

YOU4EU POLICY RECOMMENDATIONS

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YOU4EU

The policy recommendations were prepared within the Project "YOU4EU - Citizen Participation 2.0" which is implemented by Belgrade Open School (Serbia), Access Info Europe (Spain), Gong (Croatia), Institute Alternative (Montenegro) and PiNa (Slovenia).



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YOU4EU POLICY RECOMMENDATIONS ON TRANSPARENCY AND CITIZEN PARTICIPATION

During the implementation of the YOU4EU Project, we found an urgent need to act to improve transparency and participation. This document sets out the main conclusions, gathered during the project activities in all five participating countries, and a series of specific recommendations for the European Union and national governments.

KEY FINDINGS

- Public bodies at the local, national, and EU level need to significantly improve their channels of communication and respond more rapidly and comprehensively to inquiries from the public. The current situation undermines the principle that public institutions should serve the public and not vice versa. It is necessary **to strengthen communication between citizens and public institutions across Europe**, and this is something that should be fully embraced by public authorities and should not only rely on citizens' initiatives.
- In many cases, even when there are legally established mechanisms for public participation in decision-making processes, **these mechanisms are not taken seriously by public authorities who only focus on fulfilling the formal requirements for citizen participation**. These mechanisms should be more inclusive and result in establishing more open governance that efficiently addresses citizens' comments.
- There is **a pressing need to broaden and strengthen the right of citizens to engage in decision-making**, so that citizens are able to contribute constructively to decisions that affect them, and are able to contribute to problem-solving, ensuring that such decisions are taken in the public interest.

I T R A N S P A R E N C Y

Transparency Standards at the EU level

The European Union should lead by example on questions of transparency. To this end, the EU should:

- **Increase transparency of decision-making:** Ensure that all EU decision-making and legislative processes are sufficiently transparent, in real time, to permit meaningful participation. This includes full transparency of discussions in the Council of the EU.
- **Improve financial transparency:** Achieve transparency of spending of all funds managed by the EU. This includes spending of funds by the EU bodies and institutions, including travel and entertainment expenditure. It also means transparency of funds disbursed by the EU, both directly to beneficiaries and via Member States through "shared management".
- **Secure full lobby transparency:** The EU should ensure full transparency of lobbying and external influence over decisions by making the lobby register mandatory and ensuring that it applies to all institutions, bodies, and agencies, including the Council of the EU and Permanent Representations of Member States.
- **Improve proactive communication** with the citizens and ensure that social media platforms such as Facebook, Twitter, and

Instagram are used not only for one-way communication but also for engagement in debate with the interested public. The Members of the European Parliament (MEPs) should be more active in their interaction with the citizens and should respond to citizens' requests in a short period of time and in full.

EU Setting Transparency Standards in Member States and Accession Countries

As well as ensuring the transparency of European Union institutions, agencies, and bodies, the European Union should act to ensure that there are common minimum standards for the right of access to information across the EU and accession countries. To this end, the EU should:

- **Establish a requirement setting minimum standards on the right of access to information:** The EU should ensure that all Member States and accession countries have a legislative framework on the right of access to information in line with international standards (a good reference is the Council of Europe Convention on Access to Official Documents and the jurisprudence of, inter alia, the European Court of Human Rights).
- **Monitor implementation of transparency rules in accession countries:** The EU should invest more resources into monitoring the adherence to transparency standards of public institutions in the Western Balkans.
- **Set standards for access to information of public importance held by private bodies:** The European Union already mandates access to information from private bodies in specific areas. However, it should ensure that this fundamental right applies to all information of public importance held by private entities (companies), in particular in areas of public interest such as climate change, water access, land policy, and forest management.
- **Strengthen Open Data legislation and revise the PSI (Public Sector Information) Directive** so that public data is available free of charge to everyone (civil society organisations, private entities, and the general public). In particular focus on full

and free access to "high value" data sets including company and land registers.

- **Open Access to Scientific Data:** The European Union should set rules on full and free access to all scientific research and content funded by the public purse. This should apply to all research funded with the EU funds, including those carried out by academia and by private research institutions.

Council of Europe

Convention on Access to Official Documents: Press member states to ratify and implement the Convention. The Council of Europe should establish the oversight body rapidly upon ratification by a 10th country and ensure that it is fully resourced so as to carry out an effective oversight role.

