



HARMONIZATION OF THE PUBLIC CONSULTATION PROCEDURE
WITH EU ACQUIS IN THE CANDIDATE COUNTRIES: THE CASE OF
ALBANIA

MASTER'S THESIS

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DEDICATION

I dedicate my master's thesis with profound gratitude and heartfelt appreciation to both my parents, Pasho and Dona, who have been unwavering pillars of support throughout my academic journey. Their tireless work ethic, determination and encouragement have played a great role in shaping me.

DECLARATION

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

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June 2023

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ABSTRACT

Albania has consistently taken action to adhere to European values, standards and requirements, all for the ultimate purpose of joining the European Union. As the European Union demands that its candidate countries carry out the obligations imposed for their EU membership, Albania strives to do so in every step of the way as a sign of commitment to its accession. To ensure compliance with EU law in the framework of public consultations, the Albanian government has undertaken several initiatives towards transparency, accountability, openness and engagement of the civil society. This thesis unveils the legal framework regarding the public consultation process as key to public participation, both at the European and Albanian domestic level through the respective rules, procedures and conducting institutions. It analyzes the extent to which Albania has amended its legal framework regulating the public consultation process in light of its EU accession and approximation of its legislation with the EU standards. It explores the public consultation performance at the domestic level and uncovers the challenges of implementing its legal framework.

Key words: harmonization, public consultation, EU *acquis*, Albanian legislation

HARMONIZIMI I PROCEDURËS SË KONSULTIMIT PUBLIK ME TË DREJTËN E BASHKIMIT EUROPIAN NË VENDET KANDIDATE: RASTI I SHQIPËRISË

ABSTRAKT

Shqipëria ka ndërmarrë iniciativa të vazhdueshme për t'ju përmbajtur vlerave, standarteve dhe kërkesave Europiane, me qëllimin e vetëm për tu anëtarësuar në Bashkimin Europian. Ndërsa BE-ja kërkon nga vendet candidate përmbushjen e të gjitha detyrimeve që pasndjekin këtë status, Shqipëria përpiqet ta bëjë këtë në çdo hap si shenjë e angazhimit ndaj anëtarësimit të saj. Për të garantuar përputhshmërinë me kërkesat ligjore të BE-së, në kuadër të konsultimit publik, qeveria shqiptare ka ndërmarrë një sërë nismash drejt transparencës, llogaridhënies, hapjes dhe angazhimit të shoqërisë civile. Kjo tezë analizon kuadrin ligjor në lidhje me procesin e konsultimit publik, si në nivel europian ashtu edhe në atë vendas shqiptar nëpërmjet rregullave, procedurave dhe institucioneve organizuese përkatëse. Ai analizon nivelin në të cilin Shqipëria ka përmirësuar kuadrin e saj ligjor nën synimin e përafrimit të legjislacionit të saj me standardet e BE-së. Gjithashtu, teza eksploron performanceën e konsultimit publik në nivel kombëtar dhe zbulon sfidat e zbatimit të kuadrit të tij ligjor.

Fjalët kyçe: harmonizim, konsultimi publik, e drejta e Bashkimit Europian, legjislacioni shqiptar

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LIST OF ABBREVIATIONS

BRGs	Better Regulation Guidelines
DG	Directorate General
EU	European Union
GMOs	Genetically Modified Organisms
NGOs	Non-Governmental Organizations
OECD	Organization for Economic and Cooperation Development
TEU	Treaty on European Union
WPEG	White Paper on European Governance

CHAPTER 1

INTRODUCTION

1.1. Background to the research

The public consultation process allows for public institutions to seek the civil society's opinion on a current subject matter after notifying them on ongoing policy progress achieved by the respective public institutions and urging them to introduce their ideas, thoughts and conclusions. Public consultation puts forward an approach that reveals manifold gains. Firstly, it provides the bipartite benefit regarding competent government authorities and the democratic system whereby the public institutions themselves and the civil society operate. Secondly, it improves the legitimacy and credibility of these governmental institutions' decisions. Thirdly, the public consultation process enhances democracy in its core, transparency and rule of law. Thus, leading all these gains towards feasible policies that honor the needs and wants of the civil society is the holy grail of public consultations.

Consultation with the public prior to enacting policies and laws is no longer an accepted characteristic of accountable governments and democratic societies but an expected one (Donelan, 2006). This reasoning has underpinned the European Union's approach towards public consultation. According to the EU, public participation in the consultation process of policies and laws is crucial in a country, which seeks that its system be preceded by resilient democratic legitimacy and rule of law (ReSPA, 2016). European Union legislation has been sufficiently cautious to foresee this principle in its primary legislation.

Article 11 TEU states that EU institutions should provide citizens of the Union and representative associations with the opportunity of expressing and publicly exchanging their opinions in all areas, in which the Union operates with the aim of maintaining an open, transparent and regular dialogue with the civil society. Furthermore, this article has explicitly burdened the Commission with the task of carrying out broad consultations with the parties concerned in order to ensure that the Union's actions are coherent and transparent. These principles have been set in the Lisbon Treaty in order to guide the public consultation process in the European Union.

In a similar vein, while examining other sources of EU law, in particular communications from the Commission, it becomes clear the significance of the recognition of stakeholders' participation in the consultation process (Commission, 2002). Whereas citizens have been granted a dedicated portal to consultation named '*Have Your Say*' portal (Commission 2023a). The critical process of public consultation in the EU, among other things, anticipates the application of the principles of proportionality and subsidiarity, (Commission, 2001) which are embodied in Protocol 1 and 2 of the Treaty of Lisbon.

The obligation to harmonize the domestic legal system in compliance with EU standards lies not only to the EU member States but also to the candidate countries. In the Copenhagen Summit held in 1993, the European Council decided that:

“the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries” (European Council, 1993), part 7A, iii).

As can be seen, the EU demands from the candidate countries to take on the obligations of EU membership including the legal parameters prescribed for the public consultation process. Just as the candidate countries, including Albania, aspire to make their way into the European Union, it continues to name further legal requirements regarding conditions

and procedures of public consultation. All these legal requirements are introduced for the sake of openness, transparency and good governance. Candidate countries introduce a modern legal framework for public consultation, which are comprised of adequate time-spans and unique structures to monitor the process or to suspend and/or nullify policy or legislation that has not been consulted properly as foreseen by the respective legislation (Divjak, Forbici 2014).

As Albania has opened negotiations of the EU *acquis*, new legislative initiative to comply with European standards on public consultation should be taken. The 2020 communication of the Commission on “Enhancing the accession process - A credible EU perspective for the Western Balkans” voiced the reality of the Western Balkans and recognized the lack of instruments to deal with the well-needed reforms centered around economic growth, democracy and the rule of law. This communication also set forth the necessity of reforming the public administration operations in a hopeful attempt of boosting the democratic functioning of the competent institutions. The enhancement of democratic legitimacy through impartiality and righteousness in the decision-making process is reflected in the way civil society behaves toward public institutions (OECD, 2020).

1.2. Aim of the Thesis

This thesis considers how the Europeanisation process in Albania has contributed to the legislative initiatives aimed at reforming and improving the public consultation process as a requirement deriving from Albania’s aspirations of accession to the EU. Currently, Albania operates with a *lex specialis*, respectively Law 146/2014 “On Notification and Public Consultation”, which regulates the notification and public consultation process of draft laws, drafts of national and local strategic documents and policies of high public interests. The Law 146/2014 foresees the principles, rules and procedures of public participation in the policy-making process. It also comes in accordance with the commitments of the Republic of Albania in the global initiative of “Open Partnership Government”.

In this context, to assess whether the public consultation process in Albania aligns with the European Union standards, this thesis addresses firstly, the public consultation process at

the EU level shedding light on the historical development of public consultation and analyzing the core concepts, due to the different terms used in the various EU legal documents, namely participants, participation and consultation. Secondly the thesis presents a legal examination of the public consultation process in Albania inspecting the objectives, actors and the modalities contributing to the realization of the consultation process. Thirdly, this thesis endeavors a legal analysis investigation whether the public consultation process conducted in Albania aligns with the required EU standards.

1.3. Literature Review

Public consultation presents one of the main mechanisms that can achieve, through civic participation and active engagement, a resilient democratic legitimacy, transparency, openness and good governance, thus aiding the countries further mark progress in the democratic process. Public participation in a consultative procedure is not a new concept neither at the EU level nor at national levels. However, it seems to have received less attention during recent years by the Western Balkans countries, especially in Albania. There is an extensive literature on public consultations at the EU level, highlighting the historic evolution of public consultations and unveiling the differences of each era through the principles, norms, objectives, accessibility and addressees (Quittkat, Kohler-Koch 2013), followed by a number of articles closely examining specific cases of consultations from EU copyright rules (Kretschmer et al., 2014) to GMOs (Ahteensuu, Siipi 2009).

Regarding public consultation in Albania there have been articles written with a special focus on transparency and citizen participation (Council of Europe 2018); role of civic society participation in decision making process (Bino, Qirjazi & Dafa. 2018); moving on to articles critically assessing the national legal framework of public consultation, emphasizing its shortcomings and suggesting solutions (Reci, Angjeli 2021) or different case studies reports with the aim of improving institutional mechanisms and procedures (European Union Delegation 2020). While there is extensive literature on a vast array of issues concerning public consultation both at the EU level and at the Albanian national level there is barely any literature or studies examining the alignment of the Albanian public consultation process with the European standards, values and orientation as one of the many requirements stemming due to the EU membership obligation.

1.4 The Importance of the Thesis

This thesis presents the first glimpse into a comprehensive study of public consultation in two aspects. Firstly, the study provides a theoretical contribution in the area of European integration through the analysis of the effect of the European integration process on Albania's public consultation. While the impact of the European integration process in candidate countries has been acknowledged by a considerable number of authors (Vučković & Đorđević, 2019; Elbasani, 2005; Elbasani, 2014; Ilievski, 2014; Spahiu, 2015), its impact on the legal framework of public consultation in Albania still marks "uncharted territory". Secondly, this thesis contributes to a thorough examination of public consultation, its principles, objectives, role of actors and perspectives ahead, at both the European Union level and the national level of Albania, thus settling the issue of alignment with the European standards, values and orientation. At the moment of writing this thesis, only one study has been identified that analyses in a comparative way public consultation in the Western Balkan Countries in the light of the European Union (Cani & Mazelliu 2021). This study is a starting point. However, this thesis goes further by providing a comprehensive legal analysis of public consultation in the EU and to Albania. The thesis seeks to analyze whether and to what extent the EU integration process has introduced changes in Albania as a candidate country.

