indicators of success, drawing on difficulties and challenges encountered in the process of public notification and consultation. In addition, it committed to increasing the capacities of the public consultation coordinators and strengthening of quality control unit through various trainings.¹⁴⁰

The 2020 Performance Report¹⁴¹ could serve as a good example in this regard, being the only report offering reflections on good practices of consultation, providing a comparison between institutions based on their performance, as well as tailored and tangible recommendations and conclusions. However, it is unclear from the reports of the following years how / if the recommendations are followed up upon, while the analysis that performance reports offer seems to have been significantly reduced from one year to the other. For example, the 2021 Performance Report attributes the overall decrease in performance of the institutions to the poor performance of the Ministry of Finance and Economy, which consulted only 5 out of 17 documents. It does not provide any rationale or further indicator-based reflection on this. The 2021 and 2022 Performance Reports mention the COVID-19 pandemic and a cyberattack against the government as factors that have affected consultations but do not provide for further elaboration on the matter. A good practice identified in the 2022 Performance Report, that needs to be maintained, concerns the publication of the list of documents adopted without consultation. To ensure complete accountability, justification of exclusion should be provided as well.

It should be noted that the performance reports build and highly depend on the quality of the individual reports produced by institutions throughout the year, the quality of the data they have collected throughout the year, as well as the consistency of monitoring.

According to the IDM needs assessment, none of the ministries conduct internal monitoring of public consultations (self-evaluation) – a process recommended by the guideline on public consultation. As indicated in previous sections, Ministries have not established internal control/approval procedures for public consultation documents and reports, and often these documents are submitted directly to the PMO for approval. Therefore, no internal evaluation of the effectiveness of the process is conducted, which would, for example, enable the repetition of a certain consultation, if deemed not effective. It would also allow timely quality checks on the supporting documentation, evidence, and data collected to supply the annual reports. As a result, the only monitoring of public consultations currently conducted is the one of the PMO, while internal monitoring by institutions or an external/independent oversight are lacking.

138 European Commission (2022) Albania Report

139 SIGMA (2021) Albania Monitoring Report

140 Open Government Partnership Albania Action Plan 2022-2024

141 Prime Minister's Office (2021) Annual Performance Report on Public Consultations 2020 https://www.konsultimipublik.gov.al/documents/reports/Raporti%20Vjetor%20i%20Procesit%20t%C3%AB%20Konsultimit%20Publik%20p%C3%ABr%20vitet%202020_Qendra%20e%20Qeverisjes.pdf

5. APPEAL MECHANISMS AND INDEPENDENT OVERSIGHT

Public authorities should establish a compliance mechanism that would enable the submission of complaints in cases when public consultations failed to be implemented in accordance with the rules¹⁴². In practice, complaint mechanisms are a component of the process, where accountability falls short.

As addressed in the first section, the law provides the opportunity to submit a complaint with the institution responsible for conducting the consultation process, when the draft document is not approved yet. After the draft document is approved, complaints can be submitted to the IDP Commissioner, who can recommend to the responsible institution to take administrative measures against to the responsible person/persons, according to the applicable civil service legislation. Additionally, the right to appeal to the court for violations of the right to consultation, is not specifically provided.

The IDM needs assessment found that none of the institutions had established internal systems for managing citizens' complaints or published any guidelines or templates on this, as the IDP Commissioner.¹⁴³ In addition, due to a lack of provisions on this process in the internal regulations, there is a prevailing lack of clarity even among the representatives of institutions on who would be held accountable in case of a violation due to tasks being divided between several officials, including consultation coordinators, officials of legal and policy departments, and/or higher public officials supervising them. From the perspective of the stakeholders interviewed, the complaint system was unclear too, and appeared flawed in its design while they failed to understand the rationale behind submitting a complaint to the same institution that is responsible for the violation.

