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RESPUBLICA

COMMENTARY

of Law no. 146/2014

"On Notification and Public Consultation"

...along with a brief comparative analysis of the first two years of the law enforcement.

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ACRONYMS

ADISA	Agency for Delivery of Integrated Public Services
ART	Albanian Radio and Television
CAP	Code of Administrative Procedures
DCM	Decision of the Council of Ministers
EIA	Environmental Impact Assessment
ERNPC	Electronic Register for Notifications and Public Consultations
LGU	Local Government Unit
NAIS	National Agency for Information Society
NEA	National Environmental Agency
NGO	Non Profit Organization
REA	Regional Environmental Agency
SMS	Short Message Service (text phone message)

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INTRODUCTION

Law on notification and public consultation emerged as part of a package proposed by the civil society to meet the need for a more transparent government and development of policies and legal initiatives with the participation of interested citizens, NGOs etc.

The public consultation process was intended as an opportunity for a large number of people and institutions to contribute to the preparation of the legislation and that public bodies responsible for drafting policies get to know the opinions of the persons affected by the law. Consultation makes the dialogue more effective and improves the content of policies and laws. A higher degree of consultation during the legislative process increases the chances for a wider acceptance and easier implementation of the legislation. The accompanying report of this law states that the purpose of encouraging open, transparent and democratic decision-making is accomplished by providing citizens with free access to the legislation, as well as extensive information about it.

The Law on notification and public consultation was approved on 30.10.2014 and entered into force in May 2015. The law stipulates the principles, rules and procedures for public consultation and public participation in policy-making and decision-making processes. This law is in line with the commitments that Albania has undertaken in the global initiative *"Partnership for open government."*

In order to implement the law, the decision of the Council of Ministers no. 828, dated 10.07.2015 *"Approval of the rules for the creation and administration of the Electronic Register on Notifications and Public Consultations"* was approved which, as the title suggests, provides specific rules for the operation of the Register for Notifications and Public Consultations.

In this commentary we intend to bring a modest study of legal provisions for the notification and public consultation, as well as the rules provided for the creation and maintenance of the Electronic Register for Notifications and Public Consultations. A separate chapter is dedicated to the special procedures of public consultation like those carried out for draft decisions of public authorities on environmental issues, or consultation of drafts that are being reviewed in the Parliament, which are out the scope of Law no. 146/2014 "On notification and public consultation".

PURPOSE, SCOPE AND DEFINITIONS

1. General

The object of this law is the regulation of public notification and consultation process for draft acts, draft national and international strategic documents and policies of high public interest (Article 1). The law provides procedural rules that need to be followed to ensure transparency and public participation in policy making and decision making processes of the public authorities.

It should be mentioned that this law is not the only act that provides in principle the obligation of the authorities to conduct a public consultation, but the other laws that provide for special cases, do not specify how public consultation should be carried out. The entry into force of Law no. 146/2014 "On public notification and consultation" aims to regulate precisely this area, despite some uncertainties that we will further address in this material.

In principle, information and public consultation has five main objectives:

1. *Information*
2. *Consultation*
3. *Inclusion*
4. *Cooperation*
5. *Empowerment*

All five goals are implemented in practice in two different perspectives: that of the public and that of public authorities.

Regarding the first goal, ***information***, the public wants to be informed of the issues addressed by the draft law and should be helped to understand the alternative solutions offered by the proposed drafts. On the other hand, public authorities should use all reasonable means to inform the public. Information should not be limited to making the draft law available, but also by explaining it in a language understandable by the public, by simplifying the content of the draft and breaking it down into simple concepts.

In relation to the second goal, ***consultation***, the public requires that its opinions and recommendations on alternatives laid down for decision-making are taken. After successfully informing the public, public authorities should listen/read the recommendations and concerns raised by the public. It is not imperative that the recommendations are in line with the proposed draft. The public input can be in the form of a concern, which needs to be addressed in the draft in the most effective way

Concerning the third goal, ***inclusion***, the public wants that public authorities work closely with him throughout the consultative/ decision-making process, in order to ensure that his aspirations and concerns are taken into account. On the other hand, public authorities should assure the public that these concerns and recommendations were paid due attention and addressed appropriately.