1.5 Methodology

This thesis is based upon the primary legal sources of the EU and Albania, respectively the Treaties and the legal framework regulating the public consultation process at the domestic level; non-binding sources of law such as guidelines, communications and preparatory documents, namely White Papers, prepared by the Commission for conducting an effective and efficient public consultation process; legal doctrine such as books, scientific journals, EC Progress reports and various national reports.

The core methodology is that of traditional legal doctrine, resting on the interpretation and analyses of the EU Treaties' provisions and Albanian national legislation exclusively concerned with the organization of the public consultation procedure. The thesis is enriched by a constant reference to the non-binding soft law documents of the Commission

with the intention of unveiling the role of the Commission when administering the public consultation process, its objectives and expected outcomes.

Besides the traditional legal method, the historical method is added. This method allows for the assessment of the European Union's and Albania's public consultation process from a historical perspective. This analysis sheds light on (i) the course through which the public consultation process has evolved in time since the establishment of the EEC/EU at the European level and since the adoption of the democratic constitution in 1998 (The Constitution of Albania 1998 as amended) at the Albanian domestic level, and (ii) the current role the public consultation process plays in the legislative procedure both at the European and Albanian level.

The last method selected is the comparative research method. For this thesis, the comparative legal method is key as it draws attention to the extent to which Albania has amended its laws, and particularly its legal framework regulating the public consultation process for the sake of fulfilling its EU membership obligations as a candidate country and thus satisfying European requirements, standards and values.

1.6 Thesis Outline

This thesis consists of an introduction and three chapters. The introduction section lays down some background information to the research and puts forward the aim of the thesis, which considers how the Europeanisation process in Albania has contributed to the legislative initiatives aimed at reforming and improving the public consultation process as a requirement deriving from Albania's aspirations of accession to the EU. The first chapter analyzes the legal framework of public consultation at the European level. This chapter assesses the public consultation process from a historical perspective as it explores the dynamic evolution of public consultation at the EU. The process is guided by four principles such as participation, effectiveness, openness and accountability and coherence, all detailed in the chapter as foreseen by the Commission. These principles compliment the five minimum standards of public consultation that must be fulfilled for the sake of an effective and efficient process. The second chapter climbs down to the Albanian domestic level. First, it provides a historical perspective of the public consultation process since the

humble transition of the country from a communist regime towards a liberal democracy and later it moves on to explore the legal framework regulating the public consultation process, namely Law no. 146/2014 “On Notification and Public Consultation. The third chapter examines the Albanian law on public consultation in light of the European Union legislation, based on three main elements: (i) the principles of public consultation; (ii) the conducting institutions and (iii) their respective procedure. Lastly, the chapter assesses the public consultation performance at the domestic level uncovering its recent challenges in properly implementing the legal framework.

This thesis concludes that the legal framework regulating the public consultation process at the domestic level is successfully in line with European requirements, standards and values. However proper implementation remains a genuine challenge, mainly on the part of public institutions leading the process and on the part of civil society, which fails to exhibit participation in the process.

CHAPTER 2

THE EU PUBLIC CONSULTATION REGIME

2.1 The Significance of the EU Public Consultations

The EU Citizenship Report, issued by the Commission in 2017, emphasized the common European values and beliefs under which the Union was founded. The EU Citizenship Report insinuated the demand for increasing civic engagement in EU democratic processes. According to the EU Citizenship Report, the European Union manifests representative democracy through attributes such as: i) accessibility; ii) transparency; iii) political accountability; and iv) a powerful electoral system which operates on an informed and included electorate. The EU Citizenship Report strongly argued that civic engagement does not stand for simply voting every few years or so but also actively taking part in policy-making by interacting with EU institutions and holding the latter liable.

The term ‘representative democracy’ was viewed as the reciprocal relationship between governments and their citizens by the Organization for Economic Co-operation and Development (OECD). In 2001, the OECD published a handbook, titled “*Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making*”. In this book, OECD called for the ultimate goal of reinforcing democracy and argued that governments must improve their relationship with citizens if they seek to see improvement in policy-making and an increase in governmental trust. Three pragmatic strategies have been identified through which this relationship can come about such as: i) information as a one-way interaction; ii) consultation as a two-way interaction; and iii) participation as an advanced two-way interaction.

Information as a one-way interaction depicts a passive role of the society as it mainly focuses on the government conveying all regulatory decisions to its people, thus being transparent. While the advanced two-way relationship, *participation as an advanced two-way interaction*, refers to governments making room for an active role of stakeholders in regulatory development, implementation and/or enforcement (Rodrigo, Andres Amo 2005). *Consultation as a two-way interaction*, on the other hand, stands as the medium between the two, whereby a government seeks and accepts the opinion of its citizens on different policies. Consultation is a dynamic process of broadening interaction led by the necessity of listening to different voices with the clear objective of impacting regulatory decisions, policies and laws (Jones, Gammell 2009).

2.2 Unveiling the Legal Concepts of Public Consultations

Considering that the EU documents have chosen different terms to coin public consultation, it is of the utmost importance to present a legal examination of the core concepts of public participation such as: i) participants in consultations (actors); ii) the concept of participation and iii) the consultation activity itself.

2.2.1 Participants of the EU Public Consultations

The Treaty on the European Union (TEU) has established in Article 11(3) that the Commission must “carry out broad consultation with the parties concerned”. The expression “parties concerned” is found commonly in EU primary law and represents the widest category of participants, thus not allowing an immediate limitation of participation in public consultations. For instance, in some provisions the focuses of attention are different to public consultation (cf TEU, Arts 108 para 2, 186, 191 para 4 & 212 para 3). Furthermore, some expressions encountered in TEU include ‘citizens’ (TEU, Arts 10 para 3 & 11 para 1), representative associations (TEU, Art 11 paras 1 & 2) and civil society (TEU, Art 11 para 2). Beside the EU Treaties (TEU and TFEU), the EC’s Better Regulation Guidelines (hereafter BRGs) opted out for the term “stakeholder”

Hermansson, 2016),¹ while the term “interest group” is repeatedly found in scholar articles focusing on EC’s public consultation (Binderkratz, et al, 2021).

However, the variety of terms makes it difficult to avoid the interchangeability of all terms available. Considering the number of likely participants and the possibility of overlapping terms, there exists a need for theoretical and conceptual accuracy. So, while stakeholders are individuals or groups that hold an interest, this does not mean that all of them live up to the term “interest groups”. The same line of reasoning goes for all the other terms regarding participants. Interest groups are not always congruent with representative associations and citizens do not always identify with the public or civil society.

Considering that the term “parties concerned” displays a vast array of participants, a necessity for legally examining the concept arises. Tobias Lock argues that this specific term indicates not only the groups of people towards whom a legal measure is directed but also all interested groups from third countries as the Article 11(3) TEU is applicable to third country nationals as well (Lock 2019). Before this article existed, the European Union institutions used the term “interested parties” when referring to public consultation (Commission 2002). As such, the term “parties concerned” exhibits a generous line of participants which suits the Commission’s view that every individual and group in society should be equipped with the ability to convey their opinion (Commission, 2002).

Ammann and Boussat prefer the term “civil society”, which is encountered in Article 11(2) TEU and Article 15(1) of the Treaty on the Functioning of the European Union (TFEU). Barber argues that the term “civil society” is most appropriate as it incorporates both individuals and organized groups and ensures a distinction between the public and private ones (Barber 2018). In its communications, the Commission has also used the term civil society to refer to the organizations that it believes are developers of broad policy discourse (Commission 2002). This institution’s idea of “civil society” is extensive as it encompasses “organizations depicting both social and economic actors”. As such, the term “civil society” is believed to better portray the all-embracing character that consultations should manifest in a democratic setting.

¹ This article defines stakeholders as “any organization including firms, interest groups, trade unions, NGOs and sub-national governmental bodies that has an expressed interest in the policy outcome and participates in the consultative process”.

2.2.2 Participation

Participation is a crucial notion when discussing public consultation. Participating in public consultation is viewed as the incorporation of individuals and groups, who are not part of the legislative or implementation process. The current version of Article 11 TEU dates back to the Draft Treaty Establishing Constitution for Europe which contained one provision, respectively Article 47 ‘Principles of Participatory Democracy’. Inspired by Article 47 of the Draft Treaty Establishing Constitution for Europe, it was viewed as necessary to include in the final version of the TEU.

The TEU contains two provisions with a specific reference to participation. First, Article 10 (3) TEU foresees the citizen’s right to participate in the democratic life of the union. Second, Article 11 (3) TEU stipulates the obligation of the Commission to “carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent”. Both these provisions are included in the Title II of the TEU ‘Provisions on Democratic Principles’ have general applications (TEU, Title II).

Moreover, participation has been elaborated by the Commission as well. For its proper functioning, the public consultation interaction between the Commission and the civil society, must be drawn upon some key principles. These principles establish the ground for all legal developments in the future of public consultation. They are crucial for the process as they determine the habitat within which they apply. These principles are enshrined in the Commission’s White Paper on European Governance (WPEG) such as: i) participation; ii) openness and accountability; iii) effectiveness; and iv) coherence (Commission 2001). It emphasizes how participation is the solution towards making EU Policy pertinent and effective. For the public consultation interaction to be successful, the responsibility to apply these principles is bilateral, meaning that both the Commission and the interested parties must apply these principles effectively.

i. Participation

The Commission aims to include as many members of the civil society as possible, thus manifesting an inclusive approach, in terms of implementing and developing law and

policies. This principle is most important when discussing EU legislation (Commission, 2001).

ii. Openness and Accountability

The Commission strongly believes that policy-making and decision-making processes must be recognized and appreciated by the general public, if they are to be consulted on such matters (Commission 2001). The key issue here is that the consultation process must be transparent, as the process itself represents the main interaction between authorities and society. The principle of openness and accountability manifests that the parties directly involved in the procedure or the general public as well must be clear on: i) what matters are being discussed; ii) what techniques are used for consulting; iii) what parties are being consulted and why specifically them; as well as v) what shaped the policy during its drafting process. For the sake of developing EU law and policy, the principle of openness and accountability matters most in terms of EU institutional performance, regarding the interests they represent and how encompassing this representation is (Commission, 2001).

iii. Effectiveness

This principle argues that the earlier the consultation process starts the more effective it can be. However, consultation should happen at a point in the development of the policy, where it can still influence its objectives, conduct and/or delivery techniques. Consultation may be needed in different phases of the policy development.