When it comes to independent complaint mechanisms, currently, the office of the IDP Commissioner is not engaged in any monitoring activities on public consultation and has no dedicated internal structure for this process, due to the lack of legal mandate¹⁴⁴. The annual monitoring conducted by the IDP Commissioner on the overall institutional proactive transparency covers consultation only in terms of publication of the contacts of the consultation coordinator on the website of the institution¹⁴⁵. Such practice ceased in 2022, as the indicator on consultation coordinators was removed from their

142 Regional Cooperation Council Western Balkans - Recommendation on Public Participation in Policy-Making Process

143 See the website Information and Data Protection Commissioner for the complaint template: <https://www.idp.al/ankohu-2/>

144 Interview with two representatives of the Information and Data Protection Commissioner conducted by the authors on 25/1/2023.

145 Information and Data Protection Commissioner (2021) Transparency Index: Monitoring Report Proactive Transparency of Central and Dependent Institutions https://www.idp.al/wp-content/uploads/2022/01/Indeksi-2021-Monitorimi-i-institucioneve-qendrore-dhe-te-varesise_2021_me-kopertine.pdf

monitoring¹⁴⁶. The only identified institutional activities of the IDP Commissioner regarding public consultation are a 2018 report on the assessment of capacities of coordinators of right to information and consultation¹⁴⁷ and an insignificant number of (7) decisions addressing complaints received between 2017-2018, when the law was still being tested by stakeholders¹⁴⁸.

In terms of granting the IDP Commissioner sanctioning powers, the opinions of the interviewed experts varied, raising questions on the effectiveness of a punitive approach.¹⁴⁹ The main argument behind this was that it is not natural for this law to be given “teeth”, as public consultation should not be imposed but rather seen as beneficiary by the institutions themselves.

The practice of other countries also varies in this regard, while the “soft” approach prevails. In the United States and Portugal, the procedure is prescribed by law and judicially reviewed, while Canada has adopted the procedure through a policy directive that has no legal force.¹⁵⁰ In France there is a dedicated independent body dedicated to ensuring that the public is included in the preparation of all political decisions which are of national interest – it can hold consultations itself or delegate this to the drafter institution, which is obliged by this. In Romania, the right to file a lawsuit is provided by the Law on Decisional Transparency in Public Administration.¹⁵¹ Other countries in the Western Balkans, similarly to Albania, grant the government the authority to reject materials submitted by the drafter if the consultations were not carried out. This is still only a possibility, and it is left to the discretion of the authorities if they will in fact react, they are not obliged to do so.

While there is no “one-size-fits-all” approach to this, and regulation should be contextualized, according to the OECD, the need for controls on administrative discretion, and effective appeals processes is crucial to public consultations.¹⁵²

Empowering the IDP Commissioner in this regard, would also address the current gap of monitoring the consultation processes of the local government units, which based on the current institutional structure, cannot be monitored by the PMO.

Parliamentary oversight is another mechanism for accountability. The parliament’s role in overseeing the decision-making of the government needs to be strengthened¹⁵³, to ensure that all the legal initiatives submitted to the Parliament by the CoM have

146 Information and Data Protection Commissioner (2022) Transparency Index of Central and Dependent Institutions https://www.idp.al/wp-content/uploads/2023/08/Indeksi-i-transparences-institucioneve-qendrore-dhe-te-varesise_2022_me-kopertine_.pdf

147 Information and Data Protection Commissioner (2018) Report on the Assessment of Capacities of Coordinators of the Right to Information and Consultation https://www.idp.al/wp-content/uploads/2018/07/Raport_WEB_2018.pdf

148 Information and Data Protection Commissioner Decisions 2017-2018 <https://www.idp.al/vendime-2017-njpk/>

149 Interviews conducted by the authors with two representatives of Albanian Investment Council on 6/2/2023; Interview with a representative of Res Publica conducted by the authors on 2/2/2023; Interview with a representative of the Agency for Support to Civil Society conducted by the authors on 6/2/2023.

