

COMPARATIVE STUDY

CIVIL SOCIETY IN THE WESTERN BALKANS:
Involvement in the EU Accession Negotiation and EU
Integration Processes from Initiatives to a Structured
Dialogue



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INTRODUCTION

Following the accession of Romania and Bulgaria, and especially after Croatia joined the full membership to the EU, the European Commission placed an increased emphasis on the CSO inclusion in the accession process. The reasons are two-folded: 1) to ensure proper implementation and monitoring of the EU-related reforms; and 2) to increase the transparency of the process and thereby, ensure support among the citizens of the Western Balkan countries (Wunsch 2015). These actions are supported by the Commission through various programmes and financial instruments, the most notable one being Civil Society Facility. This goes in line with the introduction of the new approach towards accession negotiations that was applied for the first time in the case of Montenegro. According to the new approach, the rule of law chapters 23 – Judiciary and Fundamental rights and 24 – Justice, Freedom and Security are among the first ones to be opened and last ones to be closed. Besides the opening and closing benchmarks, for these chapters' intermediate criteria also apply. The Commission's focus on implementation track record and sustainable reforms with irreversible course of action, surfaced the need for consultation and inclusion of CSOs in the accession process. In addition to this, the political dimension of the support to CSOs that is provided by EU member states and the European Parliament. These two dimensions combined with the financial support for civil society actions pressured the governments of the Western Balkan countries to establish an enabling environment in which CSOs can be formally included in the policy and decision-making process in general and in the negotiations process more specifically.

The EU accession process also has effect on CSOs and other non-state actors. Besides their professionalisation, CSOs tend to orientate themselves more towards specific kind of actions and activities such as monitoring of government activities and reforms.¹ The second direct effect that the process has on CSOs is the need for coalition-building in order to remain relevant, influential and competent in a wider scope of policies. Because of the demanding and extensive EU accession process, it is difficult for a single civil society organisation to maintain high level of commitment and expertise for a longer period of time without jeopardizing its capability to be substantially engaged.

Framework for civil society participation in policy-making in both Montenegro and Serbia has been improved under the influence of EU conditionality policy. In this way, the EU, alongside with its donor support, is playing a significant role in strengthening and empowering the civil society, whose part has been immensely important in transforming the Western Balkans from the 1990s into the countries of liberal democracy and market economy. However, the civil society position in these countries is still strongly affected by the restricted influence on public policy design, a limited number of organisations that can offer sustainable solutions and expertise, as well as the poor or non-existent will of the institutions to substantially and systematically include civil society in the EU accession process.

The situation in the two most advanced Western Balkan countries in the EU accession process is exemplary. In Montenegro, holding of the public hearings is regular with certain deviations that mostly occur when it comes to sensitive issues. However, substantial shift in the involvement of the civil sector in policy-making has not been recorded. Progress presents rather administrative improvement in terms of whether the consultations are formally conducted or not. In Serbia, the legal framework for civil society participation in decision-making process still has serious shortcomings. During 2018 we have witnessed that ministries often organize public hearings on sensitive issues just to "tick the box", instead of organizing genuine public consultations different taking into account the stage of democratization in which Serbia should be pinpointed after five years of accession negotiations with the European Union.

On the other hand, the governments of Albania and North Macedonia in cooperation with local stakeholders are already taking steps towards formalizing CSO inclusion in the EU accession process. This is carried out on the basis of horizontal diffusion and lessons-drawing i.e. learning from the experience of CSO inclusion in Serbia and Montenegro.² Taking in consideration the current accession status of the Western Balkan countries, learning from the lessons learnt and experience share with neighbouring countries comes naturally considering the different levels of progress made.³

In Bosnia and Herzegovina there are several models through which civil society can be involved and its involvement increases over time, however in a more informal manner. Sustainable inclusion of the CSOs in the EU integration process in Kosovo* could be achieved only in its advanced stages, while currently it is visible in monitoring implementation of the Stabilization and Association Agreement. However, when

1 Wunsch, Natasha. (2015) "Beyond instrumentalisation: NGO monitoring coalitions in Croatia, Montenegro, and Serbia." *East European Politics* 31.4 (2015): 452-467.

2 Börzel, T.A. and Risse, T. (2012) 'From Europeanisation to Diffusion: Introduction', *West European Politics* 35(1): 1-19; Clarke, J., Bainton, D., Lendvai, N. and Stubbs, P. (2015) *Making Policy Move: Towards a Politics of Translation and Assemblage*. Bristol: Policy Press.

3 Wunsch, Natasha. (2015) "Beyond instrumentalisation: NGO monitoring coalitions in Croatia, Montenegro, and Serbia." *East European Politics* 31.4 (2015): 452-467.

it comes to alignment with EU standards the two latest country reports, in 2016 and 2018, it can be noted Bosnia and Herzegovina is overall at early stage, while Kosovo* is lagging behind.

This study aims to explore the dynamic and forms of public participation in the EU integration process across the entire Western Balkans region. Due to different country-experiences and different stages in the process, the study examines those countries that are conducting accession negotiations – Montenegro and Serbia – separate from those that still hold potential candidate's status or have perspective of opening negotiations – North Macedonia, Albania, Bosnia and Herzegovina and Kosovo. Thus, the study is organized in two chapters, where each chapter concludes with recommendations that are specific for each country or the group of countries.

Despite differences in the formal process and citizen-to-government experience across the Western Balkans, the research enabled identification of similarities in approaches, shared problems and strengths.

KEY REGIONAL ISSUES:

- Improved framework for the CSO's participation does not necessarily mean constructive dialogue, better legislation and greater influence of CSOs;
- Number of suggestions and recommendations received by interested parties that are incorporated in the final versions of laws and strategic documents remain extremely limited;
- Significant delays by the competent authorities (ministries) are noted in informing the public about the policy documents;
- There is still a limited number of CSOs participating in policy and decision making especially at the local level;
- Transparency of the European integration/negotiation process remains limited.

KEY OBSERVATIONS FOR IMPROVEMENT:

- An open, positive and constructive dialogue between the state and civil society organizations is essential;
- Further steps to improve the legislative framework for civil sector participation are needed;
- Ideas and recommendations coming from the civil society should be evaluated in a meaningful way;
- Strengthening CSOs capacity and network building to influence public policy is necessary.

CHAPTER 1 - CIVIL SOCIETY AND POLICY-MAKING IN MONTENEGRO AND SERBIA - FRAME WITHOUT PICTURE

AUTHOR: JOVANA MAROVIĆ

INTRODUCTION

Requirement for inclusion of civil society in the European integration process stems from:

- Need for opening institutions to the public;
- Increasing demand for better information provision to citizens;
- Importance of improving the quality of public policies.

In both, Montenegro and Serbia, which are the focus of this analysis and selected since they are at the same stage of integration, need for improving cooperation between state authorities and civil society is important precondition which should be fulfilled within the EU accession talks. Therefore, the aim of this study is to point out some of the burning issues hampering the influence of civil society organisations on public policies and their viable position on longer-term paths in policy and decision making process

The analysis starts with the clarification of the legislative framework that refers to the civil society participation in the policy-making and evaluates its provisions. It is followed by an explanation of the negotiating structure and model of participation of the civil sector in the negotiations.

The following data collection methods and instruments were used:

- Document analysis;
- Regional stakeholder consultations – an NGO survey;
- Interviews;
- Media review;
- Case studies.

Given that this report deals with civil society and its role and impact on policy-making, the focus is on its experience and research. The analysis also includes examples from practice from 2018 and 2019 until the publication of this document.⁴

CIVIL SOCIETY & PUBLIC POLICY DESIGN

LEGISLATIVE FRAMEWORK

Both, Montenegro and Serbia have improved legislative frameworks for civil society participation in the decision-making process during 2018, however, both frameworks are still deficient and do not imply significant moves in both legislative and substantive terms.

MONTENEGRO

Legislative framework for citizens' participation in the policy-making is solid. Its improvement started with the adoption of the Decree on the Manner and Procedure of Cooperation between State Administration authorities and Non-Governmental Organizations and the Decree on the Procedure and Manner of Conducting a Public Hearing in the drafting of laws in 2011 and 2012. The most important changes were certainly linked with prescribing the mandatory organization of a public hearing for draft laws.⁵ In July 2018, two regulations were merged into one.

Obligatory steps are retained from the previous legislative framework and they include: publishing a list of laws and strategies on which a public hearing will be conducted; consulting the interested parties at an early stage of drafting a law or strategy (with mandatory preparation of the report from a public hearing); organizing a public hearing. However, there is no uniform practice between ministries in respecting the binding steps from the decree. By the end of March, only seven out of seventeen ministries published an annual work program,⁶ and only two of them a schedule of public hearings for 2019.⁷ Our interlocutors positively evaluate the obligation to conduct early consultations before inaugurating the draft law,⁸ but in practice this step is often skipped.

The time frame that the decree foresees for the organization of a public hearing ranges from 20 to 40 days, "depending on the importance and complexity of the matter that is the subject of the draft law or strategy."⁹ Such a provision leaves a space for public authorities to shorten the consultation framework without need to properly justify it.

There is no legal obligation to consult the public on the security and defence laws, nor when drafting the state-level budget.^{10,11} Such a provision existed in the previous legal framework, but is now marked by the Law on State Administration itself. The law also stipulates two additional restrictions: in extraordinary, urgent or unforeseeable circumstances, and when the matter is not significantly different from original law provisions. Although the competent ministry is obliged to explain why it made a decision not to organize a public hearing, such a legal provision leaves a massive space for avoiding a debate when it comes to amendments to the law. Formulation itself allows important questions to be presented as minor changes to the law.¹² This article was even more strictly formulated in the draft law, but was mitigated during the parliamentary procedure at the civil society's initiative. "Instead of the explicit ban, it is prescribed that the ministry can organize a public hearing (which also means they do not have to)."¹³

The new decree also prescribes the Report on Regulatory Impact Assessment (RIA) to be an integral part of the package for a public hearing, which is a conceptual shift and a novelty and is consistent with the measure from the Public Administration Reform Strategy.¹⁴

New solutions, although containing a binding form to prepare reports from a public hearing do not represent an improvement as it anticipates presentation of proposals and suggestions in a summary form. This limits the understanding of the legislative process and participation of the interested parties.

5 Until then, a public hearing was regulated by the Government's Rules of procedure, which enabled the ministry to decide whether to organize a public hearing for a particular law or not.

6 Which is the obligation under Article 51 of the Law on State Administration, and they are: Ministry of Labour and Social Welfare, Health, Agriculture, Public Administration, Justice, Science and Education

7 Ministry of Public Administration and Ministry of Justice, Institute Alternative, (2019), Only two ministries announced list of public debates for 2019, <https://institut-alternativa.org/samo-dva-ministarstva-najavila-planirane-javne-rasprave-za-ovu-godinu/>

8 Interview with Dina Bajramspahić, Researcher, Institute Alternative, March 13, 2019; Interview with Milica Kovačević, President of the Managing Board, Centre for Democratic Transition, March 8, 2019

9 Decree on the Manner and Procedure of Selection of Non-Governmental Organizations' Representatives in the Governmental Working Bodies and the Manner of Conducting a Public Debate in the Drafting Laws and Strategies, Official Gazette of Republic of Montenegro No. 41/2018, <http://www.mju.gov.me/biblioteka/uredbe?alphabet=lat&AccessibilityFontSize=1>

10 Article 97, Law on State Administration, Official Gazette of the Republic of Montenegro, No. 038/03 dated 27 June 2003, Official Gazette of Montenegro, no. 022/08 - 02.04.2008, 042/11 - 15.08.2011, 054/16 - 15.08.2016, 013/18 - 28.02.2018

11 Unlike the state level the obligation to conduct public hearing during the local budget preparation is prescribed by the Law on Financing Local Self-Government.

12 Interview with Milica Kovačević, President of the Managing Board, Centre for Democratic Transition, March 8, 2019

13 Interview with Dina Bajramspahić, Researcher, Institute Alternative, March 13, 2019

14 Public Administration Reform Strategy in Montenegro 2016-2020, Ministry of Public Administration, July 2016

SUMMARY FORM - EXAMPLE

Data on the number and structure of the participants in the public hearing: _____

Summary of submitted remarks and suggestions, with the reasons for their acceptance or rejection _____

During the public hearing on this decree, CSO's focus was on this binding form in order to oblige ministries to respond to all comments. Such a way of presenting and responding to suggestions would prevent the current practice of rejecting proposals without proper justification. Such form would also establish the basis for further discussion on these topics and an important source for further improvement of the area. In addition, a report from a public hearing should be (is) a supporting document that is submitted to the European Commission with a draft law and could potentially be an important channel for adoption of some proposals.

