



GOOD GOVERNANCE

FOR OPENNESS AND ACCOUNTABILITY
IN POLITICS AND GOVERNANCE

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RECOMMENDATIONS FOR IMPROVEMENT

Openness of Executive Power Institutions in the Region and Montenegro



CENTER FOR
DEMOCRATIC
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Podgorica, March 2017

INTRODUCTION

In cooperation with partners from a regional network NGO “ActionSEE” Center for Democratic Transition (CDT) prepared this policy paper, in which we analyze a level of transparency, openness, and accountability of executive power in the Western Balkans region.

The policy is a result of a comprehensive research, which is based on a scientific methodology, and conducted by members of the ActionSEE network during the previous several months. The aim of our activities is to determine the actual state in the region through objective measurement of executive power openness and to propose recommendations for its improvement. Also, the aim is to improve compliance with the principles of good governance, in which openness takes a significant place.

The policy of openness must be the policy of all governments in the region and it must be defined as other important policies. It shouldn't be a result of a current decision or of a current mood of power. Each country in the region has its own specific political conditions in which it develops its openness but a significant space for the improvement through a joint regional action may be noticed.

An introduction of an open government concept in the Western Balkans region was most commonly dictated by requests of integration processes or motivated by the improvement of the international reputation of a country through the participation in initiatives for the open administration. Attempt to follow positive trends often neglected an essential, internal need, which represents a basis of this principle – it is actually government's openness for citizens' and society's contribution with the aim to creating public value.

This approach leads to a problem regarding the implementation of transparency and openness rules, especially on lower levels of public administration, where a social importance of this approach is not recognized, but considered as an unpleasant obligation imposed by international requests. Therefore, the policy of openness in the regional countries requires not only an expression in strategic documents, but also loud advocates of an open government concept on the highest social and state functions.

Our proposal is addressed to decision-makers of executive power in the regional countries on all levels: Government, ministries and executive agencies. It can be useful for representatives of international institutions and for NGO colleagues, who tackle with these issues.

In order to achieve quality public dialogue regarding these topics we will organize a series of public events, in which we will hear opinions of all interested stakeholders, and try to find joint sustainable solutions for the development in this area.

In addition, we will respect principles of transparency of research and inform institutions about all details of its implementation and adopted conclusions.

We remain at your disposal for all suggestions, benevolent critics and discussion regarding our policy paper.

OPENNESS OF EXECUTIVE POWER INSTITUTIONS IN THE REGION

After the analysis of a number of methodologically completed data we noticed similarities and differences regarding the situation this area within regional countries.

Generally, results indicate that from regional perspective the openness of executive power is not on a satisfactory level. It approximately amounts to only 47% of fulfilled indicators. Clear, consistent and policies of openness grounded in strategic documents do not exist. A change of an approach and management of this important segment of functioning of the current and future governments is necessary.

Each country has its own specific political conditions in which it develops its transparency and openness, with which we will deal in the second part of this document, but a significant space for the joint regional cooperation regarding the improvement of situation can be noticed.

There is no a strategic approach to the openness in the regional countries. On the basis of collected data we can conclude that openness is treated on an ad hoc basis and in most countries the policy of openness, which would be equal with other policies of executive power, is not created. The policy of openness is set in a way that it most commonly represents a good will of the executive power. It is actually the situation which is far from the desired one. It is, for now, a compilation of various rulebooks, acts and obligations and not philosophy or approach actively promoted by governments. Transparency, openness and accountability in good governance represent basic preconditions of high-quality executive power and they must not be treated as gifts for citizens.

The policy of openness should not depend on external initiatives, but it must be a part of internal policies. Only then all international initiatives get their full affirmation since they upgrade on existing strong bases in each regional country.

In a participatory process it is necessary to adopt strategic documents and annual action plans, which deal with the development of openness. It is necessary, within countries, to plan development and equalize the openness of institutions of the executive power. These differences are currently enormous and the question whether these institutions belong to the same country is imposed. After the introduction of strategic planning, it is necessary to consider adoption of laws on government and ministries. Thus this and other issues related to the functioning of public administration would be solved in the most efficient way.

Our monitoring has shown several “critical points” i.e. critical obstacles for the development of openness in the region.

Transparency and Communication

Governments must pay a special attention to the **implementation of laws on access to information**, which, generally, do not provide satisfactory results. The attention must also be paid to independence and current capacities of institutions responsible for the implementation of laws.