150 OECD Background Document on Public Consultation <https://www.oecd.org/mena/governance/36785341.pdf>

151 Council of Europe (2018) Regulatory Impact Assessment and Public Consultations: Comparative Models, Lessons Learned & Recommendations for Belarus

152 OECD Transparency through consultation and communication <https://www.oecd.org/gov/regulatory-policy/45418324.pdf>

153 Transparency International and Institute for Democracy and Mediation (2021) Deconstructing State Capture in Albania 2008 – 2020

successfully passed the filter of public consultation and are completed with the required accompanying documentation and are evidence-based. Furthermore, on its own initiative, the Parliament significantly contributes to the consultation process at the national level through its practice of public consultation. This allows stakeholders to be involved (once more) in the consultation of the reviewed draft, before its final adoption.

6. RECOMMENDATIONS

LEGAL FRAMEWORK

ADMINISTRATIVE DISCRETION

1. Include definitions of strategies and policies of high public interest in the law.
2. Expand the scope of application of the law to include the Decisions of the Council of Ministers (sub-legal acts).
3. Provide clarity on the scope of public bodies obliged to appoint a consultation coordinator.
4. Determine the cases when consultation is mandatory, by providing minimum standards for assessing the public interest carried by a draft document.
5. Require the use of other consultation methods depending on the nature of the act and the targeted group to ensure comprehensive inclusion and access (in addition to the standard e-consultation).
6. Define the cases/criteria when preliminary and informal consultations are necessary. Require monitoring and reporting on preliminary and informal consultations to ensure transparency.
7. Set out timeframes for responding to comments received during consultation and publication of feedback.

INSTITUTIONAL RESPONSIBILITIES

1. Clarify the roles and responsibilities of the public consultation coordinator and technical directorates within the institution involved in the consultation process, along with their relationships with subordinate institutions.
2. Clarify the chain of responsibility within the institutions, particularly concerning administrative measures for violations.
3. Update the institution responsible for monitoring public consultation in central government and clarify its role - replacing the Ministry of Innovation and Public Administration with the Prime Minister's Office.
4. Enhance the role of the public consultation coordinator by stipulating the necessity of appointing mid to high-level officials with legal expertise to these positions.
5. Introduce incentives, such as additional compensation for public consultation coordinators to enhance sustainability and motivation.

APPEAL MECHANISMS AND INDEPENDENT OVERSIGHT

1. Strengthen the role of the Commissioner for the Right to Information and Data Protection – enabling ex officio investigations before documents enter into force and the possibility of imposing administrative measures, or requesting the repetition of the consultation process. Empowering the IDP Commissioner would also address the current gap of monitoring the consultation processes of the local government units.
2. Provide adequate financial and human resources to the Commissioner for the Right to Information and Data Protection for monitoring consultation processes.
3. Define the right to appeal to the court for violations of the right to consultation, specifying relevant deadlines and procedures.
4. Strengthen parliamentary oversight of government decision-making, ensuring that legal acts have successfully passed the public consultation filter and are accompanied by the required supporting documentation (evidence-based).

INSTITUTIONAL REGULATORY AND ADMINISTRATIVE SETTING

INTERNAL REGULATIONS AND PROCESSES

1. Tailor internal regulations on public consultations in accordance with the institutional structure, defining the chain of responsibility and separation of duties between different departments.
2. Approve internal acts of appointment and detailed job descriptions for public consultation coordinators.
3. Include the assessment of the additional duty of public consultation coordinators in employee performance evaluations.
4. Approve Standard Procedures of Action on public consultation tailored to the structure and nature of the institution to allow standardization of internal practices. They should regulate all stages of the consultation process.
5. Publish on the institution's official website the appeals procedures for citizens and the process of handling complaints by the institution.
6. Functionalize and utilize the IPSIS system for coordinating consultation processes at both the institutional and inter-institutional levels.
7. Use centralized internal platforms for archiving documents and preserving institutional memory.
8. Allocate necessary financial resources for public consultation activities.
9. Conduct internal monitoring (self-assessment) of public consultations, following the guideline on public consultation, to improve data collection and reporting.