The consultation process serves as a medium between the Commission and the parties involved, whereby they can communicate and exchange their concerns. For example, the Commission works under several political commitments such as those to other European institutions under the Treaties or its international responsibilities towards international organizations or third countries. These obligations are conveyed and recognized during the public consultation process.

A precondition of effectiveness is the principle of proportionality, which argues that the technique chosen for consultation and its scope must be proportional to the influence of the proposed policy in practice.

Keeping interested parties informed on the political framework, under which the Commission operates and the policies it lays down for discussion, helps them set grounded expectations. (Commission, 2001)

iv. Coherence

This principle lays down that the Commission must take measures that represent the openness and stability of the public consultation process. It must guarantee all necessary instruments for the proper and democratic functioning of the public consultation process such as: i) feedback; ii) assessment and iii) review. All these efforts are established through coordination and reporting activities. Apart from its work, the Commission persuades interest groups to create their own monitoring tools so they can conduct self-evaluations in attempts to assess the success of their contribution (Commission, 2001).

According to Schmidt, participation has been deemed to strongly empower the legitimacy of legislation procedures in three different aspects (Schmidt 2013). Firstly, participation strengthens input legitimacy in terms of “government by the people” as it boosts discourse with controversy and differing opinions. Secondly, in terms of democratic legitimacy, participation increases output legitimacy in terms of “government for the people” because it nourishes beneficial understanding of the legislative process and successively it results in informed decisions. Coen and Katsaitis have argued that the Commission is in dire need of strengthening output legitimacy because of the frail democratic answerability it has been associated with (Coen, Katsaitis 2013). Third, participation serves the so-called throughput legitimacy as in “governance with the people” which represents a key benchmark in the face of accountability, clarity and effectiveness of the Union’s law-making processes in company with their broad-mindedness towards consulting the people (Schmidt, Wood 2019). Outside of the input, output and throughput legitimacy scheme, Schmidt argues that participation serves a fourth type of legitimacy, that of sociological size based on the reasoning that it soothes and softens the receiving of legislation by citizens (Schmidt 2013).

In one way or another the three types of legitimacies mentioned above set out objectives expected out of participation. It is of the utmost importance to understand that participation does not immediately guarantee democratic legitimacy. Equal representation, *inter alia*, is

one of the major criteria of participation that promises democratic legitimacy. Magnette is one of the authors that criticizes the Commission's practice for favoring organized crowds. In addition, he highlights the importance of making participation available to any and all citizens rather than customizing it to organized enthusiasts (Magnette 2003).

2.2.3 Public Consultation Process in the Union

Consultation represents the instrument through which participation is realized. While participation focuses on the participants, consultation centers around the deed that sets participation in motion.

Consultation surfaces in different phases of a law-making procedure but they commonly take place in the pre-parliamentary stage. As discussed above, Article 11(3) TEU burdens the Commission with the task of "conducting broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent". The concept of consultation as supported by the Commission itself is enshrined in various policy documents such as WPEG, the 2002 Communication "Towards a Reinforced Culture of Consultation and Dialogue" and Better Regulation Guidelines (BRGs).

2.3 The Dynamic Evolution of European Union's Public Consultation

Quitkatt and Finke, the two well-known academicians, examined the separate phases of European integration and development. They identified three consecutive stages of the Commission's public consultation evolution or otherwise known as "the three generations of public consultation" (Quitkatt, Finke 2008). They emphasize that mechanisms developed at different time periods of the European integration process are piloted by distinct purposes, beliefs and standards.

The first generation is placed within the milieu of European economic integration and persisted until the 1980s. Output legitimacy leads this stage towards an inclusive character focused on high-powered businessmen and economic connoisseurs whose accord determined the effective execution of the Community (today the Union) policies. The efforts of the Commission to attain these goals were translated into devoted ties with the European federations of farmers, trade, industry, employers, unions and different

professional interests. The kind of consultation encountered in this generation is viewed as fierce, colloquial and asymmetrical. Consultations were *ad hoc* and closed, mainly catering to pre-selected experts and economic stakeholders. Consultation tools displayed at this stage typically took the form of bilateral dialogue, multilateral gatherings and meetings available to a preferred circle of society. No discussion regarding the advantages of cooperation was initiated while all procedures remained informal by granting the Commission the greatest discretion the history of consultation has ever known.

The second generation started when the Commission continuously placed social dialogue in its agenda and began to encourage the concept of 'partnership' in its policies (Quittkat, Finke 2008, pp. 188). Similarly to the first generation, the main goal still remained European economic integration. At this point, the Commission desired to establish conversation with the European social partners. This was realized through the Delors Commission in 1985 when the "Val Duchesse Meeting" gathered all European social partners and prompted the discussion of the social aspect of the internal market (Eurofound, 2007). The outcome of this meeting resulted in the development and institutionalization of a European Social Dialogue, incorporated in the Single European Act in 1987 and presented in the 1992 Maastricht Treaty. During this period, consultation tools were available to more general interests, mostly NGOs operating in environmental matters, consumer issues and human rights.

Once the Maastricht Referendum did not succeed in Denmark (1992), the critical acclaim in member states was undeniable. At this point the Commission was forced to place special focus on the larger welcome of EU political matters in member states thus leaving behind the undivided attention it once placed on the quality of its proposals. This worry was echoed when a channel of communication unfolded for general interest representatives and a funding program for NGOs was executed. In 1996, the initiative 'Civil Dialogue' came forward regarding social relations and affairs. At this point in time, the Commission needed to secure partners for consultation so it could promote transparency. As a result, it urged networking between NGOs and it also embraced many multi-stakeholder forums, one of them being the Platform of European Social NGOs. This platform also known as the Social Platform has turned into the favorite consultation recipient of the Commission and has headed the arrangement of the public events of European Social Policy Forum since 1996 (Smismans, Stijn 2003).

This succeeding phase widened and magnified public consultation towards new levels and new societal actors. Mechanisms of public consultation and in particular its sponsorship now made room for broadened political goals and introduced in the face of inclusiveness, a wider circle of groups and organizations in society (Peers 2001). The EU extended its perception of ‘partners’ by welcoming interests somewhat diverse to those compared to the first stage. Assuredly, all endeavors pursued one intent only, which unfolded in exhibiting transparency of the system and accessibility to documents for the society so the EU could now restore the citizens’ trust in the system and shut down the voices of critics (De Leeuw, Magdalena 2003).

The Commission’s White Paper on European Governance broke ground for what represents the third stage in the development of public consultation. This generation is guided by openness, transparency, accountability, effectiveness and coherence. Its designation is clearly depicted by the choice of words “Participatory Democracy”, which translates into the Union partnering up with the broad society. Moreover, the sole aim characterizing this generation is the promotion of the democratic legitimacy in the Union’s system. Quittkat and Finke argue that this movement characterizing the third generation enhanced the debate of legitimacy deficit of the EU.

The Prodi Commission, faced with the calamity the Santer Commission left behind,² adopted a manifold approach toward public consultation, in the sense that it expanded both the spectrum and the wide variety of tools serving consultation. The new *modus operandi* represented by “Online Consultations” welcomes a vast array of voices from civil society be it organizations, groups or individuals. The significance of “civil society” was once again displayed when the draft of the EU Constitutional Treaty in Article 47 foresaw the “Principle of Participatory Democracy”. While online consultations promise the opportunity of listening to whatever the civil society has to say, a debate on its influence on EU policy has long emerged. This third-generation consultation has been rather controversial because just as participation of the public does not immediately increase

² Commissioner Santer resigned on March 15, 1999. Repeated accusations of nepotism, fraud and maltreatment of aid funds generated collective pressure mainly in the European Parliament and other institutions. The last four months of the Commissioner in office witnessed a political war against the Commission’s collective responsibility.

democratic legitimacy, similarly the democratic aptitude of electronic consultations cannot be guaranteed.

2.4 Minimum Standards Required for EU Public Consultations

An EU public consultation is described as the formal process by which the Commission gathers the thoughts and views of citizens and stakeholders about various policies in line with its Treaty obligations. It is a mechanism, portrayed by the Commission, as a win-win situation for all parties involved throughout the legislative procedure, from shaping a policy before a Commission proposal to its adoption as law and execution (Commission, 2002).

The 2014 Stakeholder Consultation Guidelines confirmed the four general principles that must be respected when consulting, namely: i) participation; ii) openness and accountability; iii) effectiveness; and iv) coherence.³ These principles are complemented by a number of five minimum standards that are crucial in consultation processes such as: i) clear content of the consultation process; ii) consultation target groups; iii) publication; iv) limitation period for participation; v) acknowledgement and feedback.

Open public consultations are organized regularly by the Commission. The management of consultation procedures is decentralized to the Commission service responsible for the specific initiative. There are times when external consultants assist or even run consultation procedures, however the lead service in the Commission is still held responsible for the objectives of consultations, the process, its results and the fulfillment of the minimum standard requirements as listed above (Commission, 2014).

Accordingly, the Commission consults interested parties openly and transparently in its significant proposals. There are various ways through which stakeholders can be consulted such as: i) focus groups; ii) public hearings; iii) different events and iv) recently online consultations via zoom or other applications. Specifically, stakeholder consultations are held during the preparation of initiatives such as: i) policy communications; ii) White Papers or Green Papers; iii) legislative initiatives including delegated acts and

³ It should be noted that these four principles were set out firstly in 2002 by the Commission's Communication "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission" COM (2002) 704 final.

implementing acts with significant impacts; iv) spending programs; and v) evaluations of existing policies.

