



## FLAWED POLICY DEVELOPMENT IN ALBANIA – TACKLING LACK OF TRANSPARENCY AND EVIDENCE-BASED POLICYMAKING

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### INTRODUCTION

One of the critical dimensions of the public administration reform (PAR) in Albania and of the European accession process refers to the transparency of policy development. Access to information has been often described as the ‘oxygen of democracy’ enabling citizens to truly participate in an informed way in decision-making processes, hold those in power accountable and influence policy development. The absence of or inaccessibility to information can create a sense of disempowerment, mistrust, and frustration with those in power. Transparency is also a principle of good governance and requires a continuous dialogue and cooperation between decision makers and other actors in society. Studies have shown that transparency benefits policy efficiency and is deemed as a crucial instrument to fight corruption. The free flow of information is thus paramount to democratic processes, building trust between government and citizens and contributing to the progress of policy development.

Through secondary resources and data collected by the [WeBER 2.0 PAR Monitoring Report](#), this policy brief zooms into the practices of arbitrary policymaking and lack of transparency in policy development in Albania. It discusses its implications and outlines some key recommendations on how to reverse the current situation particularly in terms of increasing transparency through the engagement of civil society analysis and inputs, evidence-based policy and data-driven decision making. Although public consultations and participation in policy development is an interlinked dimension of the overall transparency efforts of the governments, it falls outside of the scope of this policy brief.

### LEGAL AND POLICY FRAMEWORK ON POLICY DEVELOPMENT AND TRANSPARENCY

Transparency of Albanian public institutions is regulated by Law No. 119/2014, ‘On the Right to Information.’ The law provides transparency requirements for public authorities, provisions for freedom of information (FOI) requests, and for monitoring mechanisms. It obligates public authorities to publish their organizational structure; full text of conventions, legislation, rules, and regulations governing their work; policy documents; budget, expenses, and procurement records; and FOI request and complaint forms. In addition to the FOI request and complaint templates, public authorities are required to have a coordinator for the right to information who serves as an institutional contact point to whom requests, and complaints are communicated. There are clear deadlines for the public authorities to provide the requested information. If a public authority fails or refuses to provide the requested information without reason, the person requesting the information has the right to file a complaint with the Commissioner for the Right of Information and Personal Data Protection, who may fine the public authorities or force them to release the information.

**Formally established since 2019, the Regulatory Impact Assessment implementation is inconsistent and its impact in terms of improved regulatory and policy outcomes has yet to be achieved.**

Public authorities may withhold information, however, if it is related to or adversely affects national security, trade secrets, personal data, copyright, intergovernmental relations, monetary and fiscal policies, ongoing criminal or administrative investigations, and intra-governmental consultations for the development of public policies. Despite the restrictions, the law states that information may not be withheld if a higher public interest demands it be made public. The 'public interest' provision, however, is undefined thus proving public institutions substantial latitude to legally restrict or deny information.

The OECD argues that Countries that have effective systems and tools of regulatory policy management, such as ex ante regulatory impact assessment (RIA), are likely to be in a better position to manage risks and achieve better regulatory policy outcomes. According to [SIGMA paper 61](#), RIA is an internationally recognized tool and a process that can help improve the quality of policy making. RIA has been formally established in Albania as of 2018 with pilot cases and fully in 2019. However, its implementation is inconsistent and its impact in terms of improved regulatory and policy outcomes has yet to be achieved. The OECD finds that RIA is not yet fully recognized within the WB administrations as an essential tool that can help improve the quality of legislation, minimize risks and costs, and help achieve greater benefits. RIA is perceived as an administrative burden that must be fulfilled and is currently focused on few sectors and only on primary legislation. RIA is prepared and completed relatively late in the policy-making process, limiting its possible impact and benefits.

## THE ASYMMETRY BETWEEN THE LAW AND REALITY

The [WeBER 2.0 PAR Monitoring Report 2019/2020](#) highlights the lack of transparency in policy making processes in Albania. The information issued by the Government is not sufficiently detailed with lack of quantitative data and qualitative information and assessments. For instance, the monitoring finds that there are no online reports to be found on government webpage for 2018 and 2019 and that most of the public information available is in the format of social media audio-visual posting of prime minister and other governmental officials.

Extensive use of social media campaigns to promote claimed government achievements without official data available on the actual implementation of whole-of-government strategies and action plans establishes an information asymmetry in favor of the government and is an indicator of the concentration of the public information on the hands of the government circumventing the due process on free flow of information and access to information. Also, when it comes to perceptions of CSOs on the availability of government reporting, only 11% of respondents maintain that progress on the work plan objectives is regularly reported by the government.

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Furthermore, the [WeBER 2.0 PAR Monitoring Report 2019/2020](#) finds that for the reporting period the decisions of the Council of Ministers were partially published in a timely manner. During the COVID-19 outbreak early phase in spring 2020 the level of transparency declined with delayed full DCM being published or normative acts. A [recent study](#) finds that while the pandemic was instrumentalized by the Government to further expand its executive powers, civil society actors have been pushed away from the decision-making process. The results of the CSO survey on their perceptions on the government's decision-making transparency reveal a significant disapproval of present government practices. The majority of CSOs (53.5%) consider the decision-making process of the government as not transparent, while more than 1/3 of them (36.6%) are neutral. Similarly, most CSOs (42%) consider the exceptions to the rules of publishing of government decisions as not appropriate, while more than 1/3 (37%) are neutral on this topic. The [Trust in Governance Opinion Poll 2020](#) finds that the majority of Albanians surveyed perceived the central government (64.3%) and municipality (62.2%) as not transparent. Compared to 2019, the perceived transparency of the local and central government has increased with 1 p.p. and 2 p.p. respectively. Yet, when looking at the long-term trend, the perception on the government's transparency, both local and central, has decreased as per the data of the [Trust in Governance Opinion Poll 2020](#).

