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Framework for the Enhancement of Application of Minimum Standards for Public Consultation 2021-2025

*Office of Good Governance within the
Office of the Prime Minister*

September 2021

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LIST OF ABBREVIATIONS:

CSO	Civil Society Organization
ENER	Unique National Electronic Register of Regulations of the Republic Of North Macedonia
EU	European Union
KIPA	Kosovo Institute for Public Administration
MLGA	Ministry of Local Government Administration
MP	Member of Parliament
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
OGG	Office of Good Governance within the Office of the Prime Minister;
OPM	Office of the Prime Minister
OSCE	Organization for Security and Co-operation in Europe
SDG	Sustainable Development Goal
SIGMA	Support for Improvement in Governance and Management (joint initiative of the OECD and the EU)
ToT	Training of Trainers
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities

BACKGROUND

Transparency is a key factor that affects the increase of accountability of the public administration and, as a result, increases its performance. Transparency ensures that governments are more equitable and take account of broad societal interests in a proactive manner.

Public consultations contribute significantly to the transparency of the government and its decision-making processes. Effectively applying public consultations in practice ensures that policies and legislation are designed in an inclusive manner thanks to the possibility provided to external stakeholders to actively participate and contribute. Public consultations broaden the scope of issues that are taken into account when developing Government policies, thus improving the quality of those policies significantly. Moreover, policies and legislation that are publicly consulted can be expected to be implemented more efficiently.

Public consultations, European Integration and Sustainable Development Goals

Effective and inclusive decision-making is a vital element of the European Integration process. Developing and realizing reforms, transposing and implementing the EU Acquis and ensuring that citizens and businesses know why and when changes will occur are essential components of the process that eventually leads to joining the European Union.

This is highlighted by the fact that the European Commission Kosovo Reports¹ regularly stress the achievements and challenges that are still observed in relation to public consultations.

In addition, OECD/SIGMA regularly assesses European integration processes based on its 'Principles of Public Administration'². Principle 11 in the area 'Policy Development and Coordination' assesses the quality of the regulatory framework for public consultations as well as the application of this framework in practice.

SDG 16³ refers to promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. This goal calls – among other – for a

¹ See at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

² See at: <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>

³ See at: <https://sdgs.un.org/goals/goal16>

systematic use of public consultations in the policy development and law-making processes of government bodies.

Progress with public consultations until 2020

In 2016, the Kosovo Government adopted the Regulation No.05/2016 “on the minimum standards for the public consultations process”. This regulation entered into force on 1 January 2017. It stipulates issues such as the minimum time that needs to be provided to stakeholders to enable them to provide their replies to online consultations, sets out rules for organizing meetings, stipulates reporting requirements and regulates the manner in which reporting on the outcomes of public consultations must be conducted.

Figure 1: The role of the Office for Good Governance

Related to the implementation of Regulation No.05/2016 and to improving the public consultation practice in Kosovo, the Office for Good Governance within the Office of the Prime Minister is responsible for:

- Creating, maintaining and improving the online public consultations platform;
- Reporting on the implementation of the regulation on the minimum standards for public consultation, including the annual report on public consultations;
- Coordinating the network of government-level Public Consultation Coordinators;
- Cooperating with the Ministry of Local Government Administration (MLGA) regarding the implementation of public consultations on the local level and coordination of the network of Public Consultation Coordinators on the local level;
- Coordinating with the Kosovo Institute for Public Administration (KIPA) on trainings and capacity development;
- Liaising with civil society and NGOs regarding the implementation of the minimum standards, in particular through the Council for Government's Cooperation with the Civil Society;
- Coordinating and developing activities and policies aimed at improving the application of standards for public consultations;
- Contributing to the development of capacities for civil society in order to actively participate in the public consultation process;

In February 2017, the Government launched the web platform for online public consultations, <http://konsultimet.rks-gov.net/>, that is used by line ministries to publish draft documents subject to consultations. The platform enables

stakeholders and the public to provide comments and provide their replies to topics that are considered for adoption.

In its assessment of the public consultations process in 2017, OECD/SIGMA attributed the maximum score (10 out of 10 points) for the sub-indicator related to the adequacy of the regulatory framework for an effective public consultations process. This highlights that the legal framework covers all relevant aspects and internationally recognized best practices for regulating public consultations.

The European Commission 2019 Kosovo Report⁴ recognizes that public consultations by the government have been improving, including through an increased use of online public consultation. The report confirms that public consultations are organized more regularly. It is recognized that this is due to the adherence to and enforcement of the minimum standards for public consultations. Additionally, in the European Commission 2020 Kosovo Report⁵ it is emphasized that public consultations are organized regularly, but the minimum standards for such consultations are not being followed consistently.

The first annual report on the government's public consultations was produced in May 2018 and has been published annually ever since.

In 2020, the online consultations platform was expanded. Apart from being used by line ministries to consult the public on draft documents, municipalities are now also embedded into the platform. They now have the possibility to consult the public in the same manner as the government-level institutions have been able to do for some years.