The selection of NGO representatives in working groups dealing with legislative changes is well regulated, but state authorities often choose to select and include only one civil society member in the working group, which prevents greater stakeholder input.¹⁵

Inclusion of the interested parties is defined to the level of the draft laws CSOs are not able to comment on the final adopted laws. Same applies to Serbia.

SERBIA

Legal framework in Serbia includes the Government's Rules of Procedure and the Law on the Planning System. Amendments to the Government's Rules of Procedure from March 2013 prescribe a mandatory public hearing in four cases: for system law, new law, law on amendments to the law, law on ratification of an international treaty. However, the ministries have the opportunity not to conduct a public hearing (with an explanation). Also, in August 2014, the Government adopted Guidelines for involving civil society organizations in the decision-making process. This document explains key concepts, levels and principles of CSO participation. It is interesting that the document highlights the basic elements that should be included in the report (feedback on the results) from the public hearings (list of invited, list of those who submitted the proposals, etc.) but also suggests that a review of proposals and recommendations should be displayed in the shortened version.

New Law on the Planning System includes strategies, programs, policy concepts and action plans, which leaves laws still outside of the defined procedures for involving the public. This largely limits the role of civil society in the decision-making.

By-laws, that would regulate the obligation to conduct early consultations, were put into force in February 2019 with several months of delay, which prevents further analysis of their implementation at this stage.

The National Plan for the Adoption of EU acquis and the Government's Annual Plan have not yet been harmonized (although the annual plan of the Government indicates which laws are outside the National Plan's scope). In March 2016, the Negotiating Team adopted guidelines for the cooperation with CSOs. The document indicates the method of consulting the CSOs when preparing and adopting plans and other documents within the negotiation process and also prescribes an obligation of a written explanation for a particular proposal's rejection.

	MONTENEGRO	SERBIA
Early consultations	Yes	Yes
Public hearing on draft laws	Yes	Yes
Deadline for making a public hearing report	15 days	15 days
Duration of public debate	Up to 40 days	At least 20 days
There is an obligatory form to respond to comments	Yes	No
Consultations on the By-laws	No	No

¹⁵ Interview with Dina Bajramspahić, Researcher, Institute Alternative, March 13, 2019

PRACTICE IN MONTENEGRO AND IN SERBIA

MONTENEGRO	SERBIA
<p>All "analysed" comments listed Law on Academic Integrity</p> <p>Although a large number of stakeholders took part in the public hearing (from May 23 to June 15, 2018), the report from it listed only the provisions on which the ministry had a dilemma whether to adopt them or not, while explaining that "after analyzing all comments received during round tables and public hearings, all proposed solutions that contributed to the improvement of the text were incorporated."¹⁶ The comments were not listed, and thus the public could not get any insight into the received proposals, or which proposals were accepted or rejected. Hence, the public is only aware of the form, while the rest is prevented, including the quality of the received solutions, except for those proposals that the organization/interest group separately presented to the citizens.¹⁷</p>	<p>Shortened discussions National Security Strategy and Defense Strategy</p> <p>In addition to the fact that the Ministry of Defence gave drafts of the National Security Strategy and Defense Strategy to a public hearing during the holiday (from April 20 to May 15, 2018),¹⁸ the duration of the debate was shortened to three weeks.¹⁹ Although the civil sector requested an extension of the hearing²⁰, this request was not accepted. All proposals submitted by the National Convention on the draft of these documents were rejected.²¹</p> <p>Since the two aforementioned strategies have not been adopted for almost a year since the public hearing, consultation of the public is completely meaningless. The civil sector is of the view that if the draft text is substantially amended in relation to the version that was at the public hearing, it is necessary to relaunch it and to carry out binding steps in consultation with the interested parties. Moreover, since considerable time has elapsed from the publication of the draft strategy, the question arises of the quality of these documents in terms of which the contested provisions prevent their adoption.²² Any delay in adopting regulations as well as substantially changing of the text should be accompanied by a new public hearing.</p> <p>Info-sessions about these documents have also been organized, but their contribution is also addressed as they are prepared and maintained in an extremely formal manner.²³</p>
<p>Steps during the public hearing are conducted in a formalistic way Law on Amendments to the Mediation Law</p> <p>The CSOs capacity to influence sectorial laws is still limited, but there is also insufficient interest of ministries to bring the law closer to citizens. During the public hearing on the Law on Amendments to the Mediation Law (from April 3 to May 14, 2018), only one proposal was submitted to the Ministry of Justice, which was rejected.²⁴ The report from the public hearing did not indicate whether a round table was held at all, which would certainly influence the involvement of a larger number of stakeholders and a better discussion. Round tables are usually conducted either in the capital city or by regional principle: north, central part and south, but most of these events consist of mere explanation of new changes by government representatives. There are also slightly better reports from public hearings, such as the one on amendments to the Law on Enforcement and Security Interest (public hearing from April 27 to May 6, 2018).²⁵</p>	<p>Substantial changes of the law without a public hearing Law on Free Access to Information of Public Importance</p> <p>The Ministry of State Administration and Local Self-Government sent a new text of the Law on Free Access to Information of Public Importance, which wasn't consulted with the public, to the state authorities in December 2018. It was not explained why the CSOs recommendations and the opinions of the SIGMA experts obtained in the meantime were not accepted. Draft law on amendments to the Law on Free Access to Information of Public Importance from December 2018 is worse compared to that of March 2018, which was at a public hearing, according to the civil society's opinion. One of the problematic solutions is the exclusion of state-owned enterprises from the scope of this law, as well as the exclusion of the National Bank of Serbia from the competence of the Commissioner.²⁶ In this way, the law limits the transparency and the right of citizens to access to information on how the state budget is spent and other important information from the work of these entities.²⁷</p>

16 Ministry of Education (2018), Report from a public hearing on the draft Law on Academic Integrity

17 Popović, M., (2018), The Law on Academic Integrity an important step forward, but it is necessary to prescribe the responsibility of mentors., <http://cgo-cce.org/en/2018/07/27/zakon-o-akademskom-integritetu-yazan-iskorak-ali-je-neophodno-propisati-i-odgovornost-mentora/#XJ-sRetKjUo>

18 Easter holidays and International Workers' Day were celebrated in Serbia during this period.

19 Mihailović, I., (2018), Comments on drafts of National Security Strategy and Defense Strategy of the Republic of Serbia, Belgrade Fund for Political Excellence, <https://en.bfpe.org/comments-on-draft-national-and-defence-strategies/>

20 Pejić, J., (2018), The New National Security Strategy Strengthens the Role of the President in the Security System, Belgrade Center for Security Policy, <http://www.bezbednost.org/BCSP-News/6774/The-New-National-Security-Strategy-Strengthens.shtml>

21 Interview with Marko Savković, Program Director, Belgrade Fund for Political Excellence, March 2019

22 Interview with Marko Savković, Program Director, Belgrade Fund for Political Excellence, March 2019

23 Interview with Marko Savković, Program Director, Belgrade Fund for Political Excellence, March 2019

24 Ministry of Justice, (2018), Report from the public hearing on the draft Law on Amendments to the Mediation Law

25 Ministry of Justice, (2018), Report from the public hearing on the draft Law on Enforcement and Security Interest

26 Transparency Serbia, (2019), Commentary on the amended Draft Amendments to the Law on Free Access to Information of Public Importance, http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Komentar_decembarskog_nacrta_izmena_zakona_o_slobodnom_pristupu_informacijama_TS.pdf

27 Transparency Serbia, (2019), Commentary on the amended Draft Amendments to the Law on Free Access to Information of Public Importance,

<p>Changes out of the public eye Law on Free Access to Information</p> <p>Although some laws have been changed and almost completely aligned with the relevant EU directives during the negotiation process, including the Law on Free Access to Information, Montenegro has somehow worsened some of the solutions of this law and severely restricted access to information of public importance during 2017. These changes are a product of “grooming” in the parliament based on the amendments of the ruling party during the period when the entire opposition boycotted the work of this institution. The relevant Agency for the Protection of Personal Data and Free Access to Information has not been consulted on these solutions nor the European Commission’s opinion has been requested.²⁸</p> <p>Apart from the fact that the amendments to this law have been implemented without consulting the interested parties, this law is undermined by some serious limitations on the right to request information.²⁹</p> <p>Under these changes, institutions are no longer required to conduct a test when making the information “classified”, giving them a wide scope for manoeuvre in hiding information from the public. Amendments to the Law enable the Agency for the Personal Data Protection and Free Access to Information not to make final decisions during the procedures upon complaints by the interested party. In fact, this means that the process can last forever limiting in that way the right to information.³⁰</p>	<p>Fake debates Law on amendments to the Law on Prohibition of Discrimination</p> <p>“While preparing the Anti-Discrimination Law, the Ministry of Labour and Social Welfare has done everything to prevent any debate”³¹</p> <p>Instead of carrying out the obligatory steps in organizing a public hearing envisaged by the Government’s Rules of Procedure, the Ministry of Labour and Social Welfare organized some kind of consultations and round tables, and therefore, concluded that the interested public was consulted and had an opportunity to present their opinion on the text itself.³² The fact that the law was reportedly available to the public³³ was taken by the competent ministry as an argument that stakeholders could give their opinion, while at the same time it did not provide a framework for such a thing, nor presented the suggestions received during this process of “consulting” the interested parties or from the two debates organized by the Commissioner for the Protection of Equality. In addition to the information that only two civil society organizations participated,³⁴ there is no additional information on the results of the “debate”, nor the principle under which the participants of these events were called was explained at all. However, civil society claims that it was not familiar with the legal text before it came to parliamentary procedure.³⁵</p> <p>While explaining the legal changes and goals that should be achieved, the Ministry points out that the working version of the text was repeatedly communicated and consulted with the European Commission in 2018. However, it is stated that the Commission gave a positive opinion with certain suggestions that were incorporated in the final version. Yet, the stakeholders cannot verify the nature of the suggestions and whether the opinion is really positive or not, since the European Commission’s opinion is not available to the public, and it is not presented in the explanation of the law. Particularly the Social and Economic Council has subsequently suggested that this law should be additionally harmonized with the EU relevant directives.³⁶</p> <p>The Social-Economic Council’s opinion on a large number of laws and the classification of this step as a consultation of the interested parties is a particular problem.³⁷ Opinion on amendments to anti-discrimination legislation was one of the 18 items on the agenda of this Council,³⁸ and this body requested the further changes of this draft law.³⁹ In this particular case, the Socio-Economic Council has been used to find a wall under which the ministry will be sheltered if the question arises why certain legal solutions are proposed at all.⁴⁰</p>
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28 MANS, (2017), *Law on Free Access to Information has been changed out of the public eye*, <http://www.mans.co.me/wp-content/uploads/2017/06/AnalizaSPIjun2017MNE.pdf>

29 Access Info Europe, (2018), *Law on Free Access to Information Of Montenegro – Analysis*, MANS, <http://www.mans.co.me/wp-content/uploads/2018/06/AIE-MANSanalysis.pdf>

30 MANS, (2017), *Law on Free Access to Information has been changed out of the public eye*

31 Interview with Danilo Čurčić, Program Director, A11 - Initiative for Economic and Social Rights, March 27, 2019

32 Justification of the of the Law on Amendments to the Law on the Prohibition of Discrimination, February 14, 2019, p. 33, http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2019/265-19%20-%20Lat.pdf

33 Internet presentations of the Commissioner for the Protection of Equality, the Ombudsman and the Office for Human and Minority Rights,

34 YUKOM and the Belgrade Center for Human Rights

35 Čurčić, D., (2019), *What do the changes to the Law on the Prohibition of Discrimination bring?*, Istinomer, <https://www.istinomer.rs/clanak/2719/Sta-nam-donose-izmene-Zakona-o-zabrani-diskriminacije>

36 Justification of the Law on Amendments to the Law on the Prohibition of Discrimination, February 14, 2019, p. 33

37 Interview with Danilo Čurčić, Programme Director, A11 – Initiative for economic and social rights, 27 March 2019

38 Excerpt from the 84th regular session of the Socio-Economic Council of the Government of the Republic of Serbia held on November 16, 2019; Response of the Secretariat of the Social and Economic Council on the Request for Free Access to Information of Public Importance, A11 - Initiative for Economic and Social Rights, January 30, 2019

39 Articles 3, 8, and 14, Response of the Secretariat of the Social and Economic Council on the Request for Free Access to Information of Public Importance, A11 - Initiative for Economic and Social Rights, December 14, 2018