In connection with the fourth goal, ***cooperation***, the public wants to be a partner with public authorities in all aspects of decision-making and the authorities should take public recommendations very seriously, especially when they are well structured.

With regards to the fifth goal, ***empowerment***, the public naturally expects to feel the power of decision-making. The public wants to

have as much stake in decision-making as possible and the public authorities should ensure that the public proposals will be adopted, especially when they are coherent and well-studied. This last function can be best performed by a well organized and financially supported civil society.

Fig. 1 - Diagram of the objectives of the law on public consultation

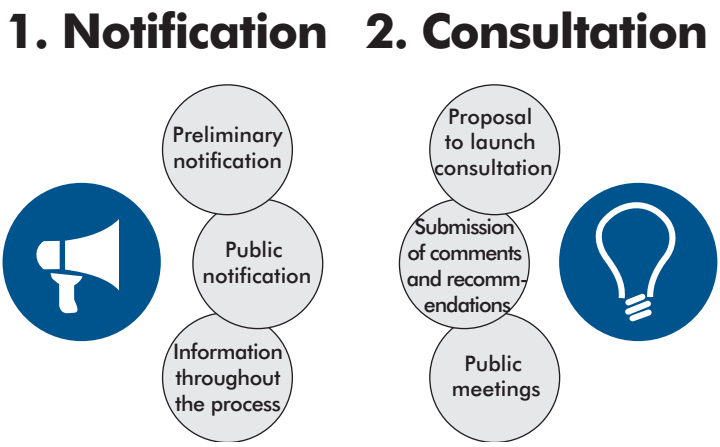
	Information	Consultation	Inclusion	Cooperation	Empowerment
The objective of public participation	To inform the public on the problems and to help him understand the alternatives of the offered solutions	To gather the opinions and recommendations of the public on the alternatives offered for decision-making	To work closely with the public throughout the process, to ensure its aspirations and concerns are considered	To ensure partnership with the public in every aspect of the decision-making	To leave the decision-making more and more with the public
The government engagement towards the public	We will inform you	We will inform you, listen to your concerns and recommendations	We will ensure that your concerns and recommendations will be taken into account	We will do our best to welcome your recommendations and structured analyses	We will adopt your recommendations

In a few words, as the name suggests, the law provides two important stages, notification and consultation.

The notification at each stage, to be further discussed in this document, is divided into preliminary notification, public notifications and provision of information at all phases.

Consultation, as it will be explained below, includes the proposals to launch a consultation, submission of comments and recommendations, as well as public meetings.

Fig. 2 - Diagram of the stages of notification and public consultation



2. The legal acts subject to public consultation

Not every act of public decision-making is subject to public consultation. Acts which are subject to procedures for public notification and consultation, according to the law (Article 1, paragraph 1) are:

a) Draft laws (draft of proposed laws, before their adoption);
b) The draft strategic documents, including national and domestic ones (drafts of strategic documents that define policy objectives in a given area, and the results to be achieved through an action plan);
c) Policies of high public interest (guiding documents of a political line, dictated by the circumstances, that will be followed in a particular field that affects the public interest as a whole, i.e. criminal policies guide the legislator and the those who enforce the law in adopting a different mentality milder or harsher punishment towards a specific category

of criminal offenses, or put emphasis on the need for more frequent use of alternative penalties).

The following acts are not subject to public consultation (Article 4, paragraph c and ç):

a) Administrative acts;
b) Sub normative acts;
c) Normative acts with the force of law, approved by the Council of Ministers.