The Commission evaluates its consultation necessities on an independent initiative-by-initiative basis in agreement with its right of initiative (Commission, 2002). The minimum standards required are compulsory for Green Papers and for all consultations on new Commission proposals, subject to impact assessments. The Commission's Refit Communication promised to conduct public consultations and apply the five minimum standards, when dealing with Fitness Checks and evaluations, and recommended that agencies do the same (Commission, 2014).

On a case-by-case basis every consultation requires a custom-made strategy, tailored to its needs, which is then approved by the inter-service group, responsible for ensuring that the consultation is in agreement with the applicable requirements. If the inter-service group has not been established, the Directorate-General decides to run it through the Secretariat General, conclusively tasked with organizing consultations on the 'Have Your Say' portal (Commission, 2023a).

The following five minimum standards are utilized by the Commission to evaluate whether the EU public consultations have been conducted successfully or not.

2.4.1 Clarity

All communications and content of consultation should be clear, concise, updated and encompass all-important information needed to encourage reaction and feedback. The context, scope, objectives, the specific issues to be discussed and the expected results of consultation must distinctly be identified. In addition, an explanation of the Commission's process of dealing with responses, what to expect and information on the next phase of policy-development must also be included. This identification assists the procedure in making it open and transparent while averting all mismatched expectations of responding target groups. If the Commission plans on holding public hearings, meetings or conferences of any kind regarding the consultation of the policy, necessary information and details must be disclosed (Commission, 2002).

2.4.2 Consultation Target Groups

Defining target groups for consultation procedures means identifying all relevant parties to the policy being consulted. According to the Commission, there are three kinds of stakeholders that must be given appropriate exposure to the consultation process, as follows. The first group of stakeholders are those, who either directly or indirectly, are impacted by the policy. The second group of stakeholders entails those that will have to implement the policy. The third group includes all entities with ambitions that hand them a direct interest in the policy (Commission 2002).

When defining target groups, it is important to consider previous engagement of participants and to assess whether there is a need for specific experience, proficiency, expert background or skills, or necessity to include non-organized interest groups. Another matter in question is to evaluate whether there is a need for genuine equilibrium between different interests such as: i) social and economic entities; ii) small and large organizations or businesses; iii) broader communities like churches or religious organizations and specific target groups as the elderly; iv) the unemployed; v) ethnic minorities or women; and vi) on a larger scale between institutions in the EU and third countries and candidate countries. In the case that a consultation entity is established, the Commission makes sure that its composition accurately manifests the sector it represents and if not, it is the responsibility of the Commission to find ways through which all interests can be included. It is important to note that all organizations with a special focus on impacting EU policy should be listed in the Transparency Register⁴, otherwise they are considered as individual feedback (Commission, 2002).

2.4.3 Publication

The Commission, for the sake of efficient and effective consultation, secures appropriate awareness-raising publicity and adjusts communication channels to accommodate the needs of all target audiences. A “single access point” is used to publish and announce public consultations on the Internet. However, this does not imply an exclusion of

⁴ The Transparency Register is an instrument that allows European citizens to see what interests are being represented at the Union level and on whose behalf.

traditional communication tools such as press releases or mailings. In order to address the wider public, a single access point for consultation has been established, whereby all interested parties can find relevant information on consultation and documentation related to it. Today, this single access point has been named ‘Have Your Say’ portal and it is available in all official EU languages (Commission, 2023a). Also, other instruments can further publicize EU consultation such as: Commission webpage and social media, speeches in events, newsletters, press conferences, Transparency Register, Permanent Representations, notification systems of the EC to its subscribers (Lironi, Peta 2017).

2.4.4 Limitation time for Participation

Stakeholder consultations reveal benefits that are manifold. By aiding in the gathering of evidence, the stakeholders’ perspective helps improve the Commission’s grasp of the matter in question thus directly impacting the quality and integrity of legislative initiatives while also boosting the citizens’ faith and embrace of the Union (Commission, 2021).

Public consultations ought to be conducted in cases of proposals that require impact assessments. It is strongly suggested when dealing with fitness checks or technical initiatives and policies that entail the concern of the wide society. Nonetheless, in the case of policies and programs that assume a defined interest, which does not concern the broad public, consultations are indeed limited to particular pre-defined groups such as stakeholders.

Stakeholder consultations are conducted on the basis of four main principles. First, consultation proceedings need to be all-inclusive, meaning it involves a vast array of stakeholders in the proceedings. Secondly, transparency must precede the process regarding not only the parties involved in it but the wide society as well. Thirdly, consultation cannot be purely bureaucratic for the sake of democracy. This means that it ought to take place at a point in time when the perspectives submitted can still cause a change in effect. Last but not least, uniformity in the face of consultation procedures must be maintained throughout all phases of the procedures.

At the beginning of a legislative or policy initiative, everyone in the general society is able to submit their own views and thoughts on the proposed matter, along with factual and

data-based information via the ‘Call for Evidence’ (Commission, 2023b). The provided period in this case is four weeks. The information submitted in this stage is taken into consideration by the Commission not only when discussing the law or policy at hand but also when assessing other analogous laws in a sole policy area (Commission, 2021).

Other technical initiatives, including here the ones supported by impact assessments require a period of 12 weeks of public consultations (Commission, 2021), which can be conducted on the ‘Have Your Say’ portal and then filtered at the stage search under the name ‘Call for Evidence’ or be followed by other consultation techniques such as panels, workshops or target consultation.

In the case of adopted proposals by the College of Commission, the consultation timeline is set at 8 weeks (Commission, 2021). In this phase, stakeholders come forward to the Commission by submitting their own perspectives on the adopted proposal at hand and the respective impact assessment. Their perspectives are then laid before the European Parliament and Council in the hopes of a more qualitative legislation process. Draft delegated acts and crucial implemented acts can also be consulted by stakeholders but within a period of 4 weeks (Commission, 2021).

2.4.5 Acknowledgement and Feedback

According to the Better Regulations Guidelines, the lead DG has discretion to divulge the information on the results of the comprehensive consultation process, feasible consequences and any other accompanying information. However, apart from an abstract, a synopsis report should be concluded at the end of the consultation procedure. Through this synopsis report, stakeholders and all participants can be informed on the degree to which their contributions have been anticipated, and if so, how they assist the process. More importantly, if certain contributions have not been considered, a line of reasoning must be presented to the respondents explaining why the development of the policy-making process could make no use of it (Commission, 2021).

CHAPTER 3

LEGAL FRAMEWORK OF PUBLIC CONSULTATION IN ALBANIA

3.1 A Historical Overview of the Public Consultation Process in Albania

In the early 1990s, Albania underwent a transition from a communist regime towards a liberal one. As part of this transition, in 1998, Albanian adopted its modern Constitution, which embodied the core principles of democracy such as rule of law and human rights (Law 8417/1998). The Constitution of Albania introduced the right of citizens to participate in the decision-making process of the government. The stipulation of this right as a constitutional provision helped public consultation to emerge as a key element of democratic governance.

In contrast to the Constitution of 1976, the Constitution of Albania introduced the right of citizens to participate in the decision-making process of the government. One year later, two important laws that made a significant step towards an open, transparent and accountable government were approved by the Assembly of Albania, respectively Law 8485/1999 “Code of the Administrative Procedures” and Law 8503/1999 “On the Right to be Informed on Official Documents”. These two laws were focused only on the right to be informed on governmental activity or initiatives and did not offer any type of mechanism regarding the participation of civil society or interest groups in the decision-making process or policy-making which sparked broad public interest.

Nevertheless, in the beginning of transition, there was limited public consultation in Albania. The government was yet led by the mentality and culture of the communist

political party and it was difficult, if not impossible for citizens of the Albanian society to enter into meaningful discussions with the government for the sake of public consultations. Later on, as Albania ratified the 1998 Aarhus Convention and the perspective of European Integration was confirmed at Thessaloniki Summit (2003), governmental authorities started to take a more democratic approach. This made public consultation even more significant amidst the country's governance.

A few years later, Law 9000/2003 introduced some provisions to include parties outside of the public administration. These provisions foresaw the establishment of expert groups, which would be responsible for compiling strategies, policies, relevant studies or specific draft acts. The Prime Minister or respective Minister had the right to establish these expert groups, which had to comply with the prerequisite of not working in any of the public institutions. However, setting up these working groups was only allowed in specific situations such as: i) exceptional circumstances, and ii) significant draft laws, when the field covered by the proposal was broad or when the legislation aimed to establish or change fundamental principles of the law.

The adoption of the "Regulation of the Council of Ministers" marked another stage in public consultation (Decision of Council of Ministers 584/2003). The "Regulation of the Council of Ministers" (584/2003) envisaged, *inter alia*, public consultation even with the civil society. Therefore, pursuant to point 14, the Legal Directories of the respective ministries when compiling draft acts, apart from consulting certain structures within and outside of the institution, had to organize and participate in consultations with organizations of the civil society, whose activities correspond with the objectives, purposes and implementation of the draft act (Decision of Council of Ministers 584/2003). Furthermore, these directories had the discretion to ask for various experts' opinions, irrespective of the fact whether they worked within the ministry or outside of it (Decision of Council of Ministers 584/2003). Nonetheless, conducting these types of consultation remained within the discretion of the Legal Directory. In other words, it was up to the Legal Directory to decide whether they preferred to conduct public consultation or not. The "Regulation of the Council of Ministers" remained silent on the procedural rules on organizing and performing consultations with external experts or structures of the civil society (584/2003).

In terms of its European integration process, the Albanian government has undertaken several initiatives towards transparency, accountability, openness and engagement of the civil society in various decision-making processes. In the framework of all these initiatives, in November 2014, the Law 146/2014 “On Notification and Public Consultation” was successfully passed by the Assembly of Albania. Throughout its principles and procedures, the Law 146/2014 seeks to regulate the process of notification and public consultation as well as improve all the relations created or derived from the process itself. Based on the responsibility of the public institutions towards the interested parties, the Law 146/2014 aims to guarantee a transparent, all-inclusive and effective public consultation in terms of all policy-making and decision-making processes regarding draft laws, strategic documents and policies of a high public interest (Article 5).