40 Čurčić, D., (2019), *What do the changes to the Law on the Prohibition of Discrimination bring?*, Istinomer, <https://www.istinomer.rs/clanak/2719/Sta-nam-donose-izmene-Zakona-o-zabrani-diskriminacije>

<p>Meaningless Hearings Law on Public Procurement</p> <p>During the public hearing (February and March 2018) on the Draft Law on Public Procurement the Ministry of Finance and the Ministry of Public Administration received nearly 450 comments and rejected 80% of them. Only 4.5% of the comments were entirely accepted.⁴¹ Although the report from the public hearing was thoroughly prepared and each of the received comments was specifically answered,⁴² this did not affect the number of approved comments.</p>	<p>No evaluation of the proposals Law on lobbying</p> <p>Proposals received during the public hearing on Law on lobbying have not been presented and evaluated. A meeting was held after a public hearing where the draft law was significantly changed upon the initiative of interested parties which created a more favourable position for themselves. Only one NGO participated in a public hearing.⁴³ Ministry of Justice did not publish any report from the public hearing, although it was obliged to do so on the basis of the Government's Rules of Procedure provisions.</p>
<p>Local budgets are not interesting to citizens</p> <p>Reports from public hearings in Montenegrin municipalities usually do not specify the exact number of citizens involved in the debate, while the report for the capital city Podgorica highlights that "the citizens did not show interest in participating."⁴⁴</p> <p>Most recent example of the lack of civil participation (or inclusion) at local level in Serbia includes the 2018 budget of Belgrade, which was approved by the local Parliament without any prior citizens' participation.</p>	

The problems in organizing public hearings we have noticed during this research and as demonstrated by the above examples can be summarized as follows:

- Instead of organizing public hearings in the manner prescribed by the law, it happens that the ministries decide to finger discussion and organize limited debates only for the selected ones;
- It often occurs that, despite extremely sensitive issues on the agenda, the competent ministry shortens space and time for discussion;
- Regardless of the significant changes in the text of the law or regulation after the public hearings, consultations are usually not re-launched;
- Received (and rejected) proposals often remain without an explanation and responses from the ministries;
- Interested parties are frequently not included in the drafting of important regulations (by-laws) including those concerning their own participation in the decision-making process.

⁴¹ Public Discussion Rendered Meaningless: 80% of Comments on the Draft Law on Public Procurement Rejected, Institute Alternative, 15 May 2018, <https://institut-alternativa.org/en/public-discussion-rendered-meaningless-80-of-comments-on-the-draft-law-on-public-procurement-rejected/>

⁴² Ministry of Finance, (2018), Report on submitted proposals during the public hearing on the Draft Law on Public Procurement, http://www.mif.gov.me/rubrike/javne_rasprave/184098/Izvestaj-o-dostavljenim-predlozima-primjedbama-i-sugestijama-u-toku-javne-rasprave-na-tekst-Nacrta-zakona-o-javnim-nabavkama.html

⁴³ Interview with Nemanja Nenadić, Programme Director, Transparency Serbia, March 22, 2019

⁴⁴ Institute Alternative, (2019), My City on My Money - A Report on the Openness of Local Budgets, <http://media.institut-alternativa.org/2019/03/moj-grad-o-mom-novcu-1.pdf>, p. 25.

ACCESSION TALKS WITH THE EUROPEAN UNION IN MONTENEGRO AND SERBIA

MODELS & TRANSPARENCY

The civil society's role within the European integration process, besides the procedures for participation in the policy-making process that we have already explained as "standard model" of civil society involvement, is not formally regulated. The EU does not propose a model which a state should apply in involving the civil society in the negotiation process, but only insists on openness, constructive dialogue and more diversified channels of communication. So, EU does not affect the model of civil society participation, but only intensity and quality. And, indeed, greater mobilization and more active role of civil society is visible from gaining the candidate status of the country, and it is particularly strong during the negotiation process. Moreover, the improvement of cooperation between the candidate country and civil society is most often set as a prerequisite for the start of the accession talks.⁴⁵

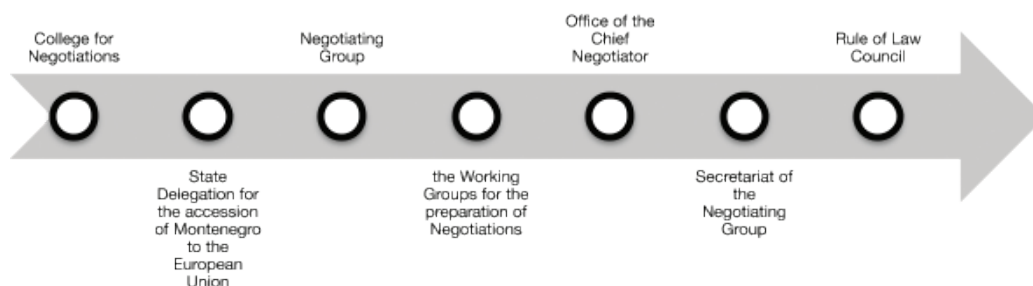
The need for increased participation of the civil society in the negotiation process stems from a number of reasons, but most often it should be due to:

- Complexity of the negotiation process when it is necessary to include all available capacities within the society. The civil sector has developed a certain level of expertise by monitoring public policies for a longer period of time; therefore, its assistance should be embraced and could fill in the gap and lack of analytical capacities in the public administration in a short run;
- Openness of the process. Democratization and integration should imply openness of institutions and raising the level of transparency to a higher level. By involving the civil society, the executive wants to build public confidence and to send a message that it has nothing to hide.
- Character of the process. Although there are different definitions of democracy, what is common to all of them is that it implies a free space for articulating interests and calling institutions to protect them.

In view of Western Balkan countries, there are various models of civil society participation in the European integration process. Such models range from those that take place through the institutions, to less formal and sustainable, which depend on donor support and specific prerequisites for action. Montenegro and Serbia have opted for two different models of civil society involvement in the negotiation process. Therefore, we will briefly outline these models of the civil society participation in the European integration process/negotiations: direct participation in the negotiation working groups as well as joint actions through the conventions.

MONTENEGRO

Montenegrin negotiation structure includes:



⁴⁵ Commission Opinion on Montenegro's application for membership of the European Union, Brussels, 9 November 2010, https://eeas.europa.eu/sites/eeas/files/mn_opinion_2010_en_0.pdf

Having in mind the structure and competencies of the bodies within it, participation of the civil sector is possible in the negotiating working groups that are at the very bottom of the arrangement. These working groups are covering the technical part of the process with preparation of the screening lists,⁴⁶ negotiating positions and action plans. Montenegro established all 33 negotiating working groups during 2012 and 2013, but their composition has since changed, including the number and members from the civil society.

Decision on establishing the negotiating structure does not have to directly foresee participation of the non-state actors in the negotiating working groups, but has to leave the possibility for the participation. Selection process has to be based on public invitation and transparent criteria. Although Croatia also was familiar with this model (where representatives of trade unions and academia were members of the negotiation working groups, but not representatives of NGOs), it is widely used in Montenegro. Since the adoption of the Decision on the Montenegrin negotiation structure in February 2012,⁴⁷ the Government has included NGO representatives in all the negotiation-working groups. Representatives of the civil sector are selected on the basis of a public call with a binding form to evaluate both individual capacities and capacities of the organization that proposes a member. So far, the call for members of the working groups for chapters 23 and 24 has been published twice in 2012 and 2016.

PARTICIPATION OF THE CIVIL SOCIETY'S REPRESENTATIVES IN NEGOTIATING WORKING GROUPS HAS NO FOOTHOLD IN THE COMPARATIVE PRACTICE AND PREVIOUS EXPERIENCES IN THE NEGOTIATIONS. IN THE WORKING GROUP FOR CHAPTER 23, THERE ARE 7 MEMBERS FROM THE NON-GOVERNMENTAL SECTOR, WHILE 24 CURRENTLY HAVE NONE.

As the Decision on the establishment of structure for the accession negotiations of Montenegro to the European Union does not directly anticipate the involvement of the civil society members, it does not include criteria for the selection of representatives in the negotiating working groups, while the binding criteria are not subsequently developed. The only exception to this rule is the submission of the application forms containing the applicants' expertise and knowledge. Finally, selection of the negotiating working group members is determined by the Government's decision based on the Chief Negotiator's proposals. The Government has the right to confirm or reject the individual proposal or individual candidate.

Montenegrin model of CSOs direct participation in the negotiation working groups is even more interesting having in mind that their mission was not determined after the preparation of negotiating positions and action plans for opening negotiations on individual chapters (as it was the case with the working groups during the previous enlargements). Namely, Montenegro redefined the role of negotiation working groups and expanded their task to monitor implementation of action plans (to be implemented until the end of the negotiation process). Therefore, this monitoring model is (or could be) even more transparent, with representatives from outside the government, thus enabling better control of the process. However, representatives of NGOs never had full access to information held by the Working Group. So during certain periods (until they fought the right to access them) members of the NGO sector did not have access to expert missions' reports, the opinions of the European Commission on key legislation, the statistics, which the working group is sending to the EC with reports on the implementation of the Action Plan for Chapter 23, etc.

Over the years, a number of issues have been raised regarding the direct involvement of the civil sector in negotiating working groups. Of course, the most important one is to which extent (if at all) the NGO loses its corrective role if it directly participates in the negotiating structure. In its character, participation in negotiating working groups is most similar to participation in working groups dealing with legislative changes (which is already explained), since both have technical character. Therefore, although the civil sector's proposals in the negotiating working group are most often outvoted, they are significant if the public is familiar and informed about them. In this regard, it would be particularly problematic if the civil sector could not communicate its proposals and suggestions to the citizens and interested parties. Moreover, the Government tried to do so with the Rules of Procedure's provisions which stipulated that only the Chief negotiator, the Head of the working group or the appointed member could speak about the negotiating working group's work. Nevertheless, NGO representatives' work in the negotiating working groups cannot be separated from their regular mission. In this sense, the greatest contribution that the civil sector has made so far by participating in the negotiating working group, besides the initiatives for publishing documents, is precisely informing the public, or the "look from inside". The civil sector has fought for its right to speak about its work in negotiating working groups (and consequently on the work of the negotiating working group itself). Therefore, it communicates directly problems in transparency, coordination, communication and reporting to the outside: the citizens, the European Commission and other interested parties.

46 Checking the harmonization of domestic legislation with the EU acquis

47 Decision on the establishment of structure for the accession negotiations of Montenegro in European Union "Off. Gazette of Montenegro", no. 09/2012, 15/14

THE RULE OF LAW COUNCIL - INSTEAD OF IMPROVING IT LIMITS TRANSPARENCY

Transparency in the most demanding Chapters 23 and 24 in Montenegro is further limited by the "nature" of negotiation structure. The Rule of Law Council has been established in 2014, two years after the adoption of the Decision on the establishment of structure for the accession negotiations of Montenegro to the European Union,⁴⁸ with a task to improve the implementation of measures under chapters 23 and 24 and put pressure on institutions that are late in meeting their obligations.⁴⁹

APART FROM THE FACT THAT DUE TO THE VERY MANNER OF THE RULE OF LAW COUNCIL'S WORK (BY CLOSING MEETINGS FOR THE PUBLIC AND NON-PARTICIPATION OF THE CIVIL SOCIETY'S REPRESENTATIVES FROM THE WORKING GROUPS IN ITS WORK) THE TRANSPARENCY OF THE NEGOTIATION PROCESS HAS BEEN VIOLATED, IT IS ALSO PROBLEMATIC THAT, BY ITS ESTABLISHMENT, THE WORK OF NEGOTIATING WORKING GROUPS IS REDUCED TO TECHNICAL RECORDING OF FULFILLED MEASURES. ALSO, SINCE ITS ESTABLISHMENT IN 2014, THE RULE OF LAW COUNCIL HELD A TOTAL OF 6 SESSIONS, OF WHICH THE LAST ONE WAS IN JUNE 2017. THIS ACTUALLY MEANS THAT THERE WAS NO NEED FOR ITS ESTABLISHMENT OR THAT THE GOVERNMENT DOES NOT SEE THE OBLIGATION OF STRENGTHENING THE RULE OF LAW AS A PRIORITY.

Although it has been repeatedly pointed out that the Rule of Law Council's functioning directly threatens the transparency of the negotiating process, which is a paradox since this Council was established to influence the speeding up the rule of law reform, only its conclusions are still available and their publication came after pressure from the civil sector.⁵⁰ Another paradox is that representatives of the civil sector who are members of the negotiating working group for Chapter 23 can propose a topic for a Council session, and after that they can not be informed what the Rule of Law Council has discussed about it.

