

## **EXECUTIVE SUMMARY**

# **PUBLIC CONSULTATION AS AN EFFECTIVE TOOL FOR IMPROVING DECISION MAKING AND PUBLIC-PRIVATE DIALOGUE<sup>1</sup>**

**Tirana**

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<sup>1</sup> Notification and public consultation of draft acts comes at the center of the work of the IC Secretariat as part of the agenda approved by its members, where the topic of public notification and consultation was the most voted for 2022. Also, it reflects a concrete sensibility of representatives of the business community (Association of Producers, Tirana Chamber of Commerce, and Industry) raised at the meeting of January 2022 IC meeting. The analysis has benefited from the input of several stakeholders and official published reports.

Public consultation is very important in the process of drafting public policies as it enables the identification of real problems or data, integrates transparency in the stages of their preparation and gives the opportunity to the public to contribute to the implementation of reforms. To this end, public-private dialogue executed through platforms of consultations is of pivotal importance to bring the parties close to each other through systemic, transparent, and inclusive instruments of interaction.

With the aim to structure such interaction, Albania endorsed in 2014 the legal framework for notification and public consultation of draft acts<sup>2</sup>. This framework constitutes the legal and formal standards to be met by the stakeholders in the pre-phases of the legislative process. It provides for an instrument such as the electronic register (fully operational only from 2018), where the interaction of groups of interests from one side and institutions on the other side should be visible through comments, suggestions and recommendations. While it does not exclude the traditional forms of consultations such as meetings and/or hearings which in many cases have been successful in shaping the applicable legislation, it *makes imperative the notification and publication of draft acts*<sup>3</sup> in the *register as the minimum requirement of public consultation*.

*But consultations often remain artificial exercises*<sup>4</sup>, despite improvements as evidenced by national and international reports (*mainly related to the adoption of the legal framework*). Business contribution to the consultation process remains quite challenging due to several issues, including getting institutional feedback and timely notification which influence building trust in the process. During a recent IC analysis<sup>5</sup>, business associations confirm being aware of the existence of the public consultation framework (92%), but still don't know about the public registry (73%), and only 12% confirm receiving an institutional response to their contribution.

More specifically, this analysis aims to evidence key challenges and bottlenecks of the public consultation process from the perspective of the parties of consultation: the business community (as a large group of interest) and institutions. The ultimate objective is the elaboration of priority interventions that support trust-building in public consultation and speed up the improvement of the process and its instruments<sup>6</sup> by:

- (a) improving the process of business-institution consultation in coherence with the objective of the legislation;
- (b) strengthen the private and public sector awareness and contribution to public policies in the view also of the upcoming EU accession and integration processes. The EU relevant chapters require close cooperation and substantial interaction between the business and institutions.

## A. FINDINGS

The analysis revealed that:

### § Pillar 1

**The quality of the public-private dialogue and its impact on the decision-making process remain limited despite recent improvements in process monitoring and evaluation indicators<sup>7</sup>. This is mainly due to the shortcomings in meeting legal and institutional obligations.** Not all draft acts, subject to public consultation procedures in the electronic register have been notified or published (e.g., fiscal package 2022). Annual Public Consultation Plans are not systematically published according to the approved Instruction. There are cases, that Consultative Explanatory Note (Consultation Document) and the Regulatory Impact Assessment (RIA) are published in the register after the completion of the public consultation procedures. Although there is an increased number of Individual Public Consultation Reports, they often lack comprehensive answers/arguments on acceptance or rejection of recommendations given by the group of interests. Municipalities do not use electronic register as a standard for notification and public consultation.

<sup>2</sup> Law 146/2014 "On Notification and Public Consultation" and its bylaws.

<sup>3</sup> Restrictions on draft acts to be notified apply.

<sup>4</sup> EU Progress Report for Albania-2021

<sup>5</sup> Referring to the data of the questionnaires

<sup>6</sup> OECD best practices on public consultation and implemented models of consultation platform in other countries have been taken into reference.

<sup>7</sup> Performance Reports on Consultation Process by the Center of Governance establishes quantitative and qualitative indicators. Annual Report for 2021 has not been published, while references are made to the Semi-Annual Report-July 2021.