Through the implementation of this law, the legislator seeks to encourage and secure the notification and public consultation process between the broad public, stakeholders and public institutions as well as their regulation for an all-encompassing partaking in the decision-making processes which regard a high public interest. The legislator aims to increase the civic participation in the public consultation process, and particularly the society’s electronic participation. Furthermore, the Law 146/2014 strives to maximize the efficiency of decision-making on the part of public institutions while strengthening transparency and liability of these authorities towards the general public and specifically stakeholders. In this way, by formalizing the public consultation process into a legal obligation, it stands as a *sine qua non* task in the procedure of drafting legislation, acts or policies of a high public interest.

In addition, the recent publication of the Manual for Drafting Legislation has increased clarity (Ministry of Justice, 2021). This manual is intended as a guide in unifying the different practices of drafting legislation. The manual insinuates that in order to promote an open, transparent and democratic decision-making, it is important that draft acts are consulted with interest groups, subjects directly or indirectly involved in the field of their implementation, experts or professionals in the field of regulation of the draft act (Ministry of Justice of the Republic of Albania, 2021). While the legal base is in line with European standards, there have been many cases when public consultation was conducted when the draft acts were already for discussion before the Parliamentary Commissions. This has

been pointed out by OECD assessment report (year) and 2014 EC Progress Report on Albania.

3.2 Legal Rules of the Notification and Public Consultation Process in Albania

Within the framework of an effective public consultation, Law 146/2014 “On Notification and Public Consultation” has established specific rules concerning every phase of the procedure, the actors partaking in the process, their responsibilities and liabilities. Its purpose is to regulate the notification and public consultation process of draft laws, national or local strategic documents and policies. The principles upon which the whole process is based ensure transparency, inclusivity and non-discrimination among participants and effectiveness on the part of institutions. It encourages accountability and strengthening the democratic integrity of public entities. The remaining part of this section analyzes the public consultation process in Albania.

3.2.1 The public institutions bearing the responsibility of conducting the public consultation process

The Law 146/2014 places a general obligation in terms of public consultation in policy-making and decision-making processes for every public institution irrespective of its nature or government level. More specifically, the obligation to organize public consultations procedures during the policy-making and decision-making process is entitled to: i) all central government bodies that perform administrative functions; ii) all public entities’ bodies to the extent to which they perform administrative functions; iii) all local government bodies that exercise administrative functions; iv) any and all bodies of the Armed Forces for as long as they perform administrative functions; and v) all other physical or legal persons, to whom has been granted, through law or any other manner foreseen by law, the right to exercise public functions (Law 146/2014, Art 2 para 9).

3.2.2 Responsibilities of conducting the notification and public consultation process

In order to properly understand public consultation, it is necessary to distinguish two kinds of responsibilities: i) the responsibility of conducting the public consultation process and

ii) the responsibility of overseeing its orderly execution. Without a doubt, the head of the respective public institution has the primary responsibility to execute the law and organize a public consultation process. At the same time, for the overseeing of the orderly execution of the process, the Law 146/2014 requires the appointment in every public institution a notification and public consultation coordinator (Law 146/2014, Art 10). This position bears the responsibility of harmonizing and administering all duties related to the public consultation process with the sole aim of guaranteeing the right of notification and public consultation. The coordinator has been conceived to act as an interface, whereby the general public, interested parties or stakeholders can seek information or to exercise their rights in regards to public consultation.

3.2.3 Draft acts that undergo public consultation in terms of the decision-making process of public institutions

The Law 146/2014 has been very clear when specifying which acts undergo public consultation. The list of acts that are excluded from public consultation is exhaustive and it mostly refers to the nature of the act, its content or the circumstances and mechanism of its ratification. Respectively, Article 4 of the Law 146/2014 has excluded from public consultation all acts related to:

- a) national security for as long as they constitute ‘state secret’ as the law on ‘state sector’ defines;
- b) international, bilateral or multilateral agreements;
- c) individual administrative acts and normative administrative acts except for when it is foreseen differently by law;
- d) normative acts by the power of law approved by the Council of Ministers;
- e) civil emergency and
- f) all other exceptional cases excluded by law.

The public consultation is obligatory for the following acts: i) draft laws; ii) national or local strategic draft documents and iii) those bearing a high public interest (Law 146/2014, Art 4). While for the draft laws and strategic draft documents public consultation is clear, a confusion could be raised on the issues bearing a “high public interest”. Firstly, the Law 146/2014 has not been defined as what it means a “high public interest”. Such lack of

clarity can complicate its interpretation and application in practice. Secondly, likewise draft laws and strategies, whether national or local, public consultation is obligatory even for issues of “high public interest”. However, lack of definition might allow arbitrary action.

3.2.4 Interested Parties involved in public consultation process

The Law 146/2014 “On Notification and Public Consultation”, through its stipulations in Article 8, exhibits an inclusive and embracing character towards the individuals and groups that can partake in a public consultation process, thus not allowing for any disorientation. As such, the interested parties in a public consultation procedure are: i) public institutions; ii) Albanian citizens and interest groups; iii) foreign physical persons with permanent residency in Albania and foreign legal persons registered in Albania (Law 146/2014, Art 8 para 1). The latter category is obliged to take part in public consultation process only if: i) there is an international treaty that allows participation or ii) public bodies, upon a direct request, deem necessary (Law 146/2014, Art 8 para 2). Whereas, public institutions have the discretion to determine, in conformity with the content of the draft act and depending upon the type of consultation selected, which parties will take part in the public consultation process.

All interested parties to the public consultation process have three rights. Firstly, the interested parties have the right to inquire information on the notification and public consultation process, including access to the draft act (Law 146/2014, Art 9 para 1). Secondly, interested parties have the right to propose to public institutions the initiation of the procedure of drafting and approving draft acts, based on the annual plan on decision-making as published by the public institution (Law 146/2014, Art 9 para 2). Finally, interested parties bear the right to submit comments and recommendations for all draft acts that are, at that moment, in the process of public consultation (Law 146/2014, Art 9 para 3).

3.2.5 The appropriate moment at which the public consultation procedure should be conducted

Law 146/2014 “On Notification and Public Consultation” recognizes the right of public institutions to gather information or preliminary opinions of interest groups prior to the drafting process of the respective act as well as their right to conduct public consultation procedures after the preparatory drafting has concluded (Law 146/2014, Art 12). The Law 146/2014 does not establish a specific time for the public consultation procedure as a separate link in the legislative process. As such, it falls on the responsibility of public institutions to provide sufficient time for the public consultation process. Additionally, public institutions have to take into consideration a number of key aspects such as: i) the nature and significance of the draft act; ii) its complexity; iii) the deadline foreseen for the approval of the act by the competent authority, based on the anticipation made in the legislative plan of draft acts; and iv) all interest groups or other groups intended to be included in the consultation process. In this sense, the respective public institution must determine in advance the period of time within which they intend to conduct the public consultation.

3.2.6 Administering the notification procedure in the public consultation process

The notification procedure constitutes the first step towards a public consultation process and it bears a great role for its orderly execution. It must warrant accessibility, transparency, effectivity and all-inclusiveness. The most important aspect of notification is the moment when it is administered. It must be done through an approach that allows for all parties to have sufficient time for submitting their thoughts and opinions. In this case, the Law 146/2014 does not set a mandatory period of time. Article 17 of the Law 146/2014 stipulates the only deadline concerning the public meetings. According to this article, interested parties should be informed no later than 20 working days prior to the public meeting and have access to the draft act being consulted (Law 146/2014, Art 17). In all other cases, the notification should be done in an appropriate manner, allowing sufficient time for consultation and keeping in mind the deadline for the approval of the act at hand by the competent authority.

Based on the nature of the consultation selected, notification should be performed with methods and manners that reflect genuine accessibility by the general public and all interested parties. Article 11 of the Law 146/2014 foresees as a default rule notification on the electronic register (Electronic Registrar for Notification and Public Consultation 2023). However, in cases where the public institution deems it appropriate, notification can be made through other methods such as: i) electronic mail; ii) public announcement exhibited in the public institution performing the notification; iii) publishing in local newspapers or in the two most preferred newspapers at a national level; or iv) announcing through national, regional or local media (Law 146/2014, Art 11). The notification must contain all the necessary elements for a public consultation process such as: i) the deadline; ii) place and method through which interested parties can submit their opinions; iii) the reasons for issuing the draft act and its potential impact; iv) contact details of the coordinator of notification and public consultation of the public institution as well as the v) location and date of the public meeting in the case that the public institution decides for its organization (Law 146/2014, Art 13).

The public institutions must take all necessary measures to organize an effective public consultation. The notification should be published in the electronic register accompanied with the draft act. Furthermore, the public institutions should publish, firstly, the annual plans of the decision-making process of the public institution as foreseen by Law 119/2014 concerning the transparency program should be published by the public institutions; and secondly, information related to the notification and public consultation process during all phases of the procedure starting from the moment the draft act is published until the final act is approved (Law 146/2014, Art 6).

Once the public institution has published the notification on the electronic register, it can opt for direct consultations or public meetings with interested parties. The decision of the public institution is documented with the respective records, which according to law no. 146/2014 constitute official state documents. When the proposed policy is particularly important or sparks a broad interest, public meetings can be broadcasted through audiovisual media with the purpose of allowing the general public to become aware of the discussions taking place (Law 146/2014, Art 6 para 2).

3.2.7 Time limitations provided in the public consultation process

One of the key aspects of a successful public consultation consists of the reasonable amount of time allowed for the interested parties to submit their opinions. On this issue, the Law 146/2014 provides a reasonable period of time of 20 working days from the day the notification of the public consultation has taken place or from the day that the process of preliminary notification has been notified (Law 146/2014, Art 15 para 1). In the case of acts that are excessively significant or complex, the respective public institution can make the decision to extend this period of time to 40 working days from the moment of notification (Law 146/2014, Art 15 para 2).

In a truly democratic process of public consultation, including as many parties as possible in the public consultation of the draft acts is substantial. Article 16 of the Law 146/2014 stipulated the discretion of public authority to extend the period of time with a purpose to receive more comments or even to repeat it only in two exceptional cases. The first case is when the public institutions are not satisfied with the quality of the comments received. The second case is when the comments collected have caused new significant issues to rise, which were not part of the first consultation (Law 146/2014, Art 16).