Communication with citizens is the next important segment, which must be significantly improved in the following period. Apart from classic methods of communication, executive power must use more modern tools to communicate with citizens. Compliance with the principle of publishing data in an open data¹ formats represents a regional problem. These formats would increase availability and facilitate citizens' data collection.

Public Funds Planning and Spending

A special attention should be also paid to strengthening of financial transparency given that regional governments do not have completed practice of publishing financial information and documents.

Executive power institutions, which publish information on budget - which would make this document understandable for citizens and explain which type of service they receive for money they gave to state - are very rare. In addition, information on how planned funds were spent are insufficient. It is necessary to make visible all payments from the state budget and provide citizens an opportunity to personally control this spending.

1) Open data are data structured in computer-understandable format, which provides opportunity of free and repeated use.

Also, on official websites of executive power plans for public procurements are not published. At the same time calls and decisions regarding public procurements and related contracts and annexes to agreements were not available in most cases.

Efficiency, Effectiveness and Citizens' Expectations from Executive Power

A significant issue on executive power functioning and its openness towards citizens is a creation of clear indicators of the success of government policies, which will be available to citizens. Accountable executive power transform their electoral promises in official state policies, but they also create an opportunity for citizens to check its results.

Regional governments still need to establish unique methods and procedures for high-quality control of their policies, and they still haven't developed adequate methods for measurement of their policies' performance. A sufficient attention was not paid to the establishment of the unique method according to which ministries would inform the Government about their work on an annual level. All above stated negatively reflect on informing citizens about executive power performances.

OPENNESS OF EXECUTIVE POWER IN MONTENEGRO

Openness of the executive power in Montenegro is in the first place in the region and it amounts to 66% of fulfilled indicators. This result is expected and it is in accordance with the previous measurement of openness on the regional level. Through negotiations for accession to the European Union, Open Government Partnership and other activities, the Government started with creating policy of openness. This was advanced by numerous initiatives from NGOs and "Government of Electoral Trust", which prepared elections in October and contributed to the policy of openness.

However, absence of strategic planning and promoting openness represents a significant deficiency. The promotion of openness, align with other policies of the executive power, must be placed equally. This has caused situation in which promotion of openness barely happens and there are bodies, which do not respect legal obligations, principles and practices of good governance without any consequences. This has created significant differences in openness of the Government, ministries and executive agencies. In Montenegro the question of openness is still a question of personal opinion of the first manager of institution or his/her team and not of a clear state policy.

An additional argument for adoption of the strategic document regulating this area is the fact that openness significantly decreases as we move towards bodies which are on a lower hierarchical level². It is obvious that there is a significant number of institutions that still resist the introduction of the concept of openness and they must systematically work on this problem with the involvement of top managers in the system.

All stated require a swift reaction and dedicated work in order to avoid negative practices of failure to adopt important documents dealing with this topic. The strategy of development and promotion of openness must be prepared and adopted until autumn 2017 and the first action plan must be implemented in 2018.

Government of Montenegro

The Government of Montenegro has the best regional score of openness and it amounts to 82% of fulfilled indicators. From the regional aspect, this score is a result which deserves attention and respect and it corresponds with development levels of Montenegro, compared to other countries. But the goal of Montenegro is the achievement of international standards in this area also, and from that aspect this must not mislead us since it does not completely satisfy needs for openness on this level of development of Montenegrin society.

There is also the problem regarding a full transparency of the Government's sessions and it must be upgraded and additionally improved. Even though there are limitations for transmission of the Government's sessions, public has no insight into sessions flow or even into key moments of sessions' discussion. After each session it is possible to access all materials discussed at this session on the website of the Government. But, we do not have practice of publishing minutes from the Government's sessions so that citizens cannot get a complete picture regarding dynamics of sessions and a way of consideration of specific policies and questions, which could have impact on their standard and life quality.

The Government does not publish a final text of the Law on Budget³ for a current and previous two years. The similar situation is with publishing the Law on Final Account, which is only in a form of proposal, not in a form of a final legal text. In addition, the search of budget document is limited and it hinders any comparison, analysis or data usage for further processing. The format allows neither a simple adding of budgetary items, nor some more complex calculations. Citizens do not have an opportunity to understand the budget through narrative and graphic explanations, which should be available through a preparation of the document "Budget for citizens".

2) The Government of Montenegro meets 82% of criteria of openness, ministries meet approximately 66% while executive agencies meet 49% of all criteria.