In 2020, the Office of Good Governance and the Kosovo Institute for Public Administration completed the Training-of-Trainers programme for public consultations. Ten trainers have been certified and the certified trainers are expected to deliver trainings on public consultations in 2021, thus contributing to further capacity development.

Consultation performance 2017-2020

The experience with the online consultations platform has been very positive regarding the publication of documents online. In total eight categories of documents are identified and monitored. These are presented in the table below with the annual number of adopted relevant documents by the Government

⁴ See at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>.

⁵ See at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf.

shown together with the percentage of documents that have been published on the online consultation platform.

The statistics show a continuously high submission rate of documents for public consultations through the online platform. Moreover, the figures show that in 2020, despite the effects of the measures taken to curtail the spread of COVID-19, the consultation website was still used effectively to engage with the wider public at a time when it was not possible to meet in face-to-face settings.

Figure 2: Annual data on use of the online public consultation platform

	2017 ⁶	2018 ⁷	2019 ⁸	2020 ⁹
Total number of documents adopted	245	237	274	184
%-e published online	90%	96%	100%	98%
Concept Documents	25	27	15	15
Laws	40	43	31	44
Action Plans	4	8	7	5
Regulations	46	66	77	42
Administrative Instructions	92	63	129	69
Strategies	9	18	6	3
Programs	0	0	5	3
Others	5	3	8	0

Challenges with public consultations

Notwithstanding the progress made in the field of public consultations, there are still important challenges that need to be addressed in order to reap the full benefits that public consultations can offer. Full implementation of the minimum standards is not yet guaranteed and requires substantial additional commitment and resources.

⁶ See <https://konsultimet.rks-gov.net/Storage/Docs/Doc-5c7905ab86aa1.pdf>

⁷ See <https://konsultimet.rks-gov.net/Storage/Docs/Doc-5d1f2441afb2a.pdf>

⁸ See <https://konsultimet.rks-gov.net/Storage/Docs/Doc-5ea09893862a6.pdf>

⁹ See <https://konsultimet.rks-gov.net/Storage/Docs/Doc-606c64aa41753.pdf>

Moreover, while recognizing the progress made in relation to public consultations, the European Commission Kosovo Reports for 2019¹⁰ and 2020¹¹ also highlight that the response rate from civil society and residents, to public consultations, through the online consultations platform, remains relatively low. The government should thus increase its efforts to promote the use of the platform to overcome the observed lack of substantive debate on draft legislation.

The EU analysis also states that some public bodies still have limited capacities to implement their legal consultation obligations. Moreover, institutions should step up their efforts to provide more consistent and meaningful feedback to input received. Last, but not least, the types of consultation tools used should ensure broad stakeholder consultation, meaning that different methods of consultation should be applied in order to reach a wider audience and specific target groups in effective ways.

With the recent incorporation of the local level into the online platform for public consultations, the EU 2019 report warns that the quality of public consultations at local level remains a concern still¹². However, this is not surprising since the practice is very new.

Additional areas for improvement are identified in this report with recommendations on how to further improve public consultations in Kosovo. For example, across the board at the Government and local level, the capacities for public consultations of civil servants need to be improved further; civil society needs to be strengthened so that it is feasible to effectively participate in the public consultations process at the Government and local level in a systematic manner; in order to make it more attractive and easier to participate in online consultations. The online consultations platform needs to be substantially improved and updated. While the legal framework generally covers all internationally recognized relevant features, it needs to be made more detailed in order for it to fully fit the Government and local context for conducting individual consultations and reporting on public consultations.

¹⁰ "Public consultations are organized more regularly, thanks to the minimum standards for such consultations. In 2018, more than 50% of all primary policy documents and draft laws were published for consultation on the web portal; this represents a substantial increase since 2017. As the response rate from civil society and the public remains relatively low, the government is making efforts to promote the use of the web-portal" <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>.

¹¹ "Public consultations are organized regularly, but the minimum standards for such consultations are not being followed consistently. In 2019, more than 82% of all primary policy documents and draft laws were published for consultation on the web portal. As the response rate from civil society and the public remains relatively low, the government is making efforts to promote the use of the web-portal." https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

¹² "Efforts to improve the capacity and service delivery of local government have continued. However, the quality of public consultation at local level remains a concern." <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

Recommendations for improving public consultations

In order to establish a strong foundation for improving public consultations for the coming years, the Office for Good Governance has implemented a series of workshops with the aim to collect direct feedback from relevant stakeholders. It also conducted additional analysis and gathered expert input to identify areas for improving public consultations.

The key areas where improvements in public consultations are needed are the following:

- Sustainability of political support: broadening the appeal of public consultations at the Government and local level;
- Improving the functionality of the online consultations platform;
- Visibility of the online consultations platform;
- Legal and implementation framework for public consultations;
- Investments in capacity development;

These five areas are elaborated in more detail below in this report, starting with the presentation of the organization of workshops, through which a substantial number of ideas and suggestions, to develop the recommendations, was brought together. Each of the five key areas is split into logical components, under which the concrete recommendations are formulated.