Another element of effective public consultation is information in advance of interested parties either in traditional manner (postal services) or by email. Depending on the complexity, nature and features of the draft act, additional information should be made available for purpose, main concepts to be discussed, studies or analysis conducted for the drafting of the act (Law 146/2014, Art 14).

3.2.8 The methods and manners through which the public consultation process is performed

The Law 146/2014 does not envisage specific forms or methods that must be followed in different cases of public consultation. Consequently, it remains within the exclusive decision of the respective public institution to select which form or method is best suited to the draft being consulted. It is crucial that public institutions make their choices in proportionality with the public impact of the draft act. According to Law 146/2014, collecting the comments and opinions that are submitted during the public consultation

process depends upon the form and manner that has been chosen by the public institution before-hand. They can be submitted verbally and/or in a written form or they can be registered in a record (Law 146/2014, Art 11 para 2). Depending upon the public institution's choice, the public consultation process can be done through: i) collecting the opinions of the interested parties or the general public in a written form after the draft act is published in the electronic register or the official webpage of the public institution, ii) collecting the comments of the interested parties in a written form through electronic mail after they have been notified on the content of the draft act and iii) public meetings in case the public institution decides to organize it because of the significance of the act and the high public interest it represents.

Public meetings encompass discussions with interest groups or they might entail a broader participation. The participants express their opinions verbally and the institution registers them in a record before archiving it. In addition, interested parties can submit their comments in written form after the public meeting within a deadline set by the institution, which cannot be less than 20 working days. Nonetheless, the public institution must ensure that the selected form through which the public consultation process will take place aims for all-inclusiveness. At this instance, a key aspect is identifying the interested parties or interest groups as well as organizing the consultation process in such a manner that it provides for successful contribution and public impact.

3.2.9 Administering the input of the interested parties and delivering a feed back towards them

The principal purpose of the public consultation process is gathering opinions, thoughts and views from the interested parties, not simply for the sake of the process but for the improvement of the draft act being consulted. In order for there to be a meaningful contribution to the process, the collection of these thoughts and opinions must be done in an organized and structured manner. Under the cautious supervision of the coordinator of notification and consultation, the respective institution documents the whole process, gathers the information and starts working on the input received (Law 146/2014, Art 19).

The public institution and its decision-making structures analyze the comments submitted and have the discretion to decide on whether to take them into account or dismiss them.

While draft acts are required to be accompanied by a synopsis of the accepted comments, the comments dismissed must be accompanied by an explanation of the reasons why they were not taken into account and must be forwarded to the respondents through one of the methods foreseen by the law (Law 146/2014, Art 11). This is all done for the sake of the transparency of the public institution.

When holding public meetings in the name of public consultation, state officials that are present must ensure that, attendance lists, records or other official documents drawn up during or after the public meeting, are administered under the legal rules set out for them as they constitute official state documents and, as such they must be accessible by the general public.

3.2.10 The institution responsible for the orderly execution of the law and the public consultation process

The responsible institutions for the orderly execution of Law 146/2014 “On Notification and Public Consultation”, are all public entities, which in the cases foreseen by the law, are obligated to place their policy-making and decision-making processes under the public consultation procedure (Law 146/2014, Art 2 para 9).

In examining the Law 146/2014, it can easily be distinguished that it fails to establish a monitoring institution with the purpose of supervising the application of the law in practice, analyzing difficulties that might rise up and taking precautions in attempts to avoid the potential harm of these difficulties. Despite this shortcoming, the Minister responsible for relations with the Parliament has, *inter alia*, the responsibility to oversee whether legal initiatives have complied with their obligation to conduct a public consultation process with the general public or interest groups (Decision of Council of Ministers 834/2003, points 4-6). On the other hand, the Minister that covers the area of information technology is the responsible institution for developing rules concerning the administration of the electronic Register for the notification and public consultation process (Law 146/2014, Art 7 para 2).

CHAPTER 4

LEGAL ANALYSIS OF THE PUBLIC CONSULTATION LAW OF ALBANIA IN LIGHT OF THE EUROPEAN UNION INTEGRATION

4.1 Introduction

As Albania strives in its efforts to become part of the EU, certain requirements such as legal standards, openness, transparency, good governance and accountability have to be fulfilled. The EU considers public consultations of policy and law-making as *sine qua non* when it comes to the proper and democratic functioning of any country aspiring to joining the EU. It encourages dynamic conversations, whereby stakeholders and interested parties voice their concerns and exchange their ideas pursuant to a transparent and coherent procedure (TEU, Art 11). Similarly, the EU requests that all standards and requirements established by the European Council, be respected and complied with by candidate countries, as a sign of commitment to their EU accession (Hillion 2010; Hillion 2015).⁵ Following the Union's requirements, Albania embedded public consultation in its internal legislation in 2014, when parliament passed the Law no. 146/2014 "On Notification and Public Consultation". The Law 146/2014 signifies one of the many steps undertaken by Albania to comply with EU conditionality for the ultimate goal of accessing the Union.

This chapter examines in a comparative way whether and to what extent Albanian legislators have transposed EU public consultation *acquis* in the domestic legislation

⁵ Article 49 third sentence reads that "the conditions of eligibility agreed upon by the European Council shall be taken into account". Based on such provisions, the European Council has in its discretion to decide on the amending or adding new accession criteria.

focusing on the following criteria: i) the principles of public consultation; ii) the institutions participating in the public consultation process; iii) the procedure of public consultation.

4.2 The Principles Guiding the Public Consultation Process

As discussed in chapter 3, for the proper functioning of public participation, a set of principles must be established. These principles provide the ground for all legal developments in the future of public consultation. They are crucial for the process as they determine the environment within which they apply. At the EU level, these set of principles are enshrined in the Commission's White Paper on European Governance (WPEG) such as: i) participation, ii) openness and accountability, iii) effectiveness and iv) coherence. These principles emphasize how participation is the solution towards making EU Policy pertinent and effective. Through the principle of participation, the Commission aims to include as many members of the civil society as it is possible, be it citizens, stakeholders, interest groups or different representative associations (Commission, 2002). In this way, public consultation at the EU level, manifests an inclusive approach towards its participating parties.

By analyzing the Law 146/2014 "On Notification and Public Consultation", it can easily be recognized that the principle of participation has been embraced by the internal legislation of Albania, exactly as put forward by the Union, if not to a greater extent. Article 8 of Law 146/2014 exhibits a clear and encompassing character when it comes to the individuals and groups that can partake in a public consultation procedure. The Law 146/2014 foresees a vast array of participants from public institutions to Albanian citizens, interest groups and all foreign physical persons with permanent residency in Albania and foreign legal persons registered in the Republic (Art 8 para 1). The participation of the latter is conditioned by the existence of an international treaty that allows their participation or when the public institutions conducting the public consultation procedure deem it necessary (Law 146/2014, Art 8 para 2).

The second principle laid down for the democratic functioning of the public consultation procedure is openness and accountability. This principle argues that if public consultation is considered the main interaction between public institutions and the society, it is a

necessity that it be recognized and appreciated by its participants. This recognition and appreciation naturally occur once the public consultation procedure is transparent throughout. Based on the openness and accountability principle, interested parties are directly involved in the process by being informed on what issues seek discussion, what *ratio legis* encourages the initiative, what parties are being consulted and what techniques are being used.

Openness and accountability are foreseen in two of the main provisions of the Law 146/2014, respectively the provision envisaging its goals and the one laying down its principles (Law 146/2014, Arts 1 and 5). Firstly, the Law 146/2014 emphasizes that it aims to encourage transparency, accountability and the integrity of the public institutions operating in the notification and consultation procedure (Art 1). Article 5 of the Law 146/2014 stipulates, *inter alia*, transparency and responsibility of public institutions as two of the main principles that must guide the public consultation procedure. The principle of transparency has to be respected in different stages of the process. Such would be the case of the Coordinator for Notification and Consultation when administering the input submitted by the participants (Law 146/2014, Art 19) or the obligation of public institutions to annually publish all decisions made in terms of public consultation (Law 146/2014, Art 6). All of these duties are burdened upon the institutions for the sake of openness and accountability, thus resulting in this principle being embedded by the Albanian legislation as required by the EU soft law.

Effectiveness is one of the four principles that must be complied with in a public consultation procedure. At the EU level, this principle argues that the sooner the consultation process starts for a proposed initiative, the more effective it can be. Yet, consultation is meant to happen at a point in the development of policy, where it might still influence its conduct, outcome or delivery. Article 12 of Law 146/2014 recognizes the right of institutions to gather information or preliminary opinions of interest groups, prior to the drafting process of the respective act as well as their right to conduct public consultations after the preparatory drafting has concluded (Law 146/2014, Art 12). The Law 146/2014 does not establish a specific point in the process, whereby the public consultation procedure must be conducted. Under these circumstances, it falls on the responsibility of public institutions to plan this process at a point in the procedure which provides sufficient time. However, public institutions have to take into consideration a

number of key aspects such as: i) the significance of the draft act; ii) its complexity and iii) the deadline foreseen for the approval of the act by the competent authority. The principle of effectiveness in the Albanian legislation has fully captured the legal reasoning laid down by the Union for the conduct of public consultation and guides the process as such.

Last but not least, the principle of coherence at the EU level requires from the Commission to represent the openness and stability of the public consultation procedure. In this sense, it must guarantee all the necessary instruments for the genuine and democratic functioning of the public consultation procedure such as: i) feedback; ii) evaluation and iii) review. The Law 146/2014 explains how the main purpose of the public consultation process is collecting thoughts and opinions from its participants, not solely because it is the aim of the process but for the sake of improving the draft act being consulted.