3) The Government published Draft Law on Budget for 2016 in a part where materials from sessions are published while Draft Laws on Budget for 2015 and 2014 are within the section Library.

4) Public Administration Reform Strategy in Montenegro 2016-2020, section 2.4, Development and coordination of policies.

5) Public Administration Reform Strategy in Montenegro 2016-2020, page 32.

6) Ministry of European Affairs, Ministry of Public Administration and Ministry of Sport

On the Government's website there are no plans for public procurements for 2015 and 2016 while there are plans for 2013 and 2014, which indicates that this practice started, but it was later suspended.

Publishing annual reports on the Government's work represents one of key instruments of openness, but also of control of its work by citizens. As soon as possible the Government should start with a full application of the action plan of public administration reform strategy in Montenegro in a part related to the development, coordination and reporting about the performance of public policies⁴.

The Government should adopt instructions for state bodies on how and in which way to publish data on the websites in an open data format. After that, a strict implementation of the principle of publishing data should be ensured.

When we talk about citizens' participation, it still exists only on a formal level. Essentially, work on this part of the Government's openness did not bring significant results. Among other things, this can be illustrated by allegations regarding the analysis of Regular Impact Assessment (RIA) from the Public Administration Reform Strategy⁵. "RIA analyses are often prepared in the last phases of preparation of regulations i.e. immediately before delivering them to the Government, which reflects on their quality and limits effects in the same time. Analyses are rarely prepared along with draft laws in order to be available to wider public during public consultations. Therefore, there must be interventions through amendments to the Decree on Procedure and Manner of Conducting Public Debate in Preparing Laws".

Ministries

Ministries of Montenegro on average fulfill 66% of criteria of openness. This modest result is the best in the region and it additionally affirms the low level of openness of regional ministries.

Differences in results among ministries in Montenegro are enormous – the best ranked ministry fulfills 81% of criteria and the worst one fulfills a half less – 43%. Our measurement⁶ did not cover newly-formed ministries⁶.

Ministries are not sufficiently dedicated to informing public about their work. Thus, by searching their websites public cannot find out what ministries plan to do and which results they achieved during the year. Official websites of ministries contain information which are not systematized in most cases, specific sections are empty or not updated, with very limited search possibilities. Therefore, websites resemble labyrinths containing

information. Principles of publishing data in an open data format are not respected and there is no unique principle about updating current accounts on social networks.

Only 62% of ministries has published all three work programs for the past three years and 56% of ministries has published their yearly work reports on their official websites.

Ministries additionally violate the Law on Free Access to Information given that 56% of them published information on names, salaries and contacts of public officials. 37% of ministries do not publish list of civil servants and state employees with their titles.

Only 12% of ministries published their budgets for the previous three years on their official websites, while on the websites of 62% of ministries there is no budget for any of the previous three years. Also, there are no any final accounts for the last three years of even 75% of ministries.

Additionally, 69% of ministries did not publish plans for public procurement for the previous year. Monitoring indicated that only 31% of ministries publish calls and decisions on public procurements and 44% of ministries publish contracts and annexes regarding public procurements.

Apart from the fact that there is a portal of public procurements, standards of transparency impose publishing of all financial documents of institutions on the websites respecting thus citizens' right to be informed.

69% of ministries said they do not conduct public consultations online, even though this mechanism is established through a subpage eParticipation, which allows citizens to electronically participate in public consultations.

Taking into consideration stated data but also those unmentioned due to limitations of space, it is clear that approach to openness should be changed completely according to the principle indicated in the introductory part of the text.

Executive Agencies

Executive agencies fulfill only 49% of openness indicators.

Websites of these bodies are often not updated and in 40% of cases it is very difficult to find documents.

Slightly more than 5% have an active account on social networks.

Public administration bodies violate the Law on Free Access to Information in the part related to proactive publishing of information: 57% of them

don't publish annual work plans on their websites, 37% publish list of civil servants and state employees with their titles, 30% deprive the public of information about who are their public officials, the amount of their salaries and their contacts while 58% publish strategies on their websites.

Almost 90% of executive agencies don't publish budgets on their websites. If we add to this even worse result of publishing final accounts and mid-year report related to spending of budget funds, the picture of budgetary non-transparency is complete.

Nearly 58% of public administration's bodies do not publish calls and decisions regarding public procurements on their internal websites. 74% of bodies don't publish contracts and annexes to agreements on public procurements. 90% of bodies do not publish plans for public procurements.