INSTITUTIONAL CAPACITIES

1. Raise awareness among high-level officials regarding the importance and benefits of public consultation processes.
2. Encourage the ongoing training of current and newly involved employees in public consultation processes, including public consultation coordinators but also senior-level officials, representatives of technical directorates, and central agencies.
3. Ensure continuous technical assistance by the Prime Minister's Office, including coordination meetings to exchange experiences and best practices among consultation coordinators of central government institutions

IMPLEMENTATION OF PUBLIC CONSULTATION

PLANNING OF PUBLIC CONSULTATION

1. Consistently publish individual consultation plans containing all necessary logistical information, including information on all consultation methods to be applied apart from e-consultations, such as meetings, preliminary consultations, informal consultations, etc.
2. Provide exhaustive explanations in the matrix for the assessment of exemptions from public consultations of various acts. Publication of this assessment by the institutions.
3. Include nonpublic stakeholders in the consultation of the Annual Plan for Public Consultations to enable open discussions on the included and excluded acts.
4. Determine the timeline of consultation by taking into account the complexity and nature of the consulted document and targeted groups. The minimum deadline of 20 days should not be applied as a maximum standard.
5. Improve planning by reasonably distributing the consultation of various acts throughout the year, avoiding simultaneous consultations within the institution and consultations held during holiday periods.

INCLUSION AND ACCESS OF STAKEHOLDERS

1. Diversify consultation methods, considering the needs of different interest groups, their level of organization, and capacities (including informal groups, local communities, marginalized communities, people with disabilities, etc.), as well as the nature of the act being consulted.
2. Combine the use of ERNPC with other consultation methods should be considered on a case-by-case basis, to increase effectivity.
3. Improve ERNPC functionalities to allow more interactivity between parties and enable the uploading of documents in various formats, and the submission of comments for every act based on topics/articles. ERNPC functionalities should be tailored to serve the improvement of statistical data collection and reporting.

4. Increase accessibility of ERNPC for people with disabilities.
5. Ensure complete functionalization of automatic notifications from ERNPC for every published act. Continuous distribution of calls for stakeholders to register as an interested party, to reach various interest groups beyond the institution's regular collaborators.
6. Diversify contributor categories in ERNPC beyond the general categories 'citizen' and 'expert' to allow for the identification of different interest groups.
7. Develop a comprehensive strategy for public outreach aimed at enhancing stakeholder awareness and engagement.
8. Collect data on the perspectives and experiences of participants in public consultations to assess the effectiveness of consultation methods.
9. Implement the Stakeholder Analysis Matrix as per the guideline on public consultation, for each act being consulted. Publication of this assessment by the institutions.
10. Continuously update the contact databases based on the nature of the act being consulted and the targeted groups, instead of its routine use.

TRANSPARENCY OF SUPPORTING DOCUMENTATION FOR PUBLIC CONSULTATION

1. Publish the complete package of supporting documents accompanying the consulted act, such as the consultation plan, regulatory impact assessment report, explanatory note (for legislative acts), individual consultation report (after the process), compatibility table for documents aiming at harmonization with EU legislation, and other relevant documents depending on the nature of the document being consulted.
2. Ensure that the supporting documentation is easily understandable, readable, reusable, and in open data formats.
3. Encourage the integration of the RIA process within the public consultation process, demonstrating its impact on the review of RIA reports.
4. Monitor the timing of publication and the quality of supporting documentation.

REPORTING ON THE RESULTS OF THE CONSULTATION

1. Consistently publish the individual consultation reports, and proactively distribute them to participants and contributors.
2. Report clearly on the actors who have participated in consultation processes, distinguishing public from non-public actors (in subcategories according to nature), and contributor actors from non-contributor actors, while also specifying their participation method (ERNPC, public meetings, etc.). This should include also the names of working group members involved in the drafting of a document and the names of consulted/hired experts.