The Law 146/2014 has explicitly envisaged the figures dealing with the feedback and review process. The collection and administration of the comments submitted is done in an organized and structured manner. The Coordinator of Notification and Public Consultation, employed at the public institution conducting the public consultation procedure, gathers information and works on the input received (Law 146/2014, Art 19). Evaluating the comments received and deciding whether to take them into consideration or otherwise remains within the discretion of the institution conducting the public consultation procedure. Comments that are dismissed must be accompanied by an explanation listing the reasons why they were not taken into account and must be forwarded to the respondents that submitted them (Law 146/2014, Art 19 para 3). As such, full compliance is observed between the principle of coherence laid down at the EU level and that embedded by the domestic legislation of Albania.

4.3 Institutions Leading the Public Consultation Process

At the European Union level, the public consultation process is organized regularly by the Commission. In specific cases such as stakeholder consultations, the handling of the process is decentralized to the Commission service responsible for a specific initiative. There are occasions when external consultants can aid the consultation procedure or even go as far as run it and yet the lead service will be the one responsible for the extent,

purpose of consultation, its course, end results and compliance with the minimum standard requirements (Commission, 2014).

The Law 146/2014 has envisaged that the responsible institutions for the orderly execution of the law and the consultation process are all public bodies, which in the cases foreseen by law are obligated to place their policy-making and decision-making processes under the consultation procedure (Art 2 para 9). Unlike the EU, the Law 146/2014 does not allow for external consultants to manage the public consultation process as it places responsibility solely on public authorities. More notably, the Coordinator of Notification and Public Consultation is an institutional figure worth mentioning as it oversees a large part of both the notification and public consultation process. Each public institution appoints a person as coordinator of public notification and consultation, who is responsible for the coordination and general administration of the work to guarantee the right of public notification and consultation (Law 146/2014, Art 10).

4.4 Unveiling the Procedure of Public Consultation

The procedure of public consultation at the Union level is described as a formal process. Pursuant to Article 11 TEU, the Commission gathers the thoughts and opinions of citizens, stakeholders and all interested parties about various proposed policies and laws (TEU, Art 11). In Albania, the Law 146/2014 regulates the process of public consultation. The Law 146/2014 aims to encourage a transparent approach to the consultation procedure, inclusive of civil society and open to the public, all for the sake of ensuring quality, integrity and legitimacy of policy and decision-making.

Public consultations conducted by the Commission may occur during different phases of the EU policy-making process, whereas in Albania participation in a public consultation process is assured in the initial phases of policy-making and law-making, before the draft acts are presented in Parliament. Regardless of how similar the approaches may seem, the European Union has gone a step beyond and envisaged an *ex-post* assessment of existing EU regulations. This approach assists the Commission in receiving feedback on the “Call for Evidence” access point, through the evaluation of existing policies and allows for public consultations on the reviews of regulations and “fitness checks” (OECD, 2022). The *ex-post* evaluation of existing EU Regulations aims to conduct an exhaustive assessment,

which evaluates whether the legal mechanisms in place are up to standard and suit their purpose. Moreover, the Union has enabled a web portal named the “Have Your Say: Simplify” (Commission, 2023c), which is intended as a single access point for stakeholders to submit their comments and suggestions on how to make existing EU legislation simpler by removing regulatory burdens (Commission, 2021). On the other hand, Albania has opted for a different approach, holding public consultation only on the initial phases of the law-making process.

The EU has enabled public consultation for different draft acts and documents, whereby each and every one of them has a specific time limitation according to its significance and complexity. As such, draft regulations, directives, implementing and delegated acts are to be consulted within a period of 4 weeks on the “Have Your Say” portal. Commission proposals and impact assessments, green papers, white papers and other non-legislative documents or technical initiatives are to be consulted within a period of 12 weeks, either on the “Have Your Say” portal, “Call for Evidence” or other forms such as panels, workshops or target consultation. Evaluations and Fitness Checks of broad public interest are to be consulted within a minimum period of 12 weeks. Proposals adopted by the College of Commission are consulted within 8 weeks (Commission, 2021).

In the case of Albania, the Law 146/2014 has precisely defined which acts undergo public consultation and which acts do not. As such, draft laws, strategic national or local draft documents and policies of a “high public interest” are subject to the public consultation process in Albania (Law 146/2014, Art 1). Other acts are explicitly being excluded from undergoing public consultation because of their nature, content or the circumstances and mechanisms of ratification (Law 146/2014, Art 4). Unlike the EU, Albanian legislation does not envisage evaluations, fitness checks or any kind of ex-post assessment of existing regulations or law. In a similar vein, different draft documents undergoing public consultation in Albania do not have specific time limitations reserved for them. In this sense, regardless of the draft act being consulted, its limitation time is always set at 20 working days (Law 146/2014, Art 15 para 1). However, the Law 146/2014 does allow for an extension of the time period in cases when the draft document is particularly complex or significant (Art 15 para 2).

For the sake of efficient and effective public consultation, the Commission aims to enable public scrutiny. In order to do this, it uses awareness-raising publicity and communication tools that reach different target audiences required for public consultation. A “single access point” has been established to publish and announce public consultation on the Internet (Commission, 2021). Nonetheless, using this online form of communicating draft documents that are being consulted does not necessarily imply the exclusion of other traditional tools of communicating such as: mail, speeches or press releases. Through this single access point, the wider public can become familiar with information on consultation and all documentation related to it. This single access point has been named the “Have Your Say” and it is available in all official EU languages (Commission, 2023a).

Similarly, the Albanian legislation on public notification has envisaged the establishment of its own ‘single access point’, which is known as the ‘Electronic Register for Notifications and Public Consultations’. This register is an official website, which serves as a central point of consultation, and through this register, access is provided and the possibility of communication is offered to all interested parties with the public institution that initiated the consultation process. This form ensures and strengthens equality in terms of access to information and services, taking into account the specific needs of certain persons or groups (Law 146/2014, Art 7 para 2).

Consultation at the EU level is not always organized on an online basis. Apart from the ‘Have Your Say’ portal, the Commission consults stakeholders through various ways such as: i) focus groups ii) public hearings iii) events and iv) recently through audiovisual consultations via zoom or different applications. Unlike the opportunities presented by the EU, the Albanian law has restricted public consultations to the Electronic Register and to public meetings. During the consultation period, based on the importance of the draft act and the high public interest, the public institution can organize public meetings, whereby the interested parties present their opinion and additional data on the draft act (Law 146/2014, Art 17). For the sake of openness, transparency and institutional accountability, the Commission concludes a synopsis report at the end of the consultation procedure. This report is used to inform citizens, stakeholders and all respondents on the degree to which their contributions have been considered and if positive, how they influenced the draft act. More notably, if some contributions have not been taken into account, the reasons as to

why this choice was made, must be listed and explain why they could not serve the development of the draft document being consulted.

The same procedure is followed exactly by the Coordinator of Notification and Public Consultation when administering the input submitted by respondents and delivering a feed back towards them (Law 146/2014, Art 19 para 3).

4.5 Public Consultation Assessment at the Albanian Domestic Level

Each year, the Commission evaluates the position of Albania regarding its journey implementing the Stabilization and Association Agreement and its alignment with the EU reform agenda⁶ by publishing the EC progress report. According to the 2022 EC Progress Report, the Law 146/2014 is “in line with European standards but consultations are formal rather than meaningful exercises”. Albania has made “limited progress in strengthening line ministries’ capacity to implement regulatory impact and hold public consultations” (pp. 4). On a positive note, the 2022 EC Progress Report recognizes the functionality of the electronic web-portal and the improvement of the regulatory framework. However, the 2022 EC Progress Report emphasizes that the Albanian public consultation process needs to strengthen its content rather than procedural standards as the usage of the electronic register has decreased to 65.8% from 79.6% in the previous year.

The Regulatory and Compliance Department, operating within the structure of the government, has released a 6-month performance report on public consultation. This performance report has observed the notification and public consultation process in all Albanian public institutions, which are obligated to place their decision-making processes under public consultation, thus resulting in a thorough analysis of the issue.

For the first six months of 2022, out of 15 draft acts that had to undergo public consultation only 9 of them did, thus resulting in 60%. Unfortunately, when compared with the year 2021, there is a decrease in public consultations of 5.9% and even a greater decrease when compared with 2020, when public consultations reached an all-time high of 79.5%. The average of the last four years shows that public consultations in Albania have been

⁶ The EU Reform Agenda highlights the Union’s work to strengthen democratic legitimacy, to support human rights, promote sustainable development, fight climate change and resolve conflicts.

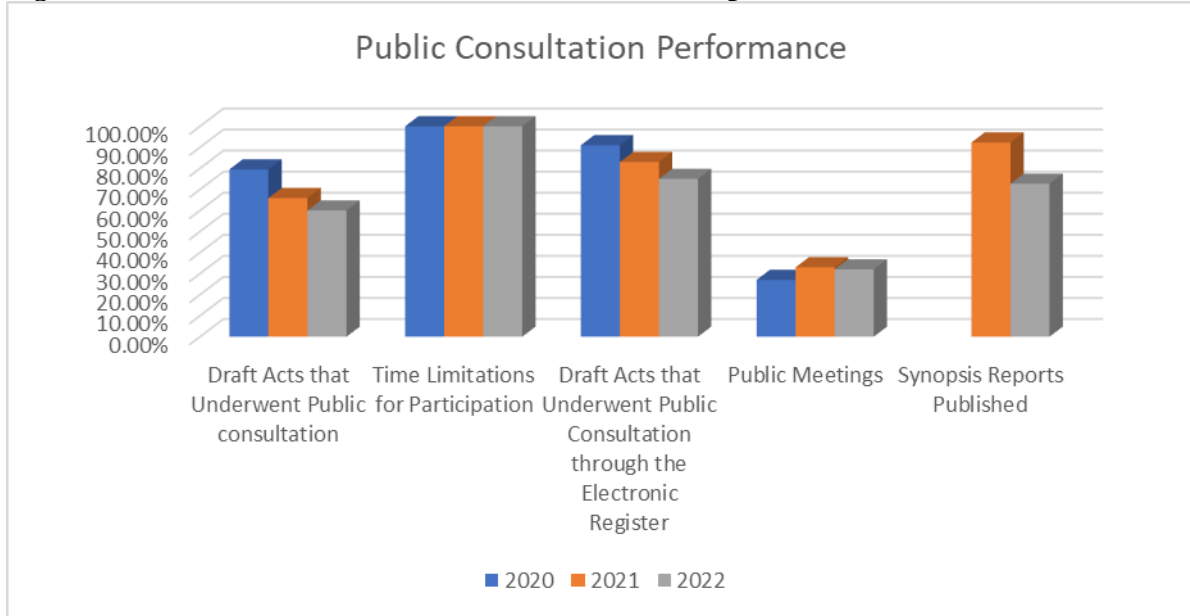
organized at a rate of 70%, which based on the annual report of SIGMA/OECD on Public Administration Principles 2021, is considered higher than other countries in the region.