*Participation is increased quantitatively, but not essentially.*⁵¹

Non-governmental sector directly participated in the preparation of Action plans for Chapters 23 and 24. Subsequently, the number of NGOs in other working groups has been significantly increased, but the impact is nevertheless limited. NGO participation in negotiation working groups over time has become almost meaningless,⁵² due to the outdated action plans which no longer leave the possibility of opening any discussion on reforms. Although Chapter 23⁵³ has been open almost three years before Serbia's, this document has been revised only once. This revision/adaptation of the Action plan was carried out in consultation with representatives of the civil sector in the negotiating working group. It was also enabled to other interested parties to submit their comments. However, despite the fact that a large number of these measures have become out-dated, and that existing activities do not yield significant results in meeting interim benchmarks, a new revision of this document is still not planned.⁵⁴

Although during the time, under the civil sector's influence, the negotiation process has become more open, there are many documents that are still out of reach, even for the members of the negotiating working groups from NGO sector who should be equal in rights and obligations with other members. For this reason, the civil sector often points out that the government creates a parallel negotiating structure.⁵⁵ One of these documents is the Dynamic Plan on interim and closing benchmarks in EU-Montenegro Negotiating Chapters adopted by the Government in February 2018. However, although it was found at the government session, this document was not published along with other materials from the session, nor was it made available to the members of the negotiating working groups from the non-governmental sector, even after insisting through the media, but also on the basis of requests for free access to information.⁵⁶ Since the content of the Plan is unknown, it is not clear what is the connection between this document and the action plans for Chapters 23 and 24, or whether new measures, which are envisaged by the plan, would encourage the implementation of the benchmarks.⁵⁷ Although at the very session where the Dynamic Plan was adopted, the Government obliged the then Ministry of European Affairs to report on its implementation on the monthly basis, these reports are not available.⁵⁸

48 Established on 6 March 2014 by the Decision amending the Decision establishing the Negotiating Structure for accession of Montenegro to the European Union

49 "Competences of the Rule of Council include monitoring of fulfilment of commitments under Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Justice, Freedom and Security, examination of the reasons for delays in the fulfilment of commitments and putting forward recommendations to the state authorities, state administration bodies and other bodies and institutions for prompt action so that the commitments in these chapters could be met.", Source: www.eu.me

50 Marović, J., Muk, S., (2015), Negotiations between Montenegro and the EU: Data access for the privileged only, Institute Alternative, <https://institut-alternativa.org/en/negotiations-between-montenegro-and-the-eu-data-access-for-the-privileged-only/>

51 Interview with Ana Novaković, Executive Director, Centre for Development of Non-Governmental Organizations, March 11, 2019

52 Interview with Ana Novaković, Executive Director, Centre for Development of Non-Governmental Organizations, March 11, 2019

53 Judicial reform, fight against corruption, fundamental rights and cooperation with the civil society, which is developed as a separate part of the action plan in Montenegro

54 Information from the working group for Chapter 23 in Montenegro

55 Bajramspahić, D., (2018), Government Hiding the Dynamic Plan, Institute Alternative, <https://institut-alternativa.org/en/government-hiding-the-dynamic-plan/>

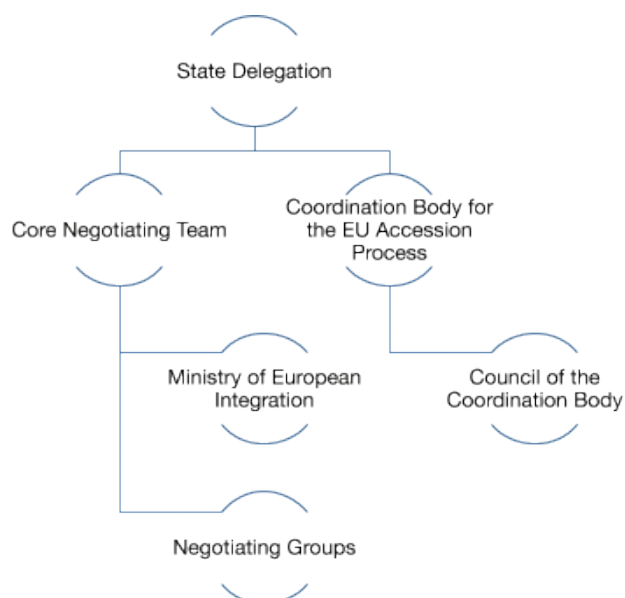
56 Ibid.

57 Interview with Dina Bajramspahić, Researcher, Institute Alternative, March 13, 2019

58 Government held a Special Session on the European Agenda - Meeting the obligations from European path is the duty of all segments of the

The most important results of the civil society representatives in the working groups achieved so far are improving transparency of the process, and providing chance to other entities to submit comments on the measures and the content of the documents under the Chapter 23 (putting pressure on competent institutions to organize public hearing). Under the pressure of negotiating working groups' members coming from the non-governmental sector, the government has published a number of documents from the negotiating process, such as non-papers, semi-annual reports on the situation in the Chapters 23 and 24 prepared by the European Commission.⁵⁹ However, apart from publishing documents, the Government does not proactively inform citizens about the dynamics of the negotiation process.⁶⁰

CORE NEGOTIATION STRUCTURE IN SERBIA INCLUDES:



SERBIA

Serbia left the representatives of the civil sector outside the negotiating groups, but included them in the negotiating team.⁶¹ Considering the wider participation of civil society in the process, Serbia has opted for a National Convention.

The National conventions model which has emerged in Slovakia in 2001, has been successfully implemented by all the Visegrad countries, and implemented lately by the Western Balkan countries, namely Serbia, Montenegro and Albania. National convention on the EU in Serbia is a permanent body established in 2006⁶² and as thematically structured debate that gathers leading representatives of public administration, political parties, NGOs, experts, businesses, trade unions and professional organizations. It provides:

- Regular consultations between Serbian governmental institutions and bodies and the interested public;
- Definitions of recommendations and opinions about Serbian negotiations;
- Transparent and open dialogue;
- Higher quality of informing the public about the accession process, negotiations and the consequences.⁶³

Working groups for all negotiation chapters are chaired by civil society organizations specialized in these areas. An extensive consultation of various branches and governance levels with other important stakeholders is the major contribution of this model.

Nevertheless, the challenges that the Convention faces in Serbia are not minor. Here we will demonstrate this on an example of the adaptation of the key document for the strengthening of the rule of law. Work on the adaptation of the Action Plan for Chapter 23 has shown serious shortcomings in cooperation with the interested parties. It was published in January 2019⁶⁴ with a deadline of 17 days for the submission of comments. The action plan is a document of hundreds of pages containing a large number of measures and activities. Tracking the document due to its size and large number of measures is challenging for stakeholders. It is therefore particularly problematic to leave an extremely short deadline for commenting on such an important umbrella document for strengthening the rule of law. In addition, some of the changes were made in the text itself, without emphasizing what were the novelties. Upon CSO initiative,⁶⁵ this deadline was extended with an additional two weeks for commenting. However, during this process, in spite of the organization of a special session with the National Convention, the civil sector did not receive proper explanation of the specific measures envisaged.⁶⁶ Working Group for Chapter 23 of the National Convention, with the Inter-Sectorial Group on Freedom of Expression and Media, sent to the Ministry of Justice over hundred of comments collected from its members.

society, February 2018, <http://www.predsjednik.gov.me/vijesti/181768/Vlada-odrzala-Posebnu-sjednicu-na-temu-Evropske-agende-ispunjavanje-obaveza-evropske-integracije-duznost-je-svih-segmenata-drust.html>

59 And now publishes them on a regular basis, See: European Commission, (2018), Non-paper on state of play regarding Chapters 23 and 24 for Montenegro, <http://www.gov.me/en/News/193611/Non-paper-on-state-of-play-regarding-Chapters-23-and-24-for-Montenegro.html>

60 Interview with Ana Novaković, Executive Director, Centre for Development of Non-Governmental Organizations, March 11, 2019

61 Representative of the European Policy Centre is negotiator for Chapters 1 (Free movement of goods), 3 (Right of establishment and freedom to provide services), and 28 (Consumer and health protection), See: Core Negotiating Team, <http://www.eu-pregovori.rs/eng/negotiation-structure/core-negotiating-team/>

62 But for some time it was not functional and its work intensified since the beginning of the negotiations.

63 About the National Convention on the EU, See: <http://eukonvent.org/eng/about-national-convention-on-the-eu/>

64 On January 22, 2019, the Ministry of Justice's website

65 EUkonvent (2019), Convent sent a letter to the Ministry of Justice to extend the public debate on the new Action Plan for Chapter 23, <http://eukonvent.org/konvent-uputio-pismo-ministarstvu-pravde-za-produzenje-javne-rasprave-o-novom-akcionom-planu-za-poglavlje-23/>

66 Ivković, I., (2019), Chapter 23: Controversies over an adaptation of the Action Plan, European Western Balkans, <https://europeanwesternbalkans.rs/poglavlje-23-kontroverze-oko-revizije-akcionog-plana/>

Our interlocutors agree that the impact of civil society in the negotiation process is limited, notwithstanding that the sector is often consulted. Namely, the challenges that organizations face when attempting to influence the laws are crucial which prevents their significant role in the negotiation process. Transparency of the process is still limited.

CONCLUSIONS AND RECOMMENDATIONS

Regardless of some improvements in the legal framework that enable the civil sector to be more closely consulted in the drafting of laws and strategic documents than it was before the start of negotiations for EU membership, progress in the substantial sense is extremely limited. Although in 2018 both Montenegro and Serbia have worked to improve legal frameworks that guarantee that interested parties are consulted, there are still a number of issues that prevent civil society's greater impact in the decision-making process, and hence in the negotiations. In order to eliminate some of these issues:

- Public administration should make additional efforts to bring the regulations closer to citizens and ensure their participation in the decision-making process;
- Institutions should respond to each received proposal individually, and not as a summary of all the suggestions received;
- For regulations that are not adopted within one year from the day of the public hearing (or for those fundamentally changed after a public hearing), the public consultation process needs to be relaunched;
- It is necessary that drafts of the secondary legislation ensuring the application of a particular law are included during the public hearing with the law, and that they are adopted at the same time as the law;
- Stipulating the minimum prescribed length of a public hearing should be an exception rather than a rule;
- European Commission's comments and opinion on draft laws should be public and available to all interested parties; EC's opinions on laws should be available during a public hearing;
- Commenting on a law before it is found at the Government session should be enabled;
- Stakeholders should be able to comment and give their opinion on all the suggestions received during a public hearing (to submit comments on the report on conducted public hearing);
- All information from the negotiation process should be made available to the public;
- Governments should make extra work to communicate the negotiation process to citizens;

MONTENEGRO

- Ministries should conduct all four mandatory steps prescribed for involving the civil sector in the decision-making process;
- The Law on State Administration should be amended in such a way that the public hearing is prescribed for all laws (without exception for laws in the field of security and defense and the law on the budget);
- Precisely define the scope and character of the changes of law that does not require a public hearing;
- Draft laws, calls for consultations, reports from consultations, calls for public hearings, reports from public hearings, bills, RIA, by-laws and the European Commission's opinion should be available on the portal eGovernment and the Ministry of Public Administration's internet presentation chronologically compiled;
- Reconsider and evaluate the role of the Rule of Law Council
- Make public all the documents from the negotiation process, including the Dynamic Plan on interim and closing benchmarks in EU-Montenegro Negotiating Chapters;

SERBIA

- Government's Annual Working Plan and the NPAA should be harmonized, while it is urgent that the Government starts publishing and submitting to the Parliament its annual work report;
- Consultations and public hearings on the revision of the NPAA should be conducted regularly;
- Structure and content of the report on conducted public hearings should be further specified by the Government's act, should be binding and include all the elements we have already pointed out;
- Expand the application of the Law on the planning system to laws;

CHAPTER 2 - CIVIL SOCIETY INCLUSION IN THE EU ACCESSION PROCESS OF THE WESTERN BALKAN COUNTRIES: THE CASES OF ALBANIA, NORTH MACEDONIA, KOSOVO AND BOSNIA AND HERZEGOVINA

AUTHORS: IVAN STEFANOVSKI AND IVANA IVANOVIK

INTRODUCTION

The beginning of 2018 was marked by the publication of the European Commission's Communication "A credible enlargement perspective for an enhanced EU engagement with the Western Balkans"⁶⁷. The document announced a "historic window of opportunity for the Western Balkan countries to firmly and unequivocally bind their future to the European Union" and that the Commission is ready "to prepare recommendations to open accession negotiations with Albania and North Macedonia". On several occasions, the Communication calls upon the governments of the region to "bring all stakeholders on board from across the political spectrum and from civil society" and to "ensure stakeholders can actively participate in the reform and policy making process [...] by establishing inclusive structured dialogues on reform priorities with the involvement of an empowered civil society."⁶⁸

The countries that are negotiating, Montenegro and Serbia, have already developed structured dialogues between the government and the civil society based on the negotiation chapters. As the remaining four Western Balkan countries have not started negotiations yet, these kinds of cooperation mechanisms structured according to the negotiation chapters are lacking. This does not mean, however, that there is lack of dialogue on issues related to the EU integration process. North Macedonia and Albania, which are waiting to commence accession negotiation, are in advance phase of preparation for structured CSO inclusion in the accession process based on the lessons learnt from the frontrunners. There are also positive examples of inclusion of civil society in crucial segments of the EU accession process of Bosnia and Herzegovina and Kosovo.