Transparency Standards at National Level

The You4EU project identified problems with the legal framework and its implementation in all the project countries. The principle recommendations for all countries are given here.

- **Maintain quality of the national access to information law** so that it meets or exceeds the standards of the Council of Europe Convention on Access to Official Documents. This standard includes that all information held by all public bodies should be the subject of access to information requests, that exceptions be limited, and that timeframes for responses be short.
- **Eliminate dangerous provisions on "abusive" requests** and ensure that any provisions which place limits on quantity, volume, or nature of requests are enforced only by independent Information Commissioners on a special, fast-track, process.
- **Improve responsiveness to citizens' requests and implementation of the right of access to information** according to existing legal frameworks, as well as comply with the legally established timeframes for answering requests.

- **Strengthen and guarantee the independence of Information Commissioners:** All countries should ensure that the bodies that oversee the right of access to information (information commissioners, transparency council, agency) are fully independent and have a strong mandate and powers.
- **Ensure the existence and application of sanctions for noncompliance with national access to information laws:** The national oversight body should have powers to sanction all non-compliance with transparency rules, including both reactive and proactive publication.
- **Privacy protection vs. public information:** Clear rules and guidelines should ensure that essential privacy protections are never abused to withhold information in the public interest, including information about decision making and about the spending of public funds.
- **Real time publication, even of “raw” data:** Key data should be released to the public in the “beta version” at an early stage, even if it is not 100% accurate in order to allow the public to check the accuracy of data.

Training of public officials

For transparency standards to be effective, training of relevant public officials is essential.

- **Right to Information Training:** All public officials should be trained on the fundamental right of access to information. Officials charged with processing and responding to requests for information should receive specialist training.
- **Open Data Training:** Public servants and technical staff should be educated on how to make data as accessible and usable as possible.
- **Fully capacitate staff of information commissioners** to ensure that they are experts in the right of access to information. This to be achieved through the recruitment processes as well as through ongoing training, study visits and exchanges.
- **Educate members of national parliaments** in national and EU policy areas, and ensure that an expert support service is at their disposal to help elected representatives understand the benefits and risks of the legislation they are deciding on.
- **Training for judges:** Conduct trainings on the right of access to information and the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union for judges who will decide upon right of access to information cases.

Proactive Publication

Specific recommendations for national authorities with respect to proactive publication were identified as a result of the research and discussions under this project.

National governments should ensure:

- **Comprehensive proactive online publication** of all basic information about the working of public bodies (for example, lists of employees, budgets, public procurement).
- **Full transparency of legislative processes:** Procedures regulating the adoption of legal acts should permit citizens to be informed in a timely way about proposed changes to the legal framework and the timetable for discussion, as well as having real-time access to all documents produced during these processes.
- **Financial transparency:** All information regarding the spending of public funds should be published proactively, in machine-readable formats.
- **Transparency to prevent corruption:** High-value data sets needed for the fight against corruption, such as company registers, land registers, and public procurement data must be available.

II PARTICIPATION

European Union & National Governments

- **The European Union, the Council of Europe, and national governments should examine how to establish a right to participate in decision-making,** recognised as a fundamental right. This would bring the European region into line with other parts of the world, such as Latin America, where the Inter American Convention on Human

Rights considers the right to participate as a human right.

- **Ensure effective mechanisms for engaging public in participatory mechanisms:** The notification of and invitations to participate in expert groups and participatory mechanisms must be widely disseminated. The European Union should strengthen the mechanisms for civil society actors to participate in expert groups advising on new legislation, as well as in consultations convened by the European Commission. At present notifications of consultations are sent primarily to those in the lobby register and there is insufficient proactive outreach to stakeholders via other channels.
- **Create more agile channels for participation:** Rather than the cumbersome European Citizens' Initiative, which is not working in practice, the EU should create multiple participation channels which do not require high levels of policy expertise but which do permit affected stakeholders to engage in decisions that affect them.
- **Create and ensure effective implementation of the legal framework for public consultations** at the national and local level by establishing procedures that significantly limit the cases of adoption of legislation without prior public consultations. The participation of a wide variety of actors in this process should be assured by broad dissemination of calls for participation, wide timeframes for leaving comments, improvement of technical capacities of e-participation portal. The authorities should take into consideration all the submitted comments and address them in full.
- **Develop mechanisms that actively engage a broader spectrum of the public** in discussions with decision-makers. This could take the form of citizen assemblies involving a representative sample of members of the public, with ground rules that ensure that inputs are genuinely integrated into the decision-making process.
- **Establish criteria and rules for mandatory participation:** The European Union and Member States, together with the accession countries, should adopt rules requiring