IDENTIFYING RECOMMENDATIONS THROUGH TARGETED CONSULTATION WORKSHOPS

Through a series of three workshops, the OGG engaged the coordinators for public consultations at the line ministries at the Government level and civil society representatives, active at the central and local level.

The findings from the workshops are presented in the text below.

The findings show that important steps forward have been made in the past years. Kosovo has developed the regulation on the minimum standards for public consultation; established the online consultation platform; implemented a functioning network of public consultation coordinators at the Government level; completed the ToT on public consultations; started the training programme on public consultations; and has started implementing public consultations at the local level as well through the MLGA regulation on public consultation and integration of municipalities into the public consultation platform.

The online consultations platform is regularly used by the administration. The COVID-19 pandemic and the change of two governments in 2020 showed that the public consultations network at the Government level, managed by the OGG, is generally well-embedded in the Kosovo administration.

At the same time, all workshop participants acknowledged that additional work is needed to improve the current situation. While the online consultations platform is an essential element in the consultations framework, it cannot yet be considered to be an effective and functional bridge between the administration on one side and the wider public, civil society and other interest groups on the other side.

The practice of public consultations is strongly skewed to the use of the consultation's platform and diminishes the use of other consultation techniques and methodologies, in particular during the early stages of decision-making. New and improved IT functionalities of the platform can be considered. Capacity development on the Government and local level needs to be continued. The visibility of the platform could be further improved and the regulation on the minimum standards for public consultations could be revised to initiate the next stage of public consultation development in Kosovo.

The identified possibilities, shortcomings and challenges together mean that the actual added value of the consultations process is not yet fully guaranteed. The proposals presented in this report derive from the workshops and insights of the expert involved in this process of information gathering, issue identification and recommendation development. The proposals are expected to contribute to the development of an improved public consultations approach. They provide the OGG with the general framework to improve the legal basis, practice, promotion and technical application of public consultations in Kosovo.

SUSTAINABILITY OF POLITICAL SUPPORT: BROADENING THE APPEAL OF PUBLIC CONSULTATIONS ON NATIONAL AND LOCAL LEVEL

The sustainability of political support on Government as well as local level, to implement effective and useful consultations is key to addressing many of the challenges related to the current situation.

Ultimately, political decision-makers are the final link to the chain of public consultations process. This includes the Prime Minister, Deputy Prime Ministers,

government ministers, deputy ministers, mayors, the President of the Assembly, MPs, chairpersons of municipal assemblies, members of municipal assemblies, their political support staff and political parties in general.

Together, these people form a broad constituency that needs to decide on the manner in which public consultations can be improved (including practical aspects such as budget and staff allocation for implementing the consultation requirements). Moreover, this same constituency is the end-beneficiary of the consultation process since the engagement of stakeholders in the decision-making process contributes to the quality of political decisions on all levels.

It is of vital importance to keep in mind that this constituency changes on a regular basis due to elections and the natural change in composition of assemblies during their mandate. This means that a one-off approach to presenting public consultations can be expected to have a fading impact over time.

Public consultations should be fully endorsed by the political decision-makers. They should be kept aware of the benefits of the process and be involved in key consultation moments. Through their own networks, media connections and social media presence they are able to play a vital role in promoting the consultations framework and, even more importantly, individual consultations that are being launched. Such a commitment to public consultations can be expected to have a positive impact on the participation rates of the wider public and civil society.

Recommendation 1: *The OGG should organize, in 2021, a central-level conference with top-level political involvement that covers public consultations extensively. This conference could also incorporate other good governance related topics. The focus of such a conference should be on the added value of the consultation process for political decision-making.*

Recommendation 2: *After the conference in 2021, the OGG should assess how to ensure a continuous engagement at the political level. This could be by continuing the conference on public consultations/good governance on a bi-annual schedule while organizing dedicated events in the intermediate year.*

IMPROVING THE FUNCTIONALITY OF THE ONLINE CONSULTATIONS PLATFORM

The online consultation platform is operational and actively used. The workshops, however, highlighted that the functionalities of the website could be further improved to make use of new but already available technological modalities to make it easier for stakeholders to participate in individual consultations and for the administration to report on them.

Online public meetings: new platform feature

The COVID-19 pandemic has shown the importance of being able to hold online meetings with stakeholders. In the previous years, the organisation of public meetings was conducted in person. This meant that meeting participants had to travel to the location where the meeting was held.

While it is clear that, depending on the situation, the ministries can organise meetings, either in person or online, this aspect of the public consultations can be further regulated in more specifics. Regardless of the fact that the impact of the COVID-19 pandemic was substantially negative in many ways, certain lessons, valuable for this report, can be learned from it.

In terms of organizing the formal public meetings as required by the minimum standards, these meetings and others (e.g. for working groups) could be organized more often in an online or a combined setting. Such a practice would enable more people to follow and participate in these meetings. The technical requirements are relatively easy to implement with currently available online meeting services.