Another challenge refers to arbitrary policy making that can be noticed in lieu of limited evidence-based policy making. The [WeBER 2.0 PAR Monitoring Report 2019/2020](#) finds that despite a strong interest from think tanks and watchdog CSOs with established expertise, Albanian policymakers have yet to consider and appreciate the importance of evidence-based policymaking and civil society participation in the process. Despite some improvements in the development of policy documents that incorporate evidence from civil society in part also due to funds from international donors or development partners, the use of evidence for policy making remains low. The [IDM study](#) on the participation of civil society in decision making processes observes a lack of culture of openness of public institutions, identified as a concern not only by CSOs but also by independent institutions. Selective engagement and the tendency to withhold information produces asymmetric government-civil society relations. This structural asymmetry leads to a rather patronizing and dismissive attitude towards CSOs by public officials and institutions.

The WeBER 2.0 PAR Monitoring Report 2019/2020 finds that while CSOs have been interested in stronger cooperation with public institutions, there is a reluctance from public institutions to proactively and consistently solicit CSO expertise. Based on the results of the CSO survey, the majority of CSOs (61.3%) say they are invited to prepare or submit policy papers, studies, or impact assessments when authorities address policy problems or develop policy proposals in their areas of work but feel as if the consideration of such policy proposals is low. On the other hand, limited resources hinder CSOs' ability to engage effectively with decision-makers for evidence-based policy. For CSOs that have a consolidated experience in public policy participation, a lack of knowledge management is observed that could serve to share and exchange best practices. Also, limited peer to peer support is noticed. A key challenge refers to building strategic communication and media relations for outreach and advocacy. Similarly, despite the formal inclusion of the regulatory impact assessment (RIA) methodology for government draft-laws, the broad exemptions to the requirement to use the methodology and the absence of its use in areas that are not exempt, suggests that government institutions lack the institutional capacities or the will to formulate evidence-based policies. Furthermore, a significant proportion of regulations introduced through secondary legislation does not undergo systematic regulatory oversight or assessment.

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In addition, other challenges such as frequent staff turnover, limited staff capacities and overload of staff hinder the implementation of the transparency programme in a genuine manner and in the benefit of public good. Limited availability of budgets for the implementation of RIA methodology in primary and secondary legislation and policy processes puts further pressure on government authorities, even if there is willingness to engage with civil society and citizens in policy processes in a meaningful way. The culture of ticking the box is still present and the transparency

programme is not yet fully embedded in the everyday working practices of the public institutions as evidenced by the IDM study on the participation of civil society in decision making processes. This study argues that genuine and sustainable cooperation between CSOs and institutions in Albania presents crucial challenges despite progress achieved. Such challenges can be seen at the level of the strategic environment in which CSOs operate; legal framework; structure and processes and the overarching cultural aspects that infuse all interactions between CSOs and public institutions.

## CONCLUSIONS AND RECOMMENDATIONS

Considering the policy context in Albania with centralised government practices and concentration of information flow, low levels of transparency and accountability, flawed consultation processes and the highly polarised political scenery, the evidence-based policy making is difficult to be achieved in practice in a meaningful way. There is resistance on the demand side of policy makers, but also mistrust and hesitancy on the side of suppliers of evidence such as think tanks, CSOs, research institutions and academia. Limited political will and lack of political leadership to commit to evidence-based policy making is a crucial contingency factor that hinders the overall level of transparency of government.

The lack of transparency in policy development and the practices of arbitrary policy making without proper use of evidence and data negatively impacts the possibility of CSOs and other social actors to hold the government accountable. Watchdog CSOs cannot perform their monitoring or policy assessment in lieu of lack of public information available or delays in responses to FOI by public authorities. The digitalization has opened up new ways of improving transparency of government through digital democracy tools, which need to be further explored in Albania as their potential remains untapped.

### **The key recommendations:**

#### **Accessibility to public information and data**

Monitoring and evaluation reports, assessment reports and/or period reports of policy strategies and documents must be made available and accessible to interested parties in an open and inclusive manner. Ministries must publish monitoring and evaluation data and other regular reports in accordance with open data and open government requirements. It is essential to step up efforts to enhance the administrative capacities of central and local institutions on data collection and usage for better policy planning, implementation, evaluation, and monitoring. Availability of data, open access, reliability, and transparency need to be upgraded.

#### **Feedback and follow up**

Line ministries should publish annual transparency plans with information about decision making processes including information on the number of acts approved, feedback received, recommendations accepted and refused, and number of meetings conducted. It is also important for CSOs to strengthen existing cooperation and alliances with independent institutions such as the Commissioner for the

Right to Information and the Protection of Personal Data, the Commissioner Against Discrimination, and the Ombudsperson for enabling an inclusive policy reform process offering equal access and entitlement to different social groups.

### Co-creation of evidence-based policy

Establish or strengthen existing units/practices for evidence based and data driven policy development through institutionalised and sustainable cooperation with academia, think tanks, CSOs and other relevant knowledge producers. Public authorities should invest in capacity development and continuous professional learning of their staff also through cooperation with other actors in society such as universities, CSOs and training centers. The RIA methodology should be implemented accordingly which requires capacity development of public authorities, but also of civil society organisations, think tanks and research institutes on the usage of RIA and its impact on policy. The cooperation model between civil society and other actors in the post COVID19 reality and considering fast digitalization emphasizes that the role of civil society in this ever-changing context must include a continuous and dynamic interaction among the state, the business, and the civil society as well as media and academia.

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