The following data collection methods and instruments were used:

- Document analysis;
- Interviews;
- Media review;
- Case studies.

NORTH MACEDONIA

North Macedonia has received the first recommendation by the European Commission for opening accession negotiations in 2009. Many documents dealing with the EU negotiations, the national negotiation structures and inclusion of civil society in the EU integration process as part of it were produced during this period. The working groups for negotiations according to the 35 chapters of the EU acquis were also established with the publication of the first National programme for the adoption of the acquis (NPAA). The inclusion of the civil society and various other stakeholders in the negotiation process was envisaged within the framework of the working groups.⁶⁹ According to the 'Institutional platform and principles for conducting accession negotiation with the EU'⁷⁰ drafted in 2007, the basis for the inclusion of various stakeholders is the NPAA. However, strategic mechanisms and platforms for targeted discussion according to the NPAA were not established and the efforts of consulting the civil society organisation according to these principles faded away as North Macedonia was not permitted to start accession negotiations during this period.

With the 2007 Strategy for cooperation of the government with the civil sector⁷¹, the government of North Macedonia expressed interest of increasing the participation of the civil sector in the process of European integration. The cases with the successive strategies from 2012

67 European Commission (2010) A credible enlargement perspective for and enhanced EU engagement with the Western Balkans COM(2018) 65 final. Strasbourg, https://eeas.europa.eu/sites/eeas/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

68 European Commission (2018) Enlargement package 2018 and country reports: http://europa.eu/rapid/press-release_IP-18-3342_en.htm

69 <http://www.sep.gov.mk/data/file/Publikacii/pregovori-za-clenstvo.pdf>

70 [http://www.sep.gov.mk/data/file/Pregovori/Platforma\(1\).pdf](http://www.sep.gov.mk/data/file/Pregovori/Platforma(1).pdf)

71 http://ecnl.org/dindocuments/150_Government%20Strategy%20for%20Cooperation.pdf

and 2018 are also cases in point. The dialogue with the civil society is observed through the lenses of their involvement in the policy making processes, adoption of legislation as well as programming and monitoring the European IPA funds through sector working groups and monitoring committees.⁷² The current Strategy goes step further and foresees inclusion of the civil society in preparing the negotiation positions for the EU negotiations chapters.⁷³

Renewed efforts in direction of proposing a negotiation structure and model for inclusion of civil society organisations were made in light of the positive outcomes and projected European path from the European Council conclusions in June 2018.⁷⁴ In the conclusions, the Council agreed to respond positively to the progress made by North Macedonia, and set out the path towards opening accession negotiations in June 2019 and a tentative timeframe for the first Intergovernmental Conference by the end of 2019. Furthermore, the "Council took note of the intention of the Commission to begin the necessary preparatory work", i.e. to start with the explanatory screening for the negotiation chapters. In light of this, there are number of venues and mechanisms through which the civil society is already cooperating with the state institutions in the EU integration process and new ones which are still in the preparatory phase. This analysis focuses more specifically on these instruments.

FREEDOM OF INFORMATION IN NORTH MACEDONIA

Freedom of information is one of the main tools through which civil society and media can obtain information from state institutions. This is the case both in terms of the EU accession process, and general issues of interest to the public. The Freedom of Information or as it is commonly referred to as the "Right to know" is constitutionally guaranteed in North Macedonia. Article 16 guarantees access to public information and establishment of institutions for public information (Constitution of Republic of Macedonia 1991, Article 16)⁷⁵. At the beginning of 2006, this right was extensively operationalized through the adoption of the Law on Access to Public Information.⁷⁶ Although the Law has been generally assessed as satisfactory (Dzamtoska-Zdravkovska 2012), for the European Commission, the implementation remains rather ineffective (European Commission 2018)⁷⁷. A recent, Open Society Foundation in North Macedonia (FOSM) policy brief, identifying the main problems with the implementation of the Law on Access to Public Information reveals that the knowledge of the general public in regards to the Law remains low; and majority of the citizens are still unaware that there is a law which guarantees their "Right to Know" (FOSM 2018). What is important from the paper is that information seekers are generally ignored by the institutions and every 10th holder of public information faces difficulties with implementation of the Law (Ibid.). The holders of information do not fulfil their legal obligation to file their annual reports to the Commission for protection of the right, while the Commission does not manage to produce an annual report which will provide recommendations on how information holders can overcome the largest problem – the silence of the administration; the system for access to information functions only partially (FOSM 2018, pp. 7-13)⁷⁸.

NEGOTIATION STRUCTURES

By the time this analysis is drafted, the Government of North Macedonia still did not come out with a clear plan of what will be the negotiation infrastructure that will conduct the negotiations with the EU. The announcement of the structure was made on a press conference in August 2018 by senior government officials. Meanwhile, the chief political and technical negotiators were appointed. Based on a single power point presentation, the negotiation structure would encompass the following institutions:

- Coordinating Body – a body which defines the country's negotiating positions and that is chaired by the Prime Minister;
- Council for rule of law;
- State Delegation – a body in charge of the accession negotiations with the EU headed by the DPM of European affairs which at the same time is the chief political negotiator;
- Negotiating group – a body headed by the chief technical negotiator;
- Secretariat of the Negotiating group as support to the abovementioned State delegation and Negotiating group.
- Office of the chief technical negotiator
- Working groups for negotiations for all EU negotiation chapters.⁷⁹

High government officials on several occasions have publicly stated that there is space for the civil society and other non-state actors in the negotiation structures and that the most obvious venue for their inclusion are the working groups. However, as mentioned above, there is still no official government document(s) that officialise these statements. In addition, for the time being, in the government decision for the establishment of these working groups from 2015, inclusion of civil society representatives is not envisaged.⁸⁰

72 [https://www.nvosorabotka.gov.mk/sites/default/files/dokumenti/STRATEGY_FOR_COOPERATION_OF_THE_GOVERNMENT_WITH_THE_CIVIL_SOCIETY\(2012-2017\).pdf](https://www.nvosorabotka.gov.mk/sites/default/files/dokumenti/STRATEGY_FOR_COOPERATION_OF_THE_GOVERNMENT_WITH_THE_CIVIL_SOCIETY(2012-2017).pdf)

73 <https://www.nvosorabotka.gov.mk/sites/default/files/Strategija%202018%20-%202020%20usvoena%209%2010%202018.pdf>

74 <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf>

75 Access to the Macedonian Constitution <https://www.wipo.int/edocs/lexdocs/laws/en/mk/mk014en.pdf>

76 Access to the Law on Access to Public Information http://www.stat.gov.mk/pdf/SlobodenPristapDolInformacii/zakon_za_informacii.pdf (In Macedonian)

77 Access to the EC's report <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-repub-lic-of-macedonia-report.pdf>

78 Access to the policy brief <http://www.fosm.mk/CMS/Files/Documents/Policy%20Brief%202012-01-20181.pdf>

79 https://idscs.org.mk/wp-content/uploads/2018/09/web_A5-CSOsENG.pdf

80 Official gazette of Republic of Macedonia no. 66/2015

Meanwhile, the civil society organizations have put on the table certain proposals, ideas and challenges on the decision how to include them in the negotiation structures. The Council for Cooperation between the Government and the civil sector⁸¹ proposed a model for inclusion of the civil society in the accession negotiations with the EU.⁸² According to the draft document, the participation of civil society organisations is envisaged in the 1) analytical examination of the acquis (screening process); 2) working groups for negotiations; 3) monitoring the process of accession negotiations within the negotiation structures and 4) independent monitoring. Besides the Council, other respected organisations presented their own outlook of the inclusion of civil society in the accession negotiations. Namely, in a joint effort to contribute to the debate the Center for European strategies Eurothink and the Institute for Democracy 'Societas Civilis' (IDSCS) presented their own view on the topic.⁸³ What these organizations are proposing is inclusion of civil society not only in the governmental working group for negotiations, but also in assisting the parliament in conducting their role of monitoring the government in the accession negotiations. Other organisations and networks such as Network 23 contributed to the debate.⁸⁴ In the expectation of the model that will be proposed by the government, the discussion within the civil society is currently delayed.

PARLIAMENT

In 2007, the Parliament of North Macedonia established the National European Integration Council (NCEI).⁸⁵ It is the only parliamentary body in which there are representatives from the parliament, government and civil society. According to the Decision with which it is established, among others, the NCEI monitors and assesses the accession negotiations, provides opinions and gives guidance for the negotiation positions of North Macedonia. Furthermore, the Chairperson of the NCEI always comes from among the Members of Parliament who are in opposition. The civil society is represented in the NCEI and it participates in its work, however, without the right to vote.

In the negotiation structure presented by the Chief political negotiator, the Parliament and its role in the accession process are not mentioned. The Serbian model foresees inclusion of civil society in the work of parliament. The parliament of North Macedonia can take this experience into consideration and include civil society in the process of monitoring and assisting government in conducting the accession negotiations. In addition, a National convention for the EU in North Macedonia similar to the one established in Serbia exists at the level of a project.

THE EU-NORTH MACEDONIA JOINT CONSULTATIVE COMMITTEE

Based on the Stabilisation and association agreement⁸⁶, a Joint Consultative Committee with the EU's Economic and Social Committee was established. The Stabilisation and Association Council during its fourth meeting on 24 of July 2007 expressed support for the establishment of the EU-North Macedonia Civil Society Joint Consultative Committee (JCC) as a civil society platform.⁸⁷ Through this platform, the civil society organisation from North Macedonia could monitor the EU accession process and "adopt recommendations for the attention of the government of the country and the EU institutions"⁸⁸. Since its establishment, the JCC with North Macedonia held eight meetings. Because of the stagnation in the EU accession process of the country, the civil society platform became inactive in October 2013. In light of the announcement for opening accession negotiation with North Macedonia in 2019, the JCC should resume its work and contribute with its specific role to the overall advancement in the accession process.