The first point of the acts that are exempt from public consultation refers to the "administrative act" which falls into two categories: *individual administrative act* and *normative administrative act*. The latter is mentioned as a separate point, implying that the first point includes only individual administrative acts. But, what do these terms mean?

a) "Individual administrative act" is every expression of will of the public authority in the exercise of his public function, to one or several individually defined subjects of law that creates, alters or terminates an actual legal relationship. (Article 2, point 1). For example, an administrative act to appoint an employee (individually definable subject), is an individual administrative act. The same applies to imposed fines, public procurement contracts etc. So any administrative decision (act) relating to the interests of a particular person (individual, business organization, non-profit organization, etc.) is considered an individual administrative act.
b) The administrative normative act shall mean any willingness expressed by the public body, in the exercise of his public function, which regulates the relationship defined by law, establishes common rules of conduct and that does not end with its implementation (Article 2, point 2). This category

includes those administrative acts that are not addressed to an individual or legal person in particular, but that address issues pertaining to a broader group. For example, the order of a minister specifying the administrative court fees is a normative act. This act applies to all those who file a lawsuit in court and must pay the applicable fees for the judicial administration services. Another concrete example is the act that defines the price for urban transport ticket. Even this act is not directed to any particular individual or legal entity, but to all persons who use the urban transport lines. Even a mandatory road sign indicating the direction to be followed while driving is an administrative normative act.

c) A special category of normative acts is the "normative act with the force of law". The definition of these normative acts that are adopted by the Council of Ministers is provided for in Article 101 of the Constitution. According to this article, the Council of Ministers, in cases of necessity and urgency, under his responsibility, may issue normative acts that have the force of law for taking temporary measures. These acts are immediately sent to the Parliament, which is convened within 5 days if was not already summoned. These acts lose force retroactively if they are not approved by the Parliament within 45 days. These normative acts are not administrative acts, but are equivalent to the laws.

According to Article 4, the draft acts issued by the Council of Ministers (that is Council of Ministers Decisions drafts), are not subject to public consultation. It should be pointed out that very often, normative acts, in this case the Council of Ministers Decisions, are very important and affect the interests of citizens the same as laws do, but the law has excluded them from the scope of its application.

The above are exceptions that the law provides per each type of act. But there are other exceptions, under special circumstances. Thus, the law provides for the following exceptions:

a) When the act deals with issues of national security, to the extent that they constitute a *state secret*, according to the law on information classified as "state secret";
b) When it comes to *international relations* and bilateral and multilateral agreements with other countries;
c) When dealing with a situation of *civil emergency* and the draft is closely linked to the measures to be taken for these emergencies;
d) When dealing with *other exceptional cases provided by law*. With this later provision, although the law does not provide for other exceptional cases, the legislator has left some room to include other exceptions that can be manifested in the future or may be implied from the interpretation of the competent authorities (like e.g. the authorities that prepare the draft laws or the Commissioner for the Right to Information and Protection of Personal Data.

With regard to item a), to evaluate whether a draft act affects national security, one essential condition should be met, that the issues be classified "state secret". Law no. 8457, dated 11.02.1999 "On information classified as "state secret"", provides for the information classification procedures. With "state secret" is meant the classified information whose disclosure would jeopardize the independence, territorial integrity, constitutional order and international relations of the Republic of Albania. However, the existence of such circumstances does not automatically result in its classification as "state secret". In this case it is required that information be declared "secret" by the competent authorities under this law.

Point b) above is self-explanatory. Here are included acts adopting bilateral or multilateral agreements that are ratified by law by the Parliament. Thus, for example, an agreement to share maritime borders between Albania and the neighboring country would not be subject to notification and public consultation. In this case, the

agreement will be dealt with through diplomatic channels to ensure good relations between states, for which is not always reasonable that information is shared with the public and their preliminary opinion is collected.

Another exceptional case is that of acts issued during emergency situations. More specifically, it refers to emergency situations caused by natural, ecological, industrial, social factors, terrorist acts, military actions (in a state of war), which cause immediate and serious harm to life, health of the population and livestock, to wealth, cultural heritage, and the environment. In these cases the legislative bodies (Parliament, Council of Ministers when issuing normative acts with the force of law) must act quickly to mitigate the damage and take the situation under control. The dynamics of these acts adoption leave no actual time to undertake public consultation and notification procedures.

Article 4 of the law, is not exhaustive in terms of the list of the limitations of law enforcement given that item d) refers to other cases that may be prescribed by specific laws, which means that if a particular law provides for exclusion of public consultation on certain issues, the draft acts related to these issues are not subject to the application of the law on public consultation. This provision is a blanket, which does not necessarily refer to a legal norm (article, points or specific paragraph), but can in principle refer to any possible provision that today or in the future, in this law or in another law, provides for limitations to public consultation.