3. Ensure consistent and complete publication of the table of comments accompanied by relevant explanations for rejection, partial acceptance, and full acceptance, as well as cases of unanswered contributions.
4. Provide clear information on the status of the approval of the act to allow tracking, since many acts are not approved in the same year as the consultation.
5. Include in the report all the consultations conducted by the institution, regardless of the method. This should include informal consultations, preliminary consultations, those conducted by investors, etc.
6. Include information on the reports regarding the quality and consistency of publication of supporting documentation.
7. Provide data in the reports that allows for an analysis of the effectiveness of different consultation methods and the level of engagement and impact of different groups.

PERFORMANCE ASSESSMENT

1. Enhance performance reports by including qualitative information alongside statistical data to assess the impact and effectiveness of consultation processes, ensuring accountability where needed.
2. Include in the performance report an evaluation of the applied methods, appropriateness of the objectives, success in engaging stakeholders, reflections on the lessons learned, and concrete recommendations.
3. Report on the measures taken to address the recommendations from previous years' performance reports and their level of implementation.
4. Provide a clear overview of all acts consulted within a given year, regardless of the consultation method, including their approval status of approval and acts excluded from public consultation.
5. Determine the cases when consultations need to be repeated, e.g., when they have been ineffective, have not achieved the objectives or when the act has undergone substantial changes during inter-institutional consultation, compared to the act consulted with the public.
6. Provide data in the performance reports that enable year-to-year and inter-institutional performance comparisons.

APPENDIXES

APPENDIX I. LIST OF INTERVIEWEES THAT CONSENTED TO BE MENTIONED IN THE REPORT

#	Name and Last name	Job position	Institution / Organisation	Date of the interview
1.	Lira Hakani	Project Coordinator on Public Information and Participation	EDEN Center	24/1/2023
2.	Elona Hoxhaj	General Director of the General Directorate for the Right to Information	IDP Commissioner	25/1/2023
3.	Blerta Nerguti	Director of the Directorate of Judicial Affairs and Integration.	IDP Commissioner	25/1/2023
4.	Kristina Voko	Executive Director	BIRN Albania	25/1/2023
5.	Timo Ligi	Team Leader	SIGMA/OECD	26/1/2023
6.	Romina Sefa	Director	Center for Social Advocacy	27/1/2023
7.	Suela Lala	Executive Director	Together Foundation	27/1/2023
8.	Diana Toma	President	Order of Pharmacists	31/1/2023
9.	Irena Dule	Lawyer	Res Publica	2/2/2023
10	Elvis Zerva	Legal & Regulatory Expert of the Investment Council Secretariat	Albania Investment Council	6/2/2023
11	Diana Leka	Head of the Investment Council Secretariat	Albania Investment Council	6/2/2023
12	Andi Kananaj	Executive Director	Agency for Support to Civil Society	6/2/2023
13.	Jonida Lakuriqi	Legal & Public Policies & External Affairs Director	Vodafone	10/2/2023

#	Name and Last name	Job position	Institution / Organisation	Date of the interview
14	Ardita Seknaj	Secretary General	International Chamber of Commerce in Albania	16/2/2023
15	Olsi Nika	Executive Director	Eco Albania	17/2/2023

APPENDIX II. KEY INFORMANT INTERVIEWS AND THE MATTERS COVERED

IDP COMMISSIONER

- The type of monitoring currently carried out by the IDP Commissioner (if any) regarding public consultations and challenges identified by the monitoring.
- The types of complaints handled by the IDP Commissioner on public consultations and the typical issues identified.
- The perceived reasons for the insignificant number of complaints received by the IDP Commissioner on public consultations over the years.
- The effectiveness of appeal mechanisms for public consultations - the effectiveness of the administrative measures taken by institutions regarding violations of public consultation and the implementation of decisions/recommendations of the IDP Commissioner.
- The mandate and capacities of the IDP Commissioner regarding public consultations, its limitations, and how it could be strengthened through legal amendments and other measures.
- The appointment and role of the coordinator for notification and public consultation within public institutions and the challenges identified.
- Recommendations of the IDP Commissioner for public and non-public actors.