SECTOR WORKING GROUPS

The instrument for pre-accession (IPA) has been established to support primarily the EU accession process. This assistance is mainly streamlined towards the implementation of the NPAA as well as the work of the SAA committees' i.e. the negotiation teams once negotiations with North Macedonia commence. Each of the IPA sectors corresponds to a number of NPAA chapters. For example, the Democracy and governance sector correspond to chapter 5 (Public procurement), chapter 16 (Taxation); chapter 17 (Economic and monetary policy), chapter 18 (Statistics), chapter 29 (Customs union), chapter 32 (Financial control) as well as chapter 33 (Financial and budgetary provisions). Under the IPA regulations, the Commission works in partnership with competent national and local authorities, as well as civil society organisations.⁸⁹ Therefore, this is another area of work where the civil society actively contributes and can further enhance the work of the EU negotiation groups in the future. Besides inclusion in the Sector working groups, the IPA monitoring committee encompasses also civil society and private sector organisations in addition to representatives of the Commission, the NIPAC (DPM for EU affairs) and other relevant national authorities and bodies of the IPA II beneficiary. Civil society participates in activities of the Sectorial Committee that monitors the implementation of the Operational Programme for Regional Development and in the Sectorial Committee for monitoring the Operational Programme for Human Resource Development.⁹⁰

81 The Council had its inaugural session on 16th of April 2018.

82 <https://www.nvosorabotka.gov.mk/sites/default/files/30.11.18%20Predlog-model%20za%20vklucivanje%20na%20gragjanskite%20organizacii%20vo%20procesot%20na%20%20pregovo%20%281%29.pdf>

83 <http://eurothink.mk/news/nBakrMqn3joiPLfmh>

84 <https://epi.org.mk/reaction-of-network-23-on-the-draft-model-for-involvement-of-csos-in-eu-accession-negotiations/?lang=en>

85 Official gazette of Macedonia no. 140/2007

86 https://eeas.europa.eu/sites/eeas/files/saa03_01_en.pdf

87 www.europa.eu/rapid/press-release_PRES-07-180_en.pdf

88 <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-north-macedonia-joint-consultative-committee>

89 <https://www.gtai.de/GTAI/Content/DE/Trade/Fachdaten/PRO/2017/11/Anlagen/PRO201711305008.pdf?v=1>

90 [https://www.nvosorabotka.gov.mk/sites/default/files/dokumenti/STRATEGY_FOR_COOPERATION_OF_THE_GOVERNMENT_WITH_THE_CIVIL_SOCIETY\(2012-2017\).pdf](https://www.nvosorabotka.gov.mk/sites/default/files/dokumenti/STRATEGY_FOR_COOPERATION_OF_THE_GOVERNMENT_WITH_THE_CIVIL_SOCIETY(2012-2017).pdf)

BLUEPRINT FOR URGENT DEMOCRATIC REFORMS – ‘SEIZING THE MOMENTUM’

In July 2016, a group of CSOs, academia and independent experts produced a Blueprint for urgent democratic reforms outlining a concept to stop and prevent further backsliding in terms of democratic standards, rule of law and to positively contribute to the resolution of the on-going political crisis in the country (Blueprint for Urgent Democratic Reforms).⁹¹ It sketched the necessary laws that needed to be changed, the actions that require to be taken and finally the instruments that can be used in the process, thereby, offering their expertise and commitment ‘to further discussions on the modalities of inclusion of the civil society in the process’⁹². A civil society organisation seized the moment by identifying the necessary steps for further democratization in key policy areas in times when the country was technically blocked because of the political crisis. A follow-up to this successful initiative has been made following the fall of the long-lasting competitive-authoritarian rule of Nikola Gruevski. The civil society gave an impetus to the prioritized reform agenda by preparing the ‘Blueprint Developed by CSOs for Urgent Democratic Reforms’ (EPI 2017)⁹³. The primary purpose of the document was to provide an incentive, guidelines and detailed activities which are necessary for restoring the democratic standards and values, achieving progress in multiple policy areas, as well as rebuilding the trust of citizens in the crucial state institutions (Ibid, p. 5). This effort of civil society acted as a response to the changed political situation following the ousting of the Prime Minister Gruevski, and the willingness of the new government to work on democratic reforms in the country. Through this document, numerous CSOs and experts managed to provide their perceptions and views in regards to the country’s reform priorities (Ibid).

Conversely, on the eve of the constitutional changes aiming to introduce the name change of North Macedonia in order to amplify the Euro-Atlantic integration process, the government decided to pursue Europeanization to overcome the lack of European values. Mainly, lacking several votes in parliament in order to seal the much needed two-thirds majority, the Macedonian parliament introduced amnesty for the MPs facilitating the storming of parliament which took place on 27 April 2017.⁹⁴ In this case, several prominent CSOs reacted to this decision urging Parliament not to engage in such activities in order not to undermine rule of law and to prevent impunity. Still, the government proceeded forward and adopted the legal changes leading to impunity of the implicated MPs.

ALBANIA

Similar to North Macedonia, the European Council, on its 2018 June’s summit⁹⁵, welcomed the progress made by Albania in five key priorities, namely public administration reform, reform of the judiciary, fight against corruption, fight against organised crime and protection of human rights, including rights of persons belonging to minorities and property rights. Based on this, the Council ‘set out the path towards opening the accession negotiations in June 2019’ (Ibid.). However, it conditioned the country with delivering tangible results as well as maintaining and deepening the already initiated reforms.⁹⁶

FREEDOM OF INFORMATION IN ALBANIA

Freedom of information (FOI) in Albania, or also known as access to information, or simply the “right to know” is guaranteed by the Constitution⁹⁷, and it is further operationalized in the Law on the Right to Information adopted in 2014⁹⁸. Apart from being a prerequisite safeguarding public interest through enhancing transparency and accountability of Albania’s institutions and public officials, this freedom also acts as a powerful data gathering tool for CSOs. By abiding to the law, state institutions enhance communication with civil society, providing the much needed information for citizens’ participation in processes related to EU accession. Although the Law generally fulfils international standards, unfortunately, its implementation is still followed by difficulties. For example, in 2016, the Mjaft Movement sent 230 FOI requests in order to receive financial and organizational information from the Albanian institutions, and received only 98 replies (around 42%)⁹⁹. This points to the direction that exchange of information between state institutions and civil society in Albania can be significantly improved. The overall improvement of the implementation of FOI can transform it into a strong tool for gaining information and advocating for European integration. It would be even better if the impetus for this initiative comes from the civil society in order to contribute to the overall improvement of democracy and rule of law.

91 http://iks.edu.mk/attachments/article/274/BP_ENG_FINAL_08.07.2016.pdf

92 Ibid.

93 Access to the link for the Blueprint <http://www.epi.org.mk/docs/BP%20DEVELOPED%20BY%20CSOs%20FOR%20URGENT%20DEMOCRATIC%20REFORMS.pdf>

94 <https://meta.mk/en/the-parliament-passed-the-law-on-amnesty-with-95-votes-in-favor-of/>

95 <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf>

96 Further advancing the process of re-evaluating judges and prosecutors and finalising the establishment of the independent judicial structures as foreseen by the Constitutional reform; finalising the establishment of specialised bodies, namely the Special Anti-Corruption and Organised Crime Structure (SPAK) and National Bureau of Investigation (NBI) and Court; strengthening the track record of proactive investigations, prosecutions and final convictions in the fight against corruption and organised crime, including at high level.

97 Art. XX, Constitution of Albania

98 Law on the Right to Information

99 <https://balkaninsight.com/2016/07/12/albanian-institutions-difficulties-in-doing-transparency-07-11-2016/#sthash.yq949hCA.dpuf>

PARLIAMENT

The last several years have been favourable for setting up institutional cooperation mechanisms between CSOs in Albania and the state institutions (Madhi 2018, p. 1)¹⁰⁰. One of the most important steps was taken in 2015 when the Albanian parliament adopted the Law on the Establishment and Functioning of the National Council for Civil Society (Law No. 119, 2015)¹⁰¹. The main goal of this document was to provide mechanisms for cross-sectorial dialogue between the government and civil society (Madhi 2018, p. 1). In terms of the composition and functioning of the Council, it is comprised of 27 members. A majority of members (14) are appointed by state institutions (NCCS 2019)¹⁰², while representatives of CSOs are selected through an online process managed by the Agency for Support of Civil Society (Madhi 2018, p. 1). Another document adopted prior to the Law is also noteworthy to be highlighted – the Road Map for the Government Policy towards more Enabling Environment for Civil Society Development 2013-2017 (2014)¹⁰³. It has already been said and proven that there is a certain strategy on behalf of the Albanian government in order to cooperate with civil society in terms of the EU accession process. Still, the main challenge lying ahead is to transform the inscribed provision into reality, and turn words into deeds, for the numerous described declarations and policy papers only remain empty phrases.

Delving deeper into cooperation between the government and civil society in Albania in terms of European integration, another very significant institution deserves undivided attention – the National Council on European Integration. In the same year when the above described NCCS was created, the Albanian Parliament decided to take steps in order to ensure transparency, inclusiveness, oversight and exchange of information between various stakeholders (Madhi 2016, p. 1). Based on the Law adopted in March 2015 (Law No. 15, 2015)¹⁰⁴, the NCEI was established two months later “as the highest national advisory body providing strategic directions and fostering all-inclusive cooperation between political parties, public institutions and civil society.” (Madhi 2016, p. 1)

NEGOTIATION STRUCTURES IN ALBANIA

In regards to the Council's decision from 27 June 2014 (Council 2014)¹⁰⁵ to grant the candidate status to Albania, the Council of Ministers enacted a decision on the establishment, organization and functioning of the state structure responsible for negotiating and concluding the Republic of Albania accession treaty with the European Union. Based on this decision, the structure responsible for negotiations shall be composed of:

- The State European Integration Committee;
- The State Delegation;
- The Negotiating Group;
- The Mission of the Republic of Albania to the EU;
- The European Integration Secretariat;
- The Inter-Institutional Working Groups
- The Partnership Platform of European Integration (Council of Ministers 2018)¹⁰⁶.

Within the Albanian negotiation structure, civil society finds its place in the Partnership Platform for European Integration. It is envisaged in the decision that informing, consulting, communicating and engaging civil society, stakeholders, academia and local government in the process of membership negotiations to European Union and to the Stabilization and Association Process shall be performed by means of the Partnership Platform for European Integration. Furthermore, engagement of civil society and stakeholders in the process of Negotiations Accession to European Union with regard to public policies during the entire negotiating process, by means of the Partnership Platform for European Integration, as well as provision of expertise in different areas related to *acquis* shall not be restricted for them provided that they comply with the relevant field of competence. The participation mode, functioning and institutional organization of the Partnership Platform for European Integration shall be approved upon Order of the minister responsible for European Integration affairs (Ibid).

100 You can find the study on the following link <http://www.eupolicyhub.eu/en/publications/>

101 Access to the Law on the following link [http://www.amshc.gov.al/web/KKSHC/Ligj_Nr.119-2015_KKSHC-\(AL\).pdf](http://www.amshc.gov.al/web/KKSHC/Ligj_Nr.119-2015_KKSHC-(AL).pdf)

102 Access to the website of the National Council for Civil Society http://www.amshc.gov.al/kkshc/?page_id=85&lang=en

103 Access to the Roadmap on the following link <http://www.amshc.gov.al/web/njoftime/2015/02.27-Udherrefyesi/Udherrefyesi%20per%20Mjedis%20Mundesues%20per%20OSHC-te.pdf>

104 Access to the Law on the following link https://www.parlament.al/wp-content/uploads/sites/4/2015/10/ligji_15-2015-1.pdf

105 Access to the Council conclusions https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf

106 Access to the Council of Ministers' Decision <https://punetejashtme.gov.al/en/mepj-fton-subjektet-e-interesuar-per-te-paraqitur-komentet-e-tyre-per-krijimin-organizimin-dhe-funksionimin-e-strukture-shtetore-per-gjegjese-per-zhvillimin-e-negociatave-dhe-perfundimin-e-traktatit/>

PARTNERSHIP PLATFORM FOR EUROPEAN INTEGRATION– ‘SUSTAINABLE INCLUSION’

As a general positive example for the Albanian case, one can underline the establishing of the Partnership platform for European Integration. The possibilities for engagement of civil society and other non-state actors in the prospective negotiations process is of high importance for Albania's European integration. Increased influence and thus, ownership, is possible by involvement of CSOs in the creation of public policies and analysis based on which the country can draft its negotiation positions.

In order to exemplify the shortcoming of the process, one should note the lack of activity of the National Council on European Integration, as well as the lack of political will to further enhance the process of civil society development and other non-state actors. Some of the burning issues that need to be taken in consideration are related to the increase of the number of non-political actors as permanent members of the council, lack of inclusion of non-political stakeholders in framing the viewpoints and decisions of the Council as well as the lack of standardization of the reporting mechanisms. Much more efforts can be made in increasing the transparency and communication with the wider public.

KOSOVO

The EU accession process with Kosovo has been overshadowed by uncertainty. Without the recognition of the five EU member states, the country cannot move further than the already signed Stabilisation and Association Agreement. In addition to Bosnia and Herzegovina, Kosovo is the second country from the Western Balkan region that is the potential candidate for EU membership. Because of the EU accession status, the analysis of the inclusion of CSO and other non-state actors in Kosovo would follow different structure than the one before, in the case of North Macedonia and Albania.