Finally, according to our direct consultation with business associations, the consultation procedures of the Albanian Parliament are more consolidated and transparent than those followed by the Ministries/Agencies.

## § Pillar 2

**The process of notification and public consultation has not substantially benefited from the electronic register as one of the structured public-private dialogue instruments. Margins for usage optimization of the electronic register as an instrument and public consultation as a process remain high. Although there is awareness by the parties on the legal framework, the business community's contribution to the electronic register remains low, while the provision of comments and technical expertise is still mainly provided through mail or direct meetings.** Appropriate identification of relevant business representatives and their timely notification requires special institutional attention considering the large number of business associations and chambers of commerce. Public institutions are concerned that the quality of private sector observations is often conditioned by limited expertise and level of representation to protect the business community's interests as a whole. In the electronic register was not identified any proposal or initiative from the business community to public bodies to start the procedure of drafting and approving legal acts, according to the annual plan of consultation, while several concrete proposals and reforms are made in consultative meetings, including those of the IC.

## § Pillar 3

**Lack of standardized promotion of notification and public consultation procedure limits trust in transparent interaction between the parties.** Although there are some positive practices of public notification and consultations, there is a sustainable perception from the business community that their feedback is not analyzed nor transparently published. There is a general perception of the business association's community on the fact that consultation practices, in most cases, remain formal. The practices of institutions are driven by formal compliance with the legislation rather than by the primary intention to obtain, assess and adopt comments and suggestions of groups of interest. The process of public consultation through the electronic register is mainly viewed as an opportunity for the administration to avoid direct confrontation with stakeholders.

## B. RECOMMENDATIONS

The following recommendations aim to address the findings through a consolidated approach and crosscutting recommendations based on three main pillars. They primarily require the following premises:

- (a) Increasing the public bodies' will, commitment, and public administration's awareness of the utmost importance of the transparent public consultation process while preparing draft acts. Dedicating to this process, institutional capacities and capabilities to empower the coordinators' role on notification and public consultation.
- (b) Although progress is being made, associations/chambers of commerce need to increase their capacities and capabilities and work for a higher standard of interaction in the country's public policy consultation processes. Chambers of commerce/business associations and interest groups should improve mechanisms of positive pressure towards institutions for more accountability as related to the public consultation procedures and their indicators of performance. Eventually, margins for usage optimization of the electronic register as an instrument and public consultation as a process, remain high.

## § Pillar 1

**Implementation of the obligations of the parties as currently provided in the public consultation legislation.** RIA is of common benefit to be subject to public consultation from the early stages of drafting the draft act and part of the package of documents published in the electronic register. Annual Public Consultation Plans and the Public Consultation Reports should be timely published in the electronic register and on the official websites of the institutions. Clear timelines as already provided in the *Instruction for Public Consultation Process* should be respected, while for a more sustainable approach such timelines might be foreseen in the law. Institutionalization of the process of identification of consultation actors according to the provisions

of the Instruction on Public Consultation Process and the orientation matrix, will help increase the pool of expertise and actors included in the consultation phase.

## § Pillar 2

**Potential legal amendments as instruments for the sustainable development of consultation in order to increase the trust of the parties involved in the process and its instrument.** Extension of the scope of public consultation also for CoM decisions and Ministers' instructions with impact to businesses activity. Structuring of an efficient and clear mechanism for administrative measures in case of non-implementation of the provision's legal framework, as enforcing instrument to increase the awareness of the public body and its administration.

## § Pillar 3

**Optimizing the functions of the electronic register as one of the instruments of open government in terms of their use as currently provided and possible improvements in order to increase access, transparency and awareness.** Enabling interactivity and automatic notifications by email on the status of the public consultation procedure (open/closed/postponed, etc.). Enhancing public accountability, by enabling the register and allowing interested parties to generate quantitative monitoring reports of notification and public consultation procedures. Promoting the electronic register as the minimum legal standard of notification and public consultation as well as raising the awareness of its users (institutions and businesses) making transparent the suggestions, comments, and responses on the public consultation of the draft acts.