The meetings that are organized, in particular the formal public meetings, should be announced on the consultations platform together with the option to register for these meetings. Where necessary, the participation in the physical space could be limited due to room size, but a fully online or hybrid meeting would see no restrictions on the number of meeting participants (depending on the meeting platform used). An additional benefit is that online and hybrid meetings can be recorded to serve as evidence for the conducted consultations and the input provided by stakeholders.

Recommendation 3: *The OGG should consider integrating the use of online or combined meetings as a standard feature in the consultations process to foster participation by lowering participation thresholds. The formal public meetings at the start of the decision-making process could be organized as a combined meeting by default.*

Recommendation 4: *The OGG should consider adjusting the online consultations platform to enable people to register for meetings and receive automatically the information for joining the meeting online. This would make it easier to participate and for ministries to manage the meeting organization.*

Access for people with disabilities and adhering to the EU Web Accessibility Directive

The online consultation platform is currently document and text based. This makes it harder for certain groups to access the information presented on the platform. It also means that the website is not in line with the EU Web Accessibility Directive.

The EU Web Accessibility Directive

Web accessibility is not only about technical standards, web architecture and design. It is an issue of political will and of moral obligation, enshrined in the United Nations [Convention on the Rights of Persons with Disabilities](#) (UNCRPD). Article 9 of the Convention, to which the EU and its Member States are party, requires that appropriate measures are taken to ensure access for persons with disabilities, on equal basis with others, to information and communication technologies, including the Internet.

The Web Accessibility Directive:

- covers websites and apps of public sector bodies, with a limited number of exceptions (e.g. broadcasters, live streaming);
- refers to specific standards to make websites and mobile apps more accessible. Such standards require for instance that there should be a text description for images, or that users are able to interact with a website without using a mouse, which can be difficult for some people with disabilities;

- requires the publication of an accessibility statement for each website and mobile app, describing the level of accessibility and indicating any content that is not accessible;
- calls for a feedback mechanism which the users can use to flag accessibility problems or to ask for the information contained in a non-accessible content.

Source: <https://ec.europa.eu/digital-single-market/en/web-accessibility>

The features that improve accessibility for persons with disabilities should be integrated into the current website as soon as possible in order to address their needs.

When the online consultations platform is fundamentally updated, the platform should be fully compliant with standards set in the EU Web Accessibility Directive and integrate various IT solutions that enable persons with disabilities to fully participate in the consultation process.

Recommendation 5: *The OGG should integrate features into the online consultations platform in 2021 that enhance accessibility for persons with disabilities.*

Recommendation 6: *When revising the underlying architecture of the online consultation platform, the OGG should ensure full application of the EU Web Accessibility Directive and integrate state-of-the-art features that enable full accessibility for persons with disabilities.*

User-friendly submission of comments

The submission of comments to public consultations organized through the online platform are regarded as cumbersome. The way in which comments need to be provided is not user-friendly. Participants in public consultations need to download the relevant documents, place the comments in these documents and then upload them again.

While professionals can be expected to participate effectively as part of their work, the current set-up puts a considerable burden on individuals that would want to provide their feedback. This burden is not just related to time, but also the implicit

requirement to have a laptop-computer and software licenses for specific programmes.

Different platforms and software that make e-participation much easier, such as 'Citizens OS (see box below) already exist. A consultations platform that is fully automated and in which the comments and participation data are collected automatically would much more efficient and easy to use. Such a system would also be more transparent and tangible than the online consultations platform that is currently in place.

Citizens OS

The vision of 'Citizens OS' is to empower as many people as possible to participate in respectful, meaningful discussions. The aim is to facilitate collective decisions on issues that directly affect people's wellbeing.

It is an open-source civic tech non-profit, based in Tallinn, Estonia and it went live in September, 2015.

'Citizens OS' characteristics are:

- 100% free to use, always. No ads, no charges.
- A ready-made platform.
- Already in 13 languages and easy to translate.
- Pro and con discussions for balanced debates.
- Private or public discussions.
- Private groups for multiple discussions with the same people.
- Customizable & anonymous voting with deadlines.
- Advanced voting features such as mini-votes and delegation.
- e-ID compatible – for logins, votes & digital signatures.

Source: <https://citizenos.com>

It is clear that there are examples of best practices based on which the improvement of the online consultation platform in Kosovo could be tailored. These should be gathered and analyzed in order to assess what can be implemented in Kosovo and its public consultations platform.

Recommendation 7: *The OGG should assess the latest possibilities for simplifying residents' engagement and see which features could be implemented through the online consultations platform.*

Recommendation 8: *The OGG should assess initiatives such as 'Citizens OS' and engage directly with the key experts from such initiatives through dedicated workshops and visits.*

Recommendation 9: *The OGG should assess the quality of public consultation platforms in the Western Balkans region and assess what best practices could be applied in Kosovo. The organization of exchanges should be considered in this context.*

App-based consultation

With the wide-spread use of mobile phones, consultations through a website should be complemented with an application that can be easily used on smartphones.