FREEDOM OF INFORMATION IN KOSOVO

The “Right to Know” in Kosovo is constitutionally enshrined in Article 41 of the Constitution¹⁰⁷. It is framed as the right of access to public documents. It proclaims that every person is entitled to the right of access to public information and that documents held by public institutions and state bodies are public, except for information that is limited by law due to privacy, business trade secrets or security classification (Constitution of Kosovo 2008, Article 41). In terms of legislation, in 2010 the Law on Access to Public Documents (LAPD – Law no. 03/L-215)¹⁰⁸ was adopted. Additionally, several other laws also touch upon this matter. The Law on Administrative Procedure, as well as the Law on Civil Service of the Republic of Kosovo contains provisions in relation to the right to know (Kajtazi 2013)¹⁰⁹. The main problems arise in terms of implementation, which clearly creates difficulties for civil society to obtain relevant information timely. A BIRN report from 2014 underpins that the right to know is substantially hindered by the secretive mentality and culture of many institutions and state employees in the country (BIRN 2014)¹¹⁰. Similar findings are highlighted in the analysis by Kosovo 2.0 media outlet, which investigated FOI in regards to journalism. The author concludes that Kosovar institutions tend to disclose information on less important issues, as well as that the level of transparency usually depends on the level of government as well (Kosovo 2.0. 2017)¹¹¹. As highlighted in the previous two cases, improvement of institutions’ performance can contribute towards the increase of transparency and accountability in the country. Furthermore, this will positively influence democratization and strengthen rule of law as gateways towards Europeanization.

THREATS FOR CIVIL SOCIETY ACTIVITIES IN KOSOVO

Inclusion of civil society in policy- and decision-making in Kosovo has become quite a contentious issue in recent times. The main issue is the new draft Law on the Freedom of Association in Non-Governmental Organizations which has caused a lot of turmoil in the country. Civil society representatives claim that if this text enters into force, a “decimation of the non-profit” principle will occur, and that opportunities are given to institutions to arbitrarily close any NGO (Kosovo 2.0. 2019)¹¹². There are obviously many reasons why such importance is given to this issue. One of the possible outcomes of the potential promulgation of this law is complete deadlock of cooperation, which will de facto mean no cooperation between civil society and government in terms of Kosovo's EU integration. A group of NGOs had recently reacted with an open letter pointing out a very long list of potential shortcomings. The most important ones are the following:

- An NGO that had accumulated money or any other type of assets can transfer these funds to another institution, even private companies, without any difficulties, following a simple decision of its board of directors. Kosovar NGOs are concerned that a promulgation of the Law will result with immediate siphoning of millions of euros from NGO accounts into private entities or individuals;
- The government could arbitrarily close down any NGO, simply for being “inactive”, without requiring a court order. This is substantially

107 Access to the Constitution of Kosovo <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

108 Access to the LAPD <http://www.kuvendikosoves.org/?cid=2,191,606>

109 Access to the Analysis of FOI in Kosovo http://www.kryeministri-ks.net/repository/docs/II...SUMMARY_ON_THE_RIGHT_OF_ACCESS_TO_PUBLIC_DOCUMENTS.pdf

110 Access to BIRN's report http://www.drejtisianekosove.com/repository/docs/report_on_access_to_public_documents_2013-2014_824655.pdf

111 Access to the article <https://kosovotwopointzero.com/en/kosovar-journalists-need-demand-implementation-access-information-rights/>

112 Access to the article <https://kosovotwopointzero.com/en/are-kosovos-ngos-under-threat/>

unconstitutional, conflicting with the constitutional right to Freedom of Association. Another important matter is how the state could measure activity? (Kosovo Civil Society Foundation 2018)¹¹³

One of the strong critics on the new draft legislation, commented that she believes the micro-financing institutions which are registered as NGOs, but have accumulated a large amount of funds, need a way to transfer their profits either to other companies, or to individuals affiliated to the micro-institutions (Int. No. 1, Kosovo)

MODELS OF COOPERATION BETWEEN CIVIL SOCIETY AND GOVERNMENT IN KOSOVO

The models of cooperation between the Kosovo government and civil society are at nascent level. The top-down pressure that EU, US and other international organisation are imposing on the Kosovo government is the main driver for CSO inclusion in the policy and decision making process. For example, in terms of cooperation with parliament, at a certain stage of adoption of laws, civil society representatives are provided with forms, usually developed by USAID, the EU, or other important international donors, and CSO representatives to give their input in terms of the proposed legislation (Ibid). Usually they are asked to provide a comparative analysis on existing legislation in several EU countries, or operationalization of different models in order to implement a certain measure or reform. In some cases, only basic research is demanded, while sometimes governmental institutions ask for concrete policy recommendations. And in most cases, this is where the involvement of civil society ends (Ibid). This model of cooperation can be treated more as a "one-way channel", rather than a cooperation mechanism.

Civil society can also take part in public consultations. In the beginning of 2017, the Kosovo Online Platform for Public Consultation was launched. The idea of this cooperation mechanism is to facilitate communication between Kosovo state institutions and the public, civil society organization and other relevant stakeholders and partners important for the policy and decision making process. The central idea behind this platform is to allow the public and relevant stakeholders (including CSOs) to express their interest in participating in the public consultation process. A CSO would identify a government unit, and respectively prepare a draft proposal in which it has particular interest. The process of consultations should be followed by publishing reports of the ministries, state agencies and other included governmental actors, which would contain reasons for accepting or not accepting certain contributions (BCSDN 2017)¹¹⁴. Still, our interlocutor claims that these public consultations are not taken into consideration as seriously as they should be, both by government and by civil society (Int. No. 1, Kosovo). The KCSF has also prepared recommendations on full functionalization and enhancement of this platform (KCSF 2017)¹¹⁵.

Another practice which functions mainly on individual level, in terms of CSOs, is the signing of memorandums of understanding (MoUs) between the organizations and particular state institutions. This is a very difficult process and not an easy task to be fulfilled. Even when certain organizations work with particular institutions for a prolonged period of time, it is difficult to sign a MoU. Mainly, Kosovo still lacks a strategic document which will ensure properly the cooperation between civil society and the state.

INFORMALITY IN COOPERATION BETWEEN CIVIL SOCIETY AND GOVERNMENT IN KOSOVO

Interesting example of informal practice of cooperation and inclusion of civil society and government in Kosovo can be traced in the policy area of fight against radicalization and violent extremism. One of the renowned Kosovar CSOs was invited by the Kosovar police forces to provide them with expertise in the field of countering/preventing violent extremism (C/PVE) (Int. No. 1, Kosovo). The informal mode of engagement like this one could be good practice on which further prospective cooperation can be built. However, if in time, this does not end in formalizing the cooperation, these practices could be misused. The government can decide to target only particular CSOs with whom it has interest to cooperate, side-lining other (more critical) organizations which might also have certain experience in a particular field.

Another informal practice that is very much in line with the central research question of this study is the informal cooperation in terms of the European Reform Agenda (ERA) for Kosovo. The main idea for establishing the ERA is the fulfilment of the obligations under the Stabilization and Association Agreement which Kosovo has signed with the EU in 2015 (Council of the European Union 2015)¹¹⁶. The main objective of the ERA is to prioritize SAA fields and implementation of specific activities in order to fulfil them. This agenda is based on the EU integration, as the key priority of Kosovo's government. The short-term priorities of the ERA are the following: (I) Good Governance and the Rule of Law, (II) Competitiveness and Investment Climate and (III) Education and Employment (Ministry of European Integration of Kosovo 2018)¹¹⁷. In regard to this process, the government in Kosovo tends to invite people from the civil society which are closely linked to it.

'The idea is to present the views of these individuals as the views of civil society, which is actually not true'. (Int. No. 1, Kosovo).

113 Access to the open letter https://www.kcsfoundation.org/wp-content/uploads/2018/12/Detailed-analysis-NGO-Law-Amendments_KCSF_ENG_final.pdf

114 Access to the information <http://www.balkancsd.net/kosovo-online-platform-for-public-consultation/>

115 Access to the recommendations https://www.kcsfoundation.org/repository/docs/03_04_2018_9878891_Online_Platform_during_2017_KCSF.PDF

116 Access to the SAA Agreement <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>

117 Access to the website containing information on the ERA <http://mei-ks.net/en/european-reform-agenda-era>

Most of these people are close to the government, and not always the true civil society experts in the particular field. Typical example for such behaviour of the Government is the inclusion of the civil society in the ERA. According to our interlocutors only very few organizations take part in the monitoring of the implementation of activities linked to the SAA. The participation of other CSOs was declined by the Ministry of European integration regardless of their expertise in assessing SAA from a political and security aspect. This is much related to the performance of the government in Kosovo in regard to the EU accession process. According to our interviewee, at the moment this publication is produced 'not more than 30% of what had been planned is achieved in terms of the implementation of the SAA' (Ibid).

CIVIL SOCIETY DOCUMENTS FOSTERING COOPERATION BETWEEN THE KOSOVO GOVERNMENT AND CIVIL SOCIETY IN EU ACCESSION PROCESS

In regard to production of documents on behalf of civil society which aim to foster cooperation between the government and civil society in Kosovo, the Kosovo Civil Society Foundation plays a leading role. This foundation is fostering the public institutions – civil society dialogue for SAA. From the viewpoint of the KCSF, the implementation of the SAA is a comprehensive reform process that should substantially include civil society. The EU reform process would greatly benefit from civil society's involvement, either through increased demand for good governance, research and analysis, capacity building or better communication. Other means of involving CSOs in this process are creation of expert groups, advocacy groups, training centers and other fruitful initiatives (KCSF 2019)¹¹⁸. The KCSF also supports the engagement of civil society organizations in the implementation of the short-term priorities of the SAA and the measures listed in the ERA (Ibid). Lastly, the KCSF believes that through the support of civil society partners it will contribute directly to strengthening the role of the civil sector and will use the potential to contribute to the implementation of the SAA. Additionally, the Foundation aims to mobilize citizen's potential and contribute to the European Agenda by utilizing the added value that partner CSOs bring and benefit from synergy and complementarity with its actions (Ibid).

FUTURE MODELS FOR INCLUDING CIVIL SOCIETY IN THE EU ACCESSION PROCESS IN KOSOVO

In terms of future modes for cooperation which might be feasible, our interlocutors believe that firstly Kosovo must enter more advanced phases of European integration. Furthermore, in this current phase, a thorough deconstruction of the SAA can be performed, thus, CSOs can express their interest to monitor the process and provide recommendations based on their expertise. As the process further develops, contemporary examples from the cases of Montenegro and Serbia can also be followed, after being tailored to the specific context of Kosovo. It has proven effective to divide CSOs works by chapters, so some organizations can monitor Chapter 23, others Chapter 24 etc. (Int. No. 1, Kosovo).

ROUGH RIDE - TOWARDS A SUCCESSFUL ERA AND SAA IMPLEMENTATION!

Due to the fact that Kosovo is in the very initial stage of the European integration process, it is rather difficult to point towards positive examples of cooperation between civil society and the government. Still, one of our interlocutors pointed towards civil society's inclusion in providing comments regarding the implementation of the ERA (Int. No. 2, Kosovo). Laws closely related to the *acquis* are usually under closer scrutiny by NGOs. The organizations tend to share their recommendations with the Kosovar government and thus, contribute to the overall accession process. Another component is the monitoring of the implementation of the SAA and the ERA in order to put bigger pressure over the government through a formal mechanism in which each organisation interested in certain area will have access to the information. (Ibid).

Previous rows already touched upon the potential implementation of the new Law on the Freedom of Association which can seriously undermine the position and the role of civil society organizations in Kosovo. In terms of the European future of the country, this can only mean a step back in regards to implementation of the provisions from the SAA agreement. Another characteristic of Kosovo's political and party system, which cannot be noticed in the other countries under study, is the existence and the strong role of a political party openly and strongly opposing European integration. Levizja Vetvendosje (LV) is a big obstacle towards Kosovo's European integration, using all possible political and extra-political tools to block the European future of the state. Being a movement-party which had managed to establish itself in the political system (Vardari and Stefanovski 2018) the largest asset and potential of the LV is its own dense membership network, but also the fact that it has not ruined the expectations of the people, nor damaged its credibility, since the party has never been in power. (Ob-radović-Wochnik, J., & Wochnik, A. 2012, Noutcheva, G. 2009, Economides, S., & Ker-Lindsay, J. 2015).

¹¹⁸ Access to the website containing KCSF standpoints on the public institutions – civil society dialogue for the SAA

BOSNIA AND HERZEGOVINA

B&H applied for EU membership in February 2016 and is currently waiting for the Opinion of the European Commission that is expected to set out conditions for a candidate status and opening of membership negotiations. Although it is hard to know what these conditions might be, from experience of B&H it is not expected to be granted the candidate status during this year, despite that being the aim of the B&H three-member Presidency, elected in October 2018.

B&H has not yet fully implemented results of the October 2018 elections and that might have negative impact on the Opinion if governments are not formed until the time of its publishing, expected together with other country reports by the end of May 2019. However, when it comes to alignment with EU standards the two latest country reports, in 2016 and 2018, noted that B&H is overall at early stage, only little more advanced as compared with Kosovo.