mandatory participatory processes on certain issues, such as participatory budgeting at a local level and mechanisms for community led local development. All such mechanisms must be structured to guarantee that a range of social and marginalised groups are included and that they are not mere window-dressing initiatives. The introduction of these mechanisms should be accompanied by the education of citizens on the opportunities and how to secure positive outcomes through participation.

- **Engage all stakeholders in specific decisions-making and legislative processes:** Steps should be taken at the outset of decision and law-making processes to ensure that all relevant stakeholders are incorporated, including other government departments at the national and local levels, as well as civil society organisations (CSOs), academics, businesses, and groups affected by the decisions and rules to be adopted. All advisory expert groups should include representatives of all relevant stakeholders.
- **Strengthen digital channels of communication and consultations with citizens and youth** by making better use of social media, and designing and incorporating digital tools, such as mobile applications and platforms, in the policy and decision-making process. Complement digital communication with public debates, educational events in schools to reach wider audiences. Ensure that the topics are those of relevance to their daily lives.
- **Digital and data literacy training should be provided not only within the formal education system** but also to those out of school and for people from public services who need additional support and education regarding new technologies.
- **Civic Education:** National authorities should be encouraged to ensure that formal educational programs contain civic education, aimed at fomenting active citizens with a sense of empowerment, ownership, and responsibility.

CIVIL SOCIETY

Civil society has a responsibility to act to ensure the wide engagement of all sectors of society in participation processes. To this end, it is recommended that CSOs:

- **Support and educate citizens on active participation** and on how to articulate their issues, how to make policy recommendations, and how to take part in decision-making processes at local, national, and the EU level;
- **Organise trainings on the right to information** and how to obtain information using requests;
- **Be innovative and creative** in engaging citizens, for example motivating people to use public data and to start public discussions with gaming techniques;
- **From civic tech to gov tech:** civil society should develop tools and e-participation and e-voting platforms, and be ready to share these with public authorities;
- **Pressure governments to use e-participation tools** and motivate citizens to participate in the decision-making process using their channels;
- **Open source always!** Ensure that solutions for reaching citizens are based on open source software and can be shared with and improved by others;
- **Collect and share best practices and standards on citizen participation** for different areas such as participative budgeting, petition system, and so forth;
- **Defend transparency and participation and raise concerns** when governments adopt policies that jeopardise, undermine or do not protect efficiently the principles of democracy and good governance;
- **Identify obstacles to participation by local communities** and make recommendations to governments and the European Union to eliminate these obstacles.

YOU4EU NATIONAL RECOMMENDATIONS

On a country-by-country basis the YOU4EU project has identified key recommendations to national authorities which are of high priority to increase public participation and to strengthen transparency, as per the pressing needs in each country.

CROATIA

The Croatian authorities should:

- Secure that public data are published online in a findable, searchable, machine-readable, and reusable form, free of charge, with data sets being regularly updated in as near as real-time as possible. Specifically, we call on Croatian Ministry of Justice to withdraw the proposal to charge for access to data from the Court registry.
- Ensure that the Information Commissioner's Office has adequate funding and human resources, and strengthen its powers by providing a better mechanism for sanctioning public authorities that ignore requests for information or refuse to provide the requested data.
- Ensure that the General Data Protection Regulation (GDPR) is interpreted consistent with the right of access to information, and in particular that it does not limit access by journalists and civil society to relevant data needed to combat corruption, such as data about politically exposed persons (PEPs) and their assets and potential conflict of interests.
- Use the Presidency of the Council of the EU to advance transparency of the Council of the EU, as well as strengthening the Council's cooperation with other EU institutions, notably the European Parliament, by developing an integrated system that would allow greater transparency of the entire European legislative process.