CSOS, PRIVATE SECTOR, REPRESENTATIVES OF NON-GOVERNMENTAL ACTORS

- The availability and quality of information presented by public institutions on their public consultation reports (individual, six-monthly, and annual).
- Transparency and consistency in the publication of the package of supporting documents for the public consultation of an act.
- Shortcomings regarding the institutional planning process of public consultations and the exclusion of important documents from the annual public consultations plan.

- The effectiveness and accessibility of public consultation through the electronic register.
- Methods/tools of notification and consultation that are perceived as more effective/ accessible.
- Sufficiency of the time made available to contribute to consultation processes.
- Knowledge and capacity to contribute to public consultation processes.
- Accountability – institutional response/follow up/taking into account of comments or contributions given during public consultation processes.
- Examples of good practices of public consultation identified; cases of consultation of documents for which consultation is not mandatory, at the institution's initiative; cases of effective preliminary consultations; cases of inclusion of CSOs in the working groups established for the drafting of a given document; cases when the input of consulted stakeholders was accepted into the draft; cases when CSOs/experts effectively provided research and policy analysis to support evidence-based decision-making and institutional accountability seeking, etc.
- Examples of violations of the right to consultation/avoidance of public consultation of an important law or policy.
- Cases of complaints submitted regarding a consultation process and the response received /measure taken.
- Shortcomings or gaps in the legislation on public consultation that have been identified during their work.

INDEPENDENT EXPERTS

- Shortcomings or gaps in the legislation on public consultation that they have identified during their work.
- Deficiencies or needs identified at the institutional level identified through their work.
- Obstacles and challenges that negatively affect public engagement in consultation processes.
- Recommendations to increase the efficiency of public consultation processes.
- Recommendations to increase accountability on violations of public consultation processes, in order not to allow consultations to be dependent on political will and enable for them to be treated as a technical exercise that is an integral part of the policymaking/lawmaking processes.
- Examples of good practices or regulation of public consultation processes in Albania/ other countries identified through their work.

AGENCY FOR SUPPORT TO CIVIL SOCIETY

- The role and initiatives of the ASCS in increasing public sector cooperation with CSOs; strengthening CSOs' capacities and their ability to influence decision-making; and increasing public participation.
- The perceived reasons for the insignificant intersectoral cooperation and participation in public consultation processes
- CSOs' ability to influence policy/law-making processes.
- The effectiveness and accessibility of public consultation through the electronic register.
- Methods/tools of notification and consultation that are perceived as more effective/ accessible.
- CSOs' knowledge and capacity to contribute to public consultation processes.
- Examples of good practices of public consultation identified; cases of consultation of documents for which consultation is not mandatory, at the institution's initiative; cases of effective preliminary consultations; cases of inclusion of CSOs in the working groups established for the drafting of a given document; cases when the input of consulted stakeholders was accepted into the draft; cases when CSOs/experts effectively provided research and policy analysis to support evidence-based decision-making and institutional accountability seeking, etc.
- Shortcomings or gaps in the legislation on public consultation that have been identified during their work.

CENTRAL GOVERNMENTAL INSTITUTIONS

As addressed in the section on Methodology, in order to avoid repetition, the data gathered for the IDM Needs Assessment Report were utilized for this report as well – including 9 comprehensive interviews conducted during August-September 2022. Data gathered from 2 consultative roundtables held during 9-10 February 2023, for the validation of the Training Module on Public Consultation were also utilized, for the same reason. The interviews and roundtables included 23 representatives of central government institutions, including representatives of ministries, central agencies, the Prime Minister's Office, public consultations coordinators, and several high-level officials such as secretary generals, legal directors, and directors of policy.



A Decade of Consultation Law in Albania

Call for Reform

Institute for Democracy and Mediation (IDM)

Rr. Shenasi Dishnica, Nd. 35, H. 1,
1017, Tirana, Shqipëri
Tel: +355 4 240 0241

Email: info@idmalbania.org

Website: www.idmalbania.org

Facebook: facebook.com/IDMAlbania/

Twitter / X: @IDM_Albania