METHODOLOGY OF RESEARCH

Openness represents a key condition of democracy since it allows citizens to receive information and knowledge, necessary for an equal participation in political life, effective decision-making and holding institutions accountable for policies which they conduct.

Around the world institutions undertake specific activities with the aim to increasing their transparency and accountability. The Regional Index of Openness of Executive Power is established in order to define to which degree citizens of the Western Balkans receive timely and understandable information from their institutions.

The Regional Index of Openness measures a degree up to which institutions of Western Balkan countries are open for citizens and society and it is based on the following four principles: 1) transparency, 2) accessibility, 3) integrity and 4) effectiveness.

The principle of transparency includes that organizational information, budget and procedure of public procurements are publicly available and published. Accessibility is related to ensuring and respecting procedures for a free access to information, improving availability of information through a mechanism of a public debate and strengthening interaction with citizens. Integrity comprises of a mechanism for prevention of corruption, conducting code of ethics and regulations of lobbying. The last principle, effectiveness, refers to monitoring and evaluation of policies conducted by institutions.

Following international standards, recommendations as well as examples of good practice⁷, these principles are further developed through special quantitative and qualitative indicators, which are evaluated on the basis of: accessibility of information on the official websites of institutions, quality of a legal framework for individual issues, other sources of public informing and questionnaires delivered to institutions.

Through around 80 indicators per institution we have measured and analyzed the openness of 274 institutions of executive power and collected over 15000 pieces of data regarding institutions.

The measurement was conducted in the period from October to the end of December 2016. A set of recommendations and guidelines directed towards institutions was developed on the basis of research results.

ActionSEE je mreža organizacija cijelog društva koje zajedno radi na promovisanju i obezbjeđivanju transparentnosti i odgovornosti institucija u jugoistočnoj Evropi, povećanju potencijala za građanski aktivizam i participaciju, promovisanju i zaštiti ljudskih prava na internetu kao i na izgradnji kapaciteta za upotrebu novih tehnologija.

7) Standards and recommendations of numerous international organizations (such as Access Info Europe, EU, IPU, OECD, OGP, SIGMA, WORLD BANK, etc.) were analyzed.

CDT Research Center (RC) was established in **2011** with the support of Think Thank Fund. RC strives to advance public policies, contribute to the quality of decisions made by authorities, and enhance public dialogue, and strengthen institutions.

Using contemporary scientific - research techniques and methods RC specially analyzes, investigates

- The regularity of the electoral process;
- Transparency and accountability of public administration at national and local level;
- Negotiation processes of European and Euro-Atlantic Integrations;
- Civil society functioning

RC in its work applies standards of transparency, objectivity, and accuracy. Relying on comparative examples of good practice and concrete results it defines measures and recommendations for improvement, which are delivered to decision makers and the general public.

RC is committed to continuous building of its research capacities and mechanisms, and successfully cooperates with domestic and foreign experts.

RC has conducted a series of research projects. We recommend to your attention:

Recommendations for improvement of communication of the Ministry of European Affairs

https://www.cdtmn.org/wp-content/uploads/2017/03/Preporuke-za-pobolj%C5%A1anje-komunikacije-Ministarstva-za-Evropske-poslove_final.pdf

Policy - Depoliticized and effective electoral management - Precondition for trust in elections

<https://www.cdtmn.org/wp-content/uploads/2017/02/DIK-Policy-01022017.pdf>

Recommendations For Improvement of Work of Agency for Prevention of Corruption

<https://www.cdtmn.org/izbori/izbori-analize/preporuke-za-unapredenje-rada-agencije/>

ANB - from the necessary confidentiality to the democratic transparency

<https://www.cdtmn.org/nato/nato-analize/transparentnost-anb-predlog-prakticne-politike/>

Planning, measuring, and reporting leveraging success of government policies

<https://www.cdtmn.org/dobroupravljanje/du-analize/predlog-prakticne-politike/>

Good governance in Montenegro - challenges and recommendations for improvement

<https://www.cdtmn.org/dobroupravljanje/du-analize/dobro-upravljanje-u-cg-predlog-prakticne-politike/>

Accession negotiations between Montenegro and the EU - active and well informed citizens or mere observers in the process

<https://www.cdtmn.org/eu/eu-analize/pregovori-o-pristupanju-cg-eu/>

Strategic Communication of the Euro-Atlantic integration processes

<https://www.cdtmn.org/nato/nato-analize/stratesko-komuniciranje-procesa-evroatlantskih-integracija/>

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