Recommendation 10: *When redesigning the online consultation platform, the OGG should assess the possibility to develop an app-version of the website that enables easier participation through smartphones.*

Article-by-article response

A practical feature that should be considered is to upload the legislative proposals in a different format that enables participants in public consultations to react to individual articles instead of to the whole document and then explain to which element, article of the document, they are reacting. This approach, apart from draft laws and draft sub-legal acts, documents which are divided in articles, can also be applied for strategies and concept documents by logically segmenting the text.

Consultation participants should be able to provide comments directly without having to download documents.

The prerequisite is that the platform provides the means to the administration to deliver consultation files in formats that enable article-by-article responses.

This approach would also enable consultation participants to only comment on a few elements that they deem relevant. This could be supportive of participation levels since the system itself would provide the opportunity for shorter and straight to the point comments as well.

Recommendation 11: The OGG should assess the possibility to enable consultation participants to provide article-by-article comments. This would make participation easier and simplify reporting for the administration.

Real-time response

Having comments provided to individual articles and segments of documents would enable the administration to provide feedback during the consultation process. Officials would also have the possibility to request additional information and/or clarifications.

Technically, such a feature would be straightforward to implement. It would, however, require a different set-up to the consultation process and require the administration to follow an online consultation process proactively. Receiving a fast response (with an update that such a response was provided by the administration), can be expected to boost participation levels since consultation participants will see that their input is taken forward in a transparent and serious manner.

Recommendation 12: The OGG should establish the requirement that administrations provide immediate replies/feedback, when possible, while the public consultation process is ongoing on the online platform, when the article-by-article response possibility is introduced.

Working groups published on the online consultations platform

The administration works with working groups for the development of laws, sub-legal acts, strategies and concept documents. Generally, a Secretary General of a ministry signs a decision establishing these working groups.

CSOs can be invited to participate as active members in these working groups. However, the current system of organization and functioning of working groups is not transparent. Moreover, many CSOs feel that they are not always invited to participate in working groups that are highly relevant for them since the topics discussed by these working groups are directly linked to the issues these CSOs focus on.

The online consultation platform could be used to publish all decisions on establishing the working groups. This should be done in an easily searchable format, not just as scans or PDFs.

Interested organizations are then able to assess whether a working group could be relevant for them and could indicate this to the responsible ministry. The responsible ministry, in turn, can then assess whether it would be useful to expand the membership of a working group or whether the organization that showed interest could be involved in more targeted stakeholder consultation events.

In order to maintain the system of working groups effective, there should be a deadline of two weeks within which organizations can indicate that they assessed the topic covered by the relevant working group and that they would like to participate as active members. The decisions on the working groups should remain published since stakeholders should at any moment in time be able to indicate that they would like to engage with a working group by providing a presentation, participate in a targeted consultation event, submit relevant information to this group or participate in any other manner in the decision-making process.

Recommendation 13: *The OGG should consider the obligation for line ministries to publish decisions on established working groups responsible for the development of laws, sub-legal acts, strategies, concept documents etc., so that stakeholders should be able to provide within two weeks a reasoned proposal for why they consider it relevant to be invited as active member of such a working group. Stakeholders should be able, at any given moment, to indicate that they would like to engage with the members of the working group to make themselves heard.*

Reporting on Public Consultations

Line ministries need to report a significant number of details on public consultations during the year. They need to report on individual consultations as well as their annual consultation activities.

The data that now needs to be generated is cumbersome to collect since it comes from different reports. There is no automated reporting possible through the online consultation platform.

Moreover, two reports need to be developed: one for OPM and one for OGG. This could possibly be simplified so that just one report is made.

Recommendation 14: *The OGG should reassess the reporting requirements and define what reports and what data need to be provided by the line ministries.*

Recommendation 15: *When redesigning the online consultations platform, the OGG should ensure that the reporting is conducted as much as possible in an automated version. This allows the administration to focus more on the content of the public consultations.*

Integration of all steps of legislative drafting and government decision-making

The public consultations process is an important segment of the decision-making process for legal and policy proposals. Currently, the administration needs to work with a cumbersome system in which various versions of the documents are shared by email. There is no overall digital platform that supports decision-making as such.

The OGG should, together with other relevant actors, assess the possibilities to develop the IT system for managing the decision-making process of the government. The online consultations platform should be an integral part of the design of such a system.

North Macedonia: ENER

The Government of North Macedonia developed the ENER platform that serves as the interface between the administration and the wider public. A substantial amount of information is published on this platform and the obligation to publicly consult is a requirement that has been built into the digital infrastructure for the decision-making process.

Source: <https://ener.gov.mk/Default.aspx>

European Commission: Decide

The European Commission has invested significant time and resources in the digitalisation of its decision-making process through the development of Decide. All decision-making steps are integrated into this digital platform, including the translation of relevant documents. This makes it much easier to manage the decision-making process.

Source: https://ec.europa.eu/info/sites/info/files/strategic-plan-2016-2020-dg-sg_april2016_en.pdf

Recommendation 16: *The OGG should - in cooperation with the Legal Office, Strategic Planning Office, Government Supporting Secretariat, the Office of the Language Commissioner and other relevant organizations, assess the possibility to develop a digital platform that integrates all decision-making requirements. The IT system could integrate preconditions, e.g. that the adoption process cannot be started unless the minimum obligatory consultation activities have been conducted. The online consultations platform should be a full element in such an IT system.*

IT access for coordinators for public consultations

In 2020, there were issues in the publication of documents in the public consultation platform by coordinators

It is very important for the coordinators to have access to the platform, both from office and from home.