MONTENEGRO

The Montenegrin authorities should:

- The Ministry of Public Administration of Montenegro should delete from the Draft Law on Free Access to Information the proposed provision on “abuse” of the right to request information, as it is too broad and leaves room for arbitrary and unjustified rejections of requests by public authorities.
- The Montenegrin government should reform the Law to Free Access to Information to ensure that all exceptions are strictly and precisely defined, that general exceptions are eliminated, and that no restrictions may be defined by other laws.
- The Montenegrin government should revise the Law on Free Access to Information so that a harm and public interest test applies to every single exception, in line with the Council of Europe Convention on Access to Official Documents, which Montenegro has ratified. This includes the exceptions protecting the intelligence and security sector.
- All Montenegrin public authorities should ensure that whenever exceptions are applied, the requester should be notified of the justification for the restriction, as well as their proposed duration.
- The Agency for Personal Data Protection and Free Access to Information and Administrative Court should ensure that cases are decided on merit, in order to guarantee effective access to justice in the area of free access to information.

SERBIA

The Serbian authorities should:

- Strive to achieve a higher level of citizen participation and stronger cooperation between the state institutions and civil society by establishing an environment in which the state perceives civil society actors as partners, not as enemies in policy

and decision-making processes.

- Enhance the system and mechanisms of public consultations by significantly limiting the number of legal acts that may be adopted through an urgent procedure and without prior participation of civil society actors in their development.
- Advance the system for conducting the public consultations by extending the timeframe for such consultations, diversifying the channels for dissemination of calls for participation, and improving the mechanisms for providing feedback to civil society and interested citizens after consultations.
- Improve the environment for freedom of expression by establishing a better protection of journalists' safety in order to reverse the trend of threats and attacks of recent years. Law enforcement should be improved, as well as relevant legal provisions, and the authorities should publicly condemn every case of threats to freedom of expression.

SLOVENIA

The Slovenian authorities should:

- Take steps to strengthen civic participation in law-making processes by involving CSOs that have expertise in specific fields, such as setting up an advisory CSO expert committee to assist the minister in environmental policy decisions and development of legislation.
- Ensure the inclusion of experts and public in public debates and consultations on environmental policy decisions.
- Establish mechanisms and rules for law-making process to guarantee that they be more cross-sectorally coordinated.
- Develop long-term strategies on specific fields, such as, in particular, energy and the environment, and establish better mechanisms so that these strategies are adhered to by the successive governments regardless of the change of political power.

- Organise more activities and personal interactions between EU representatives and institutions and citizens on local level. This should be done out of a recognition of the benefits of such interaction, including the positive outcomes for MEPs who were more active in their local area during their mandate and hence received more votes in the European Parliament elections.
- Actively deploy more soft and user-friendly approaches to present the advantages of connecting and cooperating at the European level, so there will be less Euroscepticism and more active European citizenship.

SPAIN

The Spanish government should:

- Reform the access to information law and adopt an Organic Law on the Right of Access to Information, in line with Article 20.1 of the Spanish Constitution on freedom of expression.
- Extend the Transparency Law so that it applies to three branches of power, executive, legislative and judicial, as well as all bodies performing public functions and receiving public funds.
- Strengthen the powers of the Transparency Council to sanction all violations of the transparency law, and increase its financial and human resources so that it can conduct full reviews of the implementation of the laws and impose structural measures to strengthen transparency, including by training public officials.
- Require all public bodies to publish on the Transparency Portal reports on the implementation of the Transparency Law, along with all responses to information requests.
- Ensure transparency of company ownership by guaranteeing full and free access to both the company register and the future register of beneficial owners, making both registers available in open data formats.
- Set up a platform for participation exercises that would allow interaction between

citizens and institutions, such as participatory budgeting or legislative consultations. For example, the platform used by the Madrid city government (Consul) is being used by municipal, regional, and national entities in around the world and has been endorsed by OGP and is being used by a number of OGP stakeholder forum processes.

The recommendations in this document are the result of the research activities and discussions which were organised within the "YOU4EU – Citizen Participation 2.0" Project.

The research activities were implemented from December 2018 to July 2019 and included a campaign on social networks aimed at collecting citizens' questions, a compilation of stakeholders' answers to these questions, and the publication "50 Questions from YOU to the EU" which summarised key citizens' concerns and provided an overview of recommendations for the improvement of citizen participation.

Within the Project, four public events were organised, one in each of Croatia, Slovenia, Montenegro and Serbia, between September and December 2019. Participants in these events had the opportunity to exchange views on the main challenges for the establishment of an inclusive and transparent society at the EU and national levels.

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