MODELS OF COOPERATION BETWEEN CIVIL SOCIETY AND GOVERNMENT IN B&H

In 2007, an agreement of cooperation was signed between the Councils of Ministers of B&H and CSOs. Its main aim was to exert public, organized and articulated pressure of concerned BH CSOs on the Council of Ministers and other BH institutions in order to urgently undertake all necessary steps (BCSDN 2017, p. 27). Similar documents also exist on lower levels of government. On municipal level, for example, some forms of cooperation documents are signed with nearly 100 municipalities, cantons, the Brčko District etc. Still, these agreements exist only on paper and they are not implemented in practice (Int. No. 1, B&H).

In B&H there are several models through which civil society can be involved. E-consultations regarding legislation is one of them. Still, in practice it does not really work (Ibid). There are many laws passed using urgent procedures, and the e-consultation process is bypassed, and the voice of the citizens is not really heard. Additionally, this platform is rather difficult for use, even for proficient users of such tools¹¹⁹. The 2018 EU Commission report notes that public consultations were occasionally held (EC 2018, p. 5)¹²⁰

Numerous strategies and similar documents envisaging cooperation between different levels of government in B&H also exist. Those can be found on municipal, cantonal, federal and state level. Still, the ultimate level of implementation mainly depends on the level of government, and in most cases on the institution per se. It is usually an arbitrary decision of the institution whether it will include CSOs in the consultation process or not. This is the main problem (Int. No. 1, B&H). The conclusion one can draw from the interviews conducted is that there is an existing framework in place, but it is the implementation that truly lacks. It is currently a very good idea which has still not been properly and fully used and operationalized.

INFORMAL PRACTICES OF COOPERATION BETWEEN CIVIL SOCIETY AND GOVERNMENT IN B&H

Informal practices in BH society exist in numerous forms, and they mainly depend on the strategies and approaches of CSOs. Also, it depends in which fields the CSOs operate. Usually, organizations that are very active in a certain field will tend to have good informal relationship with ministries and other institutions which are crucial for their area of operation. Informal cooperation is much more frequent than the formally established one. One of our interlocutors shared her personal experience obtained through the daily work in one of the BH CSOs. She explained how the organization where she works needed many years to establish good working relationships with the multiple levels of government in B&H. The cooperation was initiated by the organization which offered training, expertise and data, acting as a resource center for certain institutions in B&H (Ibid). This is the manner in which usually institutions and CSOs cooperate informally in B&H. Taking into consideration that CSOs many times use data from state institutions in order to monitor their work and compare them to similar institutions in the region, one can say that these activities resemble a two-way channel of communication and cooperation.

MODELS OF COOPERATION BETWEEN CIVIL SOCIETY AND GOVERNMENT IN B&H IN TERMS OF THE EU ACCESSION PROCESS

Civil society's involvement in B&H's EU accession process has recently begun to increase, although more in an informal, rather than a formal manner. This is quite visible in the last two-three years. Although formally not so much is happening, civil society is constantly providing expertise, training and data, in order to provide wider assistance to institutions through multiple channels in order to assist the process (Ibid). This inclusion exists on almost all levels of government, but not equally. On the other hand, CSOs provide their assistance mostly in the specific areas where they work and where they possess more in-depth expertise. None of the organizations treat the entire Europeanization process. Still, this cooperation depends on the will of the institutions and its head, the governing parties and other structural factors. Some institutions had been rather open, while other not so much. Our interlocutor underlined that most of the institutions were open, although time was needed in order to gain mutual trust and create a channel for communication, removing prior barriers. The manner which leads to success is to approach them as someone who provides assistance, and not like someone that is here to attack them. The trend is generally positive.

119 Access to the e-consultations website <https://ekonsultacije.gov.ba/>

120 Access to the EC 2018 report on B&H <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf>

CIVIL SOCIETY DOCUMENTS FOSTERING COOPERATION BETWEEN THE B&H GOVERNMENT AND CIVIL SOCIETY IN TERMS OF B&H'S EU ACCESSION PROCESS

There are several existing documents which foster this type of cooperation. The idea is to develop better channels of communication and CSOs to operate more efficiently in networks. A positive example is the recent initiative to adopt the Code of Ethics and Good Governance in CSOs in B&H. The need to develop this kind of document stems from the negative perceptions of citizens and the general public about civil society in B&H, especially in regards to the NGO sector. The initiative launched by the CPCD encompasses a campaign that will focus on changing this negative image of civil society through promotion and implementation of some of the principles of work and core values of this sector, such as the principles of solidarity, transparency, independence, accountability, legality and professionalism. This campaign emphasizes the need to establish internal working rules and relations with societal actors coming from outside the NGO sector (BCSDN 2019)¹²¹.

FUTURE MODELS FOR INCLUDING CIVIL SOCIETY IN THE EU ACCESSION PROCESS IN B&H

Future inclusion of civil society in B&H's EU accession should be more formal. Civil society representatives should take part in working groups, in other bodies where formalized decision-making processes are taking place, and should be involved in legislation approximation. Our interlocutor mentioned the Montenegrin model of civil society participation in the body working on the reform of public administration in the country. These formal representatives from civil society can provide comments and suggestions and can influence the process from the inside. A similar approach would be highly beneficial for B&H.

NASCENT, PARTNERSHIP BASED, CONSULTATION PROCESS – ENHANCING TRANSPARENCY AND OPENNESS IN THE EU ACCESSION PROCESS

A positive example of CSOs and other non-state actors' contribution in the EU integration process of B&H can be observed in the answering of the European commission questionnaire for the preparation of the opinion on the application of B&H for membership of the EU. In order to increase the transparency and raise awareness of the overall EU integration process, the B&H authorities have invited CSOs to contribute with their views and opinions in this exercise. An eKonsultacije web portal was established for this purpose; and this process of CSO contribution was running in parallel with the answering of the questionnaire by the state institutions. Out of 29 civil organisation that registered on the web portal, 17 organisations submitted responses in regards to questions from 9 chapters including the rule of law chapter 23 'Judiciary and fundamental rights' and 24 'Justice, freedom and security' as well as in regards to political and economic criteria.¹²²

¹²¹ Access to the link explaining the initiative for the Code of Ethics and Good Governance <http://www.balkancsd.net/advocacy-campaign-for-a-code-of-ethics-and-good-governance-in-csos-in-bih/>

¹²² http://www.dei.gov.ba/dei/direkcija/sektor_strategija/Uputnik/odgovoriupitnik/default.aspx?id=19652&langTag=bs-BA

CONCLUSION AND RECOMMENDATIONS

The countries analysed in this paper are at different stages in the EU accession process. While Bosnia and Herzegovina and Kosovo are still potential candidate countries, Albania and North Macedonia are waiting to open accession negotiation with the EU in June 2019 according to the European path put forward on the June 2018 European Council meeting.

Regardless of their accession status, the challenges these countries are facing in terms of inclusion of civil society in the EU accession process are similar: 1) additional efforts are needed by the governments to establish legal framework and environment supportive of civil society and non-state actors involvement in various stages of the policy- and decision-making process; 2) promoting inclusive political processes related to the EU accession process by formalizing and standardizing the inclusion of civil society and non-state actors in the political arena. In the cases of Albania and North Macedonia, this translates to formalised inclusion of civil society in the government negotiation structures and in assisting the parliaments in assessing and monitoring the implementation of the EU acquis.

There are two sets of recommendations. The first one for Albania and Macedonia in anticipation of starting accession negotiation and another set of recommendations for B&H and Kosovo.

ALBANIA AND NORTH MACEDONIA

- Particular section in the Law on FOI should be devoted to the transparency of the documents that are part of the EU accession process. These amendments should force governments towards greater openness in the rather technical negotiation process while allowing access to civil society organisations and other non-state actors access to information and data. This will enable greater involvement from the non-state actors, two-way communication between the government and civil society, and increase of mutual trust which can positively contribute to the entire process.
- The Albanian government already adopted and published a decision on the establishment, organization and functioning of the state structure responsible for negotiating and concluding Albania's accession to the EU. This is a very positive example which needs to be followed by the government of North Macedonia respectively. In doing so, the government in Skopje needs to consult the civil society and other non-state actors in order to establish inclusive negotiation platform sustainable and resilient to the changes of political parties in government.
- The full potential of the established National Council for Civil Society in Albania and The Council for Cooperation between the Government and Civil Society should be exploited. The Councils could also serve as a support platform for the negotiations structures in terms of exchange of opinions, ideas and modalities of implementation of the EU acquis.
- National Parliaments through their EU committees and Councils need to be involved in monitoring and assessing the EU accession process. This oversight is especially important for the inclusion of opposition political parties. Furthermore, the Parliaments can play a unique role in promoting the EU agenda and bringing it closer to the citizens/constituencies
- The work of the Joint Consultative Committee between the EU and North Macedonia should resume, whereas the one between Albania and EU should be established. This is another venue in which the civil society can contribute and get involved in the EU accession process.

BOSNIA AND HERZEGOVINA AND KOSOVO

- The informal practices that already exist need to be formalised and structured accordingly to the specific country needs in order to decreased the manoeuvring space of governments/to diminishing the possibilities for arbitrary decision whether to include civil society and other non-state actors or not in the EU accession process.
- The Kosovo Online Platform for Public Consultation and B&H eKonsultacije platform need to be further exploited and integrated in the policy and decision-making processes.
- Establishing the functional thematic coalitions and CSO networks to monitor and assess the implementation of specific areas of the Stabilisation and Association agreement
- Based on the more advanced countries in the EU accession process, the countries should consider establishing National Councils for cooperation between the government and civil society, with specific focus on the EU accession negotiation process.

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APPENDIXES

CHAPTER 1

TABLE 1: PLAN AND IMPLEMENTATION OF LEGISLATIVE ACTIVITIES BY CHAPTERS AND INSTITUTIONS IN 2018 IN MONTENEGRO¹²³

	Institution	Regulation (Law/Bylaw)	R	NR
CHAPTER 23				
1.	Ministry of Culture	Law on Amendments to the Law on Public Broadcasting Services "Radio of Montenegro" and "Television of Montenegro"		
2.	Ministry of Culture	Law on Media		
3.	Ministry for Human and Minority Rights	Law on Registered Partnership ¹²⁴		
4.	Ministry of Justice	Law on Amendments to the Mediation Law		
5.	Ministry of Education	Law on Academic Integrity		
6.	Ministry of Labour and Social Welfare	Law on Volunteerism		
7.	Ministry of Labour and Social Welfare	Law on Professional Rehabilitation and Employment of Persons with Disabilities ¹²⁵		
8.	Ministry of Interior	Internal Affairs Law		
CHAPTER 24				
9.	Ministry of Justice	Law on Confirmation/Ratification of the Council of Europe Convention against Trafficking in Human Organs		
10.	Ministry of Justice	Law on Verification of Signatures and Manuscripts		
11.	Ministry of Justice	Law on Judicial Co-operation in Criminal Matters with EU Member States		
12.	Ministry of Justice	Law on Enforcement and Security Interest		
13.	Ministry of Justice	Law on Amendments to the Civil Procedure Law		
14.	Ministry of Sustainable Development and Tourism	Law on the ratification of the Protocol on the Implementation of the Vienna Convention and the Paris Convention		
15.	Ministry of Sustainable Development and Tourism	Law on Ratification of the International Convention On the Prevention of Nuclear Terrorism		
16.	Ministry of Interior	Internal Affairs Law		
17.	Ministry of Interior	Law on Amendments to the Law on Detective Activity		
18.	Ministry of Interior	Law on Amendments to the Border Control Law		
19.	Ministry of Foreign Affairs	Law on Amendments to the Law on International Restrictive Measures		

¹²³ Based on: European Integration Office, (2019), Report on the implementation of Montenegro's Accession Program to the European Union 2018 – 2020. Note: Report includes obligations for the ministries, it does not always mean that the parliamentary procedure is completed.

¹²⁴ Also within the Chapter 19

¹²⁵ Also within the Chapter 19

TABLE 2: REVIEW OF PUBLIC HEARINGS (SAMPLE)

	Law	Public Debate	Duration	Dates	Round Table
CHAPTER 23					
1.	Law on Registered Partnership ¹²⁶		42	14 May- 25 June 2018	3
2.	Law on Amendments to the Mediation Law		40	3 April – 14 May 2018	/
3.	Law on Academic Integrity		24	23 May – 15 June 2018	3
CHAPTER 24					
4.	Law on Judicial Co-operation in Criminal Matters with EU Member States		20	10 July – 30 July 2017	
5.	Law on Enforcement and Security Interest		40	27 April – 6 May 2018	/

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