Recommendation 17: *The OGG should foster the development of a solution so that all coordinators for public consultation in the line ministries have full access to the online consultations platform from their workplaces.*

Recommendation 18: *The OGG should check whether coordinators for public consultations on the local level always have access to the online consultations platform to avoid problems seen at the Government level.*

VISIBILITY OF THE ONLINE CONSULTATIONS PLATFORM

While the online consultation platform has been launched and is operational, it is not as widely known as should be in order to boost participation in public consultations and increase the number of responses that are received.

The issue about the low level of participation and the low number of responses needs to be addressed in two ways.

First, the improvements to the online consultations platform, as presented above, can be expected to facilitate participation in the consultation process.

Second, promotion of the online consultation platform and individual consultations needs to be stepped up so that more people will be aware of the possibilities they have to contribute to public consultations and participate in decision-making processes.

Establishing the online consultation platform as the single contribution channel for stakeholders

A substantial number of stakeholders still prefer to submit their comments directly via email instead of submitting their suggestions formally via the consultation platform. This needs to change in order to show the added value of the consultation process through the online platform, as the submissions themselves were triggered through the publication of draft proposals on the online consultations platform.

Two streams of activity in this regard can be considered.

First, the OGG organizes meetings with line ministries and civil society to address the submission of contributions outside the formal consultation channels. Such meetings could also be held with international organizations.

Secondly, the OGG could foresee a change in the regulation on the minimum standards for public consultation so that all submissions that are received outside the formal consultation channels are still taken up in the reports on the individual consultations and are also published online.

Recommendation 19: *The OGG should organize meetings at the Government level with line ministries and CSOs to encourage the use of the online consultations platform when submitting comments to draft proposals (instead of using non-formal channels).*

Recommendation 20: *The OGG should organize meetings on the local level with line ministries and CSOs to encourage the use of the online consultations platform when submitting comments to draft proposals (instead of using non-formal channels).*

Recommendation 21: *The OGG should consider a change in the regulation covering public consultations and oblige that informal submissions of comments are still reflected transparently in the reports on consultations.*

Promotion of the online consultation platform

Generally, the impression is that, so far, the outreach to the public and the dissemination of information to CSOs regarding the existence of the online consultations platform and on how to participate in consultations has been insufficient.

With the incorporation of the local level into the online consultations platform, all government decision-making processes are formally expected to proceed through the platform. This makes it more relevant to consider wider outreach

campaigns to show the possibilities that the online consultations platform provides.

The OGG should assess the possibilities to intensify outreach activities regarding the promotion of the online consultations platform. It is important to organise such outreach activities over an extended period of time and repeat certain activities on an annual basis.

This outreach should also focus on specific groups such as the media, academics and youth. These target groups should be identified in cooperation with civil society.

Recommendation 22: *The OGG should develop a multiannual outreach and communication plan to disseminate information about the online consultations platform.*

Recommendation 23: *The OGG should consider a general TV and radio campaign to encourage citizens and businesses to participate in public consultations on the online consultations platform.*

Promotion of individual consultations

Public consultations are often published on the consultations platform without any prior announcement. Such a practice means that stakeholders could remain unaware that the public consultations for a certain piece of draft legislation have been initiated, resulting in lesser time to prepare for and engage in the consultations.

When consultations are published on the online consultations platform, they are not always announced in the various (social) media channels that the administration and decision-makers use.

The local media could be an important interlocutor when reaching out to the public since many people follow local TV. They generally broadcast decisions on local TV, however, they could also broadcast announcements of public discussions. Additionally, local TV could broadcast the discussions themselves.

Recommendation 24: *Line ministries and municipalities should be obliged to announce the launch of public consultations online, e.g. via their social networks, in order to provide stakeholders with the possibility to prepare for their participation in the consultations.*

Recommendation 25: *The OGG should consider an automatic link between the OGG social media account and the online consultations platform so that each published consultation is automatically listed in its feed. Alternatively, social media accounts for the online consultations platform could be set up that do the same.*

Recommendation 26: *The practice of promoting public consultations through the (social) media channels of government institutions and responsible decision-makers should be integrated into the public consultation process and possibly also in the minimum standards for public consultations.*

Recommendation 27: *The OGG and MLGA should assess together with municipalities the possibilities to engage local media in the promotion of public consultations and consultation events.*

Recommendation 28: *The OGG, in cooperation with relevant line ministries and municipalities, should identify high-profile files for which a consultation process can be organized, e.g. including essay competitions for pupils/students and consultation events in each municipality.*

Better follow-up closed consultations

Receiving no or little information as to how comments provided through public consultations can be expected to contribute leads to a high reluctance for people to spend their time participating in consultations.

Generally, people see that there is too little explanation and communication after the consultation process is closed. Most importantly, it is not clear how comments were taken forward.