At first sight, the limitations seem to be many, but in practice acts that are excluded from the public consultation are few, that in practice do not minimize the role of public impact on public decision-making. The only valid debate that remains to be discussed is the inclusion of draft decisions of the Council of Ministers. It must be said that once the law on notification and public consultation was still in the drafting stage, acts of the Council of Ministers were not excluded. This was the will of that part of civil society that was involved with

drafting this law (mainly Open Society Foundation for Albania). But later, in the Parliament, there was some skepticism about the possibility of publicly consulting these drafts due to the difficulties that this would represent in practice, and so it was decided that they would be excluded from the scope of regulation of this law. In the future, depending on the engagement of civil society and the public at large there will be a clearer relationship between the interest and quality of the public opinion on the one hand and the slowing the decision-making process on the other, creating other premises that can become the reason for changing this law.

3. Principles in the process of public notification and consultation

Like any law, the law on notification and public consultation is guided by some principles that help the people that enforce the law to better interpret it in practice. Thus, public authorities during the notification and consultation process of draft laws should be based on the following principles:

a) *Transparency during the public notification and consultation process with an ll inclusive and non-discriminatory participation;*

As it can be read from the above point (taken literally from the provision), it contains some principles, like:

- Transparency;
- All- inclusive participation, and;
- Non-discriminatory participation.

Transparency during the consultation process is one of the important principles that puts public authority in front of the obligation to develop an open procedure for reviewing draft acts, policy making and decision-making processes. In pursuance of this principle, public authority should effectively inform the public.

To achieve this, it is not enough just a notification placed at the public authority's premises or an advertisement in a hidden corner of the website. The notification should be made by means that ensure a wide dissemination of information such as a notification broadcasted in the media, or by email in a register previously created by the authority, that should include well-known civil society organizations that are engaged in the relevant field addressed by the draft act.

Another aspect related to the transparency is the completeness of the notification. A notification announcing the initiation of a consultation procedure is not complete if it is not accompanied by acts that are in the process of being consulted.

All inclusive and non-discriminatory participation seems to contain two concepts that are complementary to one another but this is not always the case. For example, participation may not be discriminatory because the group called for consultation may include individuals from different ethnic, racial, gender groups, but because participation may be limited only to individuals in a given neighborhood or area of the city, who were notified in advance to attend the meeting, while the rest of the citizens may not be informed. This participation is not all- inclusive. Such a phenomenon occurs when, for example, the Municipality of Tirana calls for a public hearing regarding the central city square and ensures the participation of some of the residents of Unit no. 5 by distributing SMS or door-to-door leaflets, while the other residents of this unit, or those of other units, are not aware and informed about the public hearing. If the information is done partially then we are dealing with a violation of the principle of all-inclusive participation.

On the other hand, the principle of non-discriminatory participation means that no one should be excluded from participation, regardless of its particular qualities. For example, it may have been ensured an all inclusive participation by notifying the general public about the

consultative session, but no suitable place was made available for people with disabilities. In this case, obviously it is not always expected that public authorities think about the participation of people with disabilities because it would require many resources, such as audio interpretation of texts and graphs for people who do not see (or distribution of texts in the Braille alphabet), or interpreters for people who do not listen, etc., while in practice there may be no person with such disabilities to attend the session. In these cases, public authorities are expected to be notified at a reasonable time about the participation of people with specific disabilities so that they can take appropriate measures. In general, access for people with disabilities using wheelchairs is completely possible to be provided in advance by the authorities even without them being notified in advance. Thus, public authorities may hold the consultative meetings in locations that are easily accessible not only by persons with disabilities but also by other persons who for reasons of age or health do not have the possibility to access other locations.

b) The effectiveness of the decision-making process in public bodies;

In order to make the decision-making of the public authority and the public consultation for this decision-making more effective, the administrative procedure should be developed in such a way as to ensure the respect of all rights recognized to the public and the latