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In response to the invitation of the Secretariat of the European Committee on Democracy and Governance and the Conference of International Non-Governmental Organisations to participate in the consultations on the document called "Public consultation-Draft Guidelines on Civil Participation in Political Decision-Making", we are hereby presenting the comments prepared by members of the Civic Legislative Forum.

The Civic Legislation Forum has been operating at the Polish Stefan Batory Foundation since 2009. It includes representatives of non-governmental organisations, law firms, the academia and registered lobbyists. The Forum's objective is to improve the quality of the law and the transparency of the law-making process, as well as increasing the involvement of the citizens in this process.

We consider the document presented for consultation to be very important and necessary. Based on our experience to date, we consider statements on the following as being particularly important:

- The principle of conducting the consultation and the dialogue processes should be non-discrimination and inclusiveness of all individuals and organisations concerned.
- Full and effective complaints procedures, access to justice and redress mechanisms need to be made available in the event civil participation in the decision-making processes has not been conducted in accordance with the regulatory framework or has been denied (point 19).
- Laws, policies and decisions should not be adopted unless meaningful civil participation has taken place in line with the legal or regulatory framework (point 20).
- Public authorities are encouraged to develop plans for consultation which clarify the objectives, the process that will be conducted and methods used (point 28).
- Public authorities and NGOs should establish joint working groups or committees, engage in co-drafting of documents and joint decision-making such as participative budgeting and conclude strategic partnerships for implementation of decisions (point 37).
- Enshrining guarantees for civil participation in a legal and regulatory framework is strongly recommended, but member states should also ensure to the maximum extent possible compliance with the above guidelines at all levels of decision-making (point 39).

While fully agreeing with the argument that the main responsibility for creating conditions for civic participation rests with the public sector, we believe that such a document should also contain indications as to the role and duties of the civil sector. We would consider the following to be included among them:

- mutual respect of civil participants in the participation process, regardless of the views represented;
- responsibility for the opinions, views and positions presented;
- fulfilment of the function of representation, namely the provision of information to the citizens and collection of feedback from them; responsiveness to the citizens.

We are concerned that a document not containing a part describing the roles and responsibilities of the NGOs in the process of civil participation in political decision-making can be considered biased and may not be accepted by the authorities.

We are aware that, by nature, such documents as “Public consultation – Draft Guidelines on Civil Participation in Political Decision-Making” must be of a high level of generality. However, we believe that they should contain statements of clarification in at least a few places to avoid misunderstandings. We have presented some suggestions of clarifications or changes to some of the provisions below. We are convinced that their introduction will increase the chances of making this document more functional.

- ad document title “Public consultation - Draft Guidelines on Civil Participation in Political Decision-Making” – We wonder whether it is appropriate here to use the word “political”? Does this not limit the matters to which this document applies? Does it not apply to a much broader range of decision-making than just political decisions?
- ad section I. “Scope and definitions” – We believe that the term “civil society” should also be defined here. Although, as a rule, the term NGO is somehow described legally or practically in the individual countries, the term “civil society” is not. In addition, we have the impression that the term “civil society” is used interchangeably with “NGOs” and the “general public” in some fragments of this document – this can be confusing.
- ad point 5. “The actions of public authorities at different levels and of NGOs and civil society in general should be based on the following common principles:
 - *Accountability and transparency* of the process at all stages of decision-making;” – We propose defining how, in the context of this document, the notions of “accountability” and “transparency” should be understood. For example, by adding conditions which should be satisfied for a process to be considered accountable and transparent.
- ad point 5. “The actions of public authorities at different levels and of NGOs and civil society in general should be based on the following common principles:
 - *Responsiveness* in order to provide proper and timely feedback on the contributions and recommendations from civil society and ensure a real impact of participation on the decision-making;” – We believe that responsiveness alone on the part of the authorities will not assure a real impact on decision-making. However, it should increase the chance of such an influence. Therefore, we propose replacing the words “ensure a real impact” with the words “increased chance”.
- ad point 6. “Member states should maintain an enabling environment for civil society which respects in law and in practice the fundamental rights to freedom of association, freedom of assembly and freedom of expression and which limits any interference with the right to establish and freely operate an NGO.” – We propose adding the words “freedom of information” after the words “freedom of expression”. We believe it is important to refer to freedom of information in this part of the document, in the meaning of the freedom to obtain knowledge about the activities of the public authorities.
- ad point 13. “Civil participation should be guaranteed by an appropriate legal or regulatory framework to encourage and support broad and meaningful participation. Specific limitations and restrictions should be clearly prescribed and narrowly defined.” – We are concerned that the restriction contained in the second sentence namely “should be clearly prescribed and narrowly defined,” may be insufficient to actually guarantee “broad and

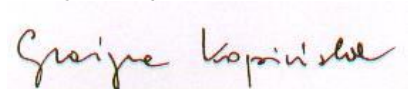
meaningful participation.” Therefore, we propose adding the words “in the applicable law, which is necessary in a democratic society” at the end of the point.

- ad point 14. “All phases of decision-making such as agenda-setting, drafting, adoption, implementation, monitoring and reformulation should be accessible for civil participation. Civil participation can take various forms, on-line and off-line, and should not be limited to one modality.” – We propose adding the following sentence here: “All participants of the participation process, whether this is an individual citizen or a large network organisation, should be treated equally by the public institutions which are the hosts of the participation process.
- ad point 15. “Public authorities should develop and adhere to transparent procedures in decision-making, facilitating civil participation.” – We propose replacing the word “facilitating” with the stronger and unambiguous “guaranteeing”. We believe it is also appropriate to add a sentence to this point stating that these procedures should be appropriately reflected in the law.
- ad point 17. “Public authorities should provide regularly updated, accessible and comprehensive information about the decision-making process and its contents.” – We believe that this point requires several additions. First of all, we propose clearly highlighting that, in this case, this applies to all levels of public authorities, namely central, regional and local.
Furthermore, we propose adding “in a clearly defined place” after the word “accessible”. The point is that this information should be easy for the citizens to find.
It may also be worth adding that these documents should be written in such a way that they are understandable to the public.
- ad point 18. “Public authorities should make good use of the new information and communication technologies, infographics and social media to facilitate civil participation.” – We believe public authorities should be obliged to use open data wherever possible. Infographics is no substitute for access to raw data.
- ad point 19. “Full and effective complaints procedures, access to justice and redress mechanisms need to be made available in the event civil participation in the decision-making processes has not been conducted in accordance with the regulatory framework or has been denied.” – We are not sure that the term “public authorities” used in section IV Prerequisites for meaningful civil participation also refers to the law-making bodies. If so, we believe this should be highlighted, especially in point 19.
- ad point 20. “Laws, policies and decisions should not be adopted unless meaningful civil participation has taken place in line with the legal or regulatory framework.” – As we mentioned at the beginning, we consider this provision to be extremely important. However, in our opinion, there will only be a chance that it will work properly if the condition contained in section II. Conditions and principles, namely: “Non-discrimination and inclusiveness of all individuals and organisations concerned” is reliably satisfied. So perhaps it would be worth referring to it at this point?
- ad point 23. “Access to information is an indispensable precondition for genuine civil participation.” – Would it not be worth making some mention here of limited access to classified information?

- ad point 31. “The legal or regulatory framework should prescribe reasonable deadlines for submitting input for each draft of the document.” – The term “reasonable deadlines” seems to us to be vague, giving the authorities a great deal of room for discretion. We believe it is worth including some reference dates or at least add – at times enabling all stakeholders to become familiar with these drafts and to prepare their positions.
- ad point 32. “Use of expedited consultation procedures for policy-making should be allowed only under exceptional circumstances on specific conditions such as emergency situations and should be duly motivated.” – We believe that the ability to use this type of extraordinary procedure should be specified in the applicable law.
- ad point 34. “Public authorities and NGOs should consider establishing different platforms as a permanent space for dialogue and participation with interested stakeholders. Such platforms may include regular public hearings, public forums, multi-sectoral councils or similar structures.” - According to our experience “public hearings” is an instrument used in the consultation process. In view of the lack of interaction while they are taking place, it would probably be difficult to include it among the instruments used in a dialogue, which assumes interaction.
- ad point 38. “Public authorities in member states should adopt clear processes and transparent criteria for representation of NGOs and other interested parties in bodies where decisions are co-created (councils, working groups, expert meetings, etc.). When inviting NGOs to take part in such bodies, public authorities are encouraged to consider their expertise and their previous public contributions on the relevant subject matter.” – We believe the criteria for NGO representation in the dialogue process should be prepared by the authorities, or at least in consultation with the NGOs, although it would be ideal if these criteria are set (developed) jointly.
- ad point 41. “Where a member state decides to regulate participation of NGOs in political activities, it should explicitly list what is considered as engagement in political activities. When there are limits to such political engagement, those should be clearly prescribed and narrowly defined.” – We propose adding the term “which are necessary in a democratic state” after the words “in political activities”.

On behalf of the Civic Legislative Forum

Grażyna Kopińska



Public Integrity Program