Some improvements to the online platform that could be considered, such as providing replies while the online public consultation is ongoing, would address this issue. However, there could be other activities as well that would provide more transparency and insight as to how comments received through public consultations and other consultation activities were taken forward.

Recommendation 29: *The OGG should assess how feedback after consultations are closed, can be improved under the current legal framework. Online workshops and other easy-to-organize events could be held after a public consultation to discuss submissions and the response of the administration.*

Recommendation 30: *When revising the online consultations platform and the regulation covering public consultations, the OGG should consider additional feedback requirements to enhance transparency on the question how comments were taken into account.*

LEGAL AND IMPLEMENTATION FRAMEWORK FOR PUBLIC CONSULTATIONS

Formal evaluation of the regulation

The process initiated by the OGG, with support of the OSCE Mission in Kosovo, to assess how public consultations can be improved, has brought to light a considerable number of issues that need to be addressed. In some areas it is already clear that amendments to the regulation on the minimum standards for public consultation are warranted. The introduction of new technical features on the website should go hand in hand with the legal requirement to use these.

With a discussion on the amendments to the regulation covering public consultation to be expected, the OGG should consider initiating the formal ex-

post assessment stage in 2021 to have a strong evidence base for changes to the requirements for public consultation. Such a process can be combined with introducing new features and possibilities on the online consultations platform.

Such a process would enable the OGG also to consider aspects that have not been touched upon so far in this report, such as issues related to the minimum time during which public consultations are open for comments (2 weeks), and whether this is sufficient for stakeholders to provide replies.

Recommendation 31: *The OGG should consider initiating a formal ex-post evaluation of the regulation on minimum standards for public consultations in 2021.*

Early-stage involvement and consultation in decision-making

The online consultations platform provides for consultations at a late stage in the decision-making process. While this provides high levels of transparency and opportunities for everyone to engage in the decision-making process, here is significant added value if the focus is placed on improving and enhancing the early-stage engagement.

More workshops with stakeholders should be organized in the early stages of decision-making, in addition to the obligatory public meeting at the start of every decision-making process. This is regarded as a more effective way to engage with organizations that have less capacities at hand since they will be able to provide important considerations for the further decision-making process.

Recommendation 32: *The OGG should promote early-stage stakeholder consultation in addition to the public meeting that is already obligatory. For the possible revision of the regulation on minimum standards for public consultation, such early-stage involvement of stakeholders could be stronger embedded in the legal framework.*

Stricter enforcement of the minimum standards

The enforcement of the minimum standards for public consultations is apparently not yet fully ensured. Not always are public consultations organized and when they are organized, they do not always comply with the minimum requirements.

Whereas this issue can be applied only to the Government level, it should be avoided from developing on the local level.

Government level: stricter adoption requirements

Some problems remain regarding the implementation of the minimum standards for the duration of public consultations, while laws often do take a long time to be formally adopted. The requirement to consult and the minimum time frames should be respected always but this is not the case. These time frames are already short and should not be reduced further. In addition, often the law-making process within the administration before a draft law is adopted by the government and sent to the assembly is very long. This does not compare well to shortening formal consultation periods.

Also, when submitted comments are not taken into account, line ministries do not always make clear why certain ideas are not taken up. This problem can be addressed quickly since the regulation already explains how this should be done in practice. It is an issue that needs to be enforced more systematically.

Recommendation 33: *The OGG should ensure that in the upcoming revision of the Rules of Procedure of the Government the minimum requirements for public consultations are fully adhered to before a proposal is adopted by the Government or ministry (for certain sub-legal acts).*

Recommendation 34: *When developing the next version of the online consultation platform, the OGG should ensure that the platform does not enable organizations to deviate from the minimum standards unless this is explicitly approved.*

Local level: score card

Municipalities have only recently been integrated into the online consultations platform and are starting to submit proposals for public consultations. It can be expected that municipalities will face very similar challenges like the Government level did when introducing public consultations. In addition, the local context could uncover more complicating factors that have not yet been considered.

MLGA monitors the performance of municipalities, which monitoring shows that there is no even progress across Kosovo when it comes to municipalities. In relation to public consultations, for example, practical and easy-to-do tasks are not yet completed. Namely, many websites of different municipalities do not even contain the link to the online consultations platform yet.

Coordinators for public consultations on the local level have not been appointed in every municipality. The administrative instruction for public consultation on the local level is not yet fully implemented. Practical guidance has been developed and technically the local level is integrated into the platform, but the actual process and many practical requirements remain to be implemented.

Recommendation 35: The OGG and MLGA should develop a local level score card for public consultations to show to what extent municipalities have implemented the practical public consultation related requirements. The score cards should be published and might be linked to the grant system the MLGA has put in place for municipalities.

Multiple consultation channels and methodologies

The online consultations platform is a vital component in the approach to public consultations in Kosovo. At the same time, the administration needs to be more creative regarding the ways it organizes and implements the public consultation process, in particular in reaching out to specific target groups and making participation in public consultations easier.