Regarding time limitations for participation, the report shows that all nine acts that were publicly consulted, were done so for at least a minimum of 20 working days, which is in full compliance with the time limit set by Law 146/2014.

Within the first half of 2022, 10 out of 12 consulted draft acts were published in the Electronic Register, meaning 83% of the draft acts. For one of the draft acts, the legal obligation of consulting for a minimum of 20 working days was not complied with, which brings the index down to 75%. 3 draft documents were approved without undergoing any type of public consultation. Such approval undermines the principles enshrined in Law 146/2014. Public meetings were held for 7 out of 9 draft acts consulted with an index of 77.77%. When compared to 2021, which had an index of 91.42%, a considerable decrease is observed. The number of participants that contributed to the public consultation processes for the first half of 2022 results in 45, recording an all-time low when compared to the last four years. Within six months, 82 comments were submitted, from which 56 were accepted, 5 partially accepted and 21 were refused. Out of 9 acts that were consulted, only 6 were accompanied by a synopsis report detailing the public consultation procedure that had taken place for the respective initiative.

If one were to compare sectors among one another, the health and agriculture sectors testifies to a consolidated public consultation process for the 4th year in a row, performing at a 100% level regarding frequency and with maximum points regarding quality, whereas the Ministry of Finance and Economy and the Ministry of Infrastructure and Energy continue to perform at problematic levels regarding public consultation.

Figure 4.1: Public Consultation Performance for the period 2020-2022



Source: Department of Regulatory and Compliance (2022)

For many years now, Albania has perpetually taken steps to conform to its EU Reform Agenda and implement its Stabilization and Association Agreement, thus complying with the European standards and values. In terms of public consultation, Albania has unfailingly followed in the footsteps of the Union, by approximating the legal framework that regulates the public consultation process with the EU law, regulations and guidelines. The Albanian and European public consultation procedures share common principles, purposes and expected outcomes. Albanian law has successfully captured the Union’s *‘ratio decidendi’* and has transcribed it into a regulatory framework that guides the organization of the public consultation procedure in a full alignment with the European Union standards and requirements.

However, the public consultation process in Albania is, without a doubt, inconsistent, weak and controversial at its best. A rational evaluation of the process would grant standing to the arguments presented by the Commission’s progress report and the 6-month performance report mentioned above. The complex situation can be explained through a two-tier approach. On the one hand, there are flagrant violations of the law committed by public institutions such as the case of three draft documents being approved by Parliament without undergoing any type of public consultation, directly breaching the core principles

of democratic legitimacy, transparency and integrity. To make matters worse, there are central ministries such as the Ministry of Finances and Economies and the Ministry of Infrastructure and Energy that do not publish synopsis reports despite having conducted public consultation procedures thus breaching the openness and accountability as well as the coherence principle. On the other hand, the past year recorded an all-time low of 45 participants, which highlights the lack of information, will and enthusiasm that the civil society holds towards public consultation procedures. As such, the Albanian law on public notification might be fully in line with European standards and values but its orderly execution is yet far from it as it seems to represent a bureaucratic requirement rather than a meaningful and democratic dialogue.

CHAPTER 5

CONCLUSIONS

At the European Union level, public consultations are viewed as a dynamic and meaningful two-way dialogue, led by the demand of listening to different voices with the clear common objective of impacting regulatory decisions, policies and laws. The public consultation process allows public institutions to seek the society's opinion on a proposed initiative, after notifying them on ongoing policy progress. In addition, the public consultation encourages citizens and interested parties to provide their ideas, opinions and views on issues affecting them. This is noted as well in the EU Citizenship Report, issued by the Commission in 2017, where the EU emphasized the need for an increase of the civic engagement in EU democratic processes for the sake of functional representative democracy.

According to the EU, the public consultation of laws and policies is key in countries that strive for their system to be led by functional democratic legitimacy and rule of law. The EU has embodied this principle in the primary law, respectively Article 11 of the TEU. This article states that EU institutions should provide citizens of the Union and representative associations with the opportunity of expressing and publicly exchanging their opinions in all areas, in which the Union operates with the aim of maintaining an open, transparent and regular dialogue with the civil society (TEU, Art 11). Furthermore, this article has explicitly burdened the Commission with the task of carrying out broad consultations with the parties concerned in order to ensure that the Union's actions are coherent and transparent.

Considering the fact that EU documents have chosen different terms to refer to public consultation, their variety makes it difficult to avoid the interchangeability of all terms available. Since there is a good possibility of overlapping terms, there exists a need for theoretical and conceptual accuracy. The three main terms used when referring to public consultation are participants, participation and public consultation process. The expression “parties concerned” is commonly found in EU primary law and presents the widest category of participants. Other expressions found in TEU are “citizens”, “representative associations” and “civil society”. The EC’s BRGs chose the term “stakeholder” while many scholar articles preferred the term “interest groups”. The term ‘participation’ is key when examining public consultation.

For its proper functioning, the public consultation interaction between the Commission and the civil society, must be drawn upon a number of key principles, enshrined in the Commission’s White Paper on European Governance such as: i) participation; ii) openness and accountability; iv) effectiveness and v) coherence (Commission, 2001). These principles are complemented by a number of five minimum standards that are crucial in consultation processes such as: i) clear content of the consultation process; ii) consultation target groups; iii) publication; iv) limitation period for participation; v) acknowledgement and feedback (Commission, 2002). The first minimum standard of clarity, requires that all communications and content of consultation should be clear, concise, updated and encompass all-important information needed to encourage reaction and feedback. The context, scope, objectives, the specific issues to be discussed and the expected results of consultation must distinctly be identified. The second minimum standard explains that defining target groups for consultation procedures means identifying all relevant parties to the policy being consulted. The third minimum standard demands that the Commission uses appropriate awareness-raising publicity and adjusts communication channels to accommodate the needs of all target audiences. A “single access point” is used to publish and announce public consultations on the Internet, whereby all interested parties can find relevant information on consultation and documentation related to it. The time limitation standard requires that the consultation procedure be conducted at a point in time when the comments submitted can still impact the proposed initiative. The EU has enabled public consultation for different draft acts and documents, whereby each and every one of them has a specific time limitation according to its significance and complexity. The last

minimum standard required, acknowledgement and feedback, demands that a synopsis report be concluded at the end of the consultation procedure. Through this synopsis report, stakeholders and all participants are informed on the degree to which their contributions have been considered, and if so, how they assisted the process. More importantly, if certain contributions have not been considered, a line of reasoning must be presented to the respondents explaining why the development of the policy-making process could make no use of it.

Candidate countries, like EU member states, are obligated to harmonize their domestic legal systems in compliance with EU standards. A candidate country must adhere to “European democracy, rule of law, human rights, respect and protection of minorities as well as a market economy that can handle the competitive pressure and forces within the Union” (European Council, 1993). Moreover, the candidate countries must take on all obligations of EU membership, including the legal standards required for the public consultation process (European Council, 1993). In March 2020, the European Council decided to open negotiations with Albania to harmonize domestic law in compliance with the EU acquis.

Albania has consistently taken action to adhere to European values, standards and requirements, all for the grand purpose of joining the European Union. As the European Union demands that its candidate countries carry out the obligations imposed for their EU membership, Albania strives to do so in every step of the way as a sign of commitment to its accession. To ensure compliance with EU law, the Albanian government has undertaken several initiatives towards transparency, accountability, openness and engagement of the civil society in various decision-making processes. In the framework of all these initiatives, in November 2014, the Law 146/2014 “On Notification and Public Consultation” was successfully passed by the Assembly of Albania. Through the implementation of this law, the legislator sought to regulate the process of notification and public consultation as well as improve all the relations created or derived from the process itself.

Unlike the EU, Albania holds public consultation only on the initial phases of the law-making process. Law 146/2014 has precisely defined which acts undergo public consultation and which acts do not. As such, draft laws, strategic national or local draft documents and policies of a “high public interest” are subject to the public consultation

process in Albania (Law 146/2014, Art 1). Other acts are explicitly being excluded from undergoing public consultation because of their nature, content or the circumstances and mechanisms of ratification (Law 146/2014, Art 4). Different draft documents undergoing public consultation in Albania do not have specific time limitations reserved for them. In this sense, regardless of the draft act being consulted, its limitation time is always set at 20 working days (Law 146/2014, Art 15 para 1). However, Law 146/2014 does allow for an extension of the time period in cases when the draft document is particularly complex or significant (Law 146/2014, Art 15 para 2). The Albanian legislation on public notification has envisaged the establishment of its own ‘single access point’, which is known as the ‘Electronic Register for Notifications and Public Consultations’. The same procedure is followed by the Commission at the EU level and the Coordinator of Notification and Public Consultation at the domestic Albanian level when administering the input submitted by respondents and delivering a feed back towards them.

Law 146/2014 “On Notification and Public Consultation” presents itself fully aligned with EU standards and requirements. Public participation in the legislative process is one of the core components of the rule of law, which in itself is a founding value of the Union and guiding principle of its operations. Albania’s efforts to reflect this value in its internal legislation resulted successful, as today the country’s regulatory framework on public consultation shares the same principles, objectives and expected outcomes as public participation does at the European level.

As a conclusion, Albania has undertaken significant measures to ensure its compliance with EU’s requirements of openness, transparency, accountability and good governance to ensure improvement of the regulatory framework of the public consultation process. The current Albanian law on public consultation is up to date and successfully in line with the European principles, purposes, rules and outcomes. However, ensuring proper implementation remains a challenge. The lack of transparency and accountability of public institutions on one hand and the lack of eagerness and enthusiasm, with which the public consultation phenomenon is received by the civil society makes it weak, unreliable and polemical at its best.

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