The administration should assess how to go beyond the standard regulated ways that are reflected in the regulation regulating public consultations. For most people, submitting comments through the online consultations platform, as it is designed currently, is a cumbersome process and there is a high burden put on participation.

The administration needs to find additional methods to engage residents and there are already many of those available. There also needs to be a better approach for dissemination and outreach for individual consultations. The technology for doing this is already available and the main challenge is identifying which such technologies can be applied easily and effectively.

The selection of consultation methods should be based on the fact that many organizations do not have the resources or capacities to comment on a draft law or other lengthy document since they do not have the detailed specialized expertise for this. Moreover, many people are not willing or able to comment on a long and complex document as is required now.

Recommendation 36: *The OGG should assess which alternative consultation methods could be used to complement the public consultations platform. The possible application of these methods should be integrated into the minimum standards for public consultations.*

Recommendation 37: *The OGG should - in cooperation with the responsible line ministry or municipality - select a number of files for which new consultation methods and approaches are tested to see their possible added value.*

Recommendation 38: *The OGG should, in cooperation with line ministries and municipalities, assess whether it is possible to logically submit certain elements of a proposal already for a public consultation, preferably through the online consultations platform. For example, the platform could integrate the possibility to conduct surveys and polls amongst registered organizations.*

CAPACITY DEVELOPMENT

It is important to set out a process aimed at strengthening the capacities of all relevant institutions at the central and local level, as well as, civil society organizations, professional groups and other stakeholders.

OGG and MLGA capacities

The OGG and MLGA play special roles in the public consultations process. They are the instigators and drivers for the reforms and thus play an important role in

promoting the uptake of the public consultations practice and provide transparency into the question how far such an uptake has been realized.

The capacities of the OGG and MLGA need to be in line with the task they are set out to perform. This applies to both the number of required human resources and the preparedness of the staff involved in the reforms related to public consultations.

The OGG and MLGA should assess their needs, for the medium-term, in order to ensure that the improvements related to the online consultation platform, the adjustments to the consultation process (in particular earlier involvement of stakeholders), implementation of the consultation process on the local level, update of the regulation covering public consultations, uptake of new consultation methods and the adjustment of the minimum standards for public consultations, can be performed effectively. The two organizations should consider a combination of staff recruitment, dedicated staff trainings, technical assistance and other donor support related to public consultation.

Such a medium-term outlook of the needs should be linked to the strategic policy framework for improving the public consultations process in the future.

Recommendation 39: *The OGG and the MLGA should develop a medium-term needs assessment in terms of staffing, training, technical assistance and other donor support.*

Recommendation 40: *The OGG should consider updating the strategic policy framework related to public consultations to embed improving public consultations further into the political outlook for Kosovo. Explicit attention might be provided to the SDGs in this context.*

Government and local level: administration

With the ToT on public consultations completed and trainers certified, Kosovo has available training delivery capacities for the topic. These should be deployed proactively and in an ambitious manner. The OGG should set clear targets for training delivery, in particular related to the number of public officials trained. Together with KIPA, the OGG should assess the merits of online training modules for public consultations to complement the face-to-face trainings. When

necessary, specific online training modules should be developed for the local level.

Public consultations depend on implementing the consultation requirements, but also on the quality of consultation materials and the language used. Many observers conclude that writing skills within the administration are very much in need of improvement. The OGG should assess with KIPA the possibility to roll out dedicated trainings related to policy writing.

Recommendation 41: *The OGG should establish clear training targets for public officials at the Government and the local level to be trained on public consultations and ensure a swift outreach within the administration through training.*

Recommendation 42: *The OGG, in cooperation with KIPA, should consider whether online training modules can be developed for public consultations.*

Recommendation 43: *Together with the MLGA and KIPA, the OGG should assess whether online training modules should be developed specifically for the local level.*

Recommendation 44: *The OGG and KIPA should assess the possibility to develop and deliver trainings related to policy writing in order to improve the quality of consultation documents. This could possibly also be complemented with a ToT on the subject.*

CSOs at central and local level

While CSOs are expected to play a vital role in policy development and law making through the public consultations process, they often do not have the human resources nor the capacity to effectively participate in consultation activities. This is in particular the case in relation to the latter stage consultations, during decision-making, through the online consultations platform.

While it is clear that additional capacity development for CSOs is needed, it cannot be determined as of yet what kind of capacity development support would be best suited.

Recommendation 45: *The OGG and MLGA should assess whether they can develop CSO support programme or activities in relation to promoting the uptake of and participation in public consultations on the local level already in 2021.*

Recommendation 46: *The OGG, together with the organization responsible for donor coordination, should engage with the donor community to assess possibilities for them to more effectively support development of capacities of NGOs related to participation in public consultations.*

Recommendation 47: *The OGG should initiate a capacity analysis of CSOs at the central and the local level (preferably in each municipality). Based on this analysis, the OGG and MLGA can define the best support modalities for CSOs in the medium-term.*

Framework for the Enhancement of Application of Minimum Standards for Public Consultation 2021-2025

*Office of Good Governance within the
Office of the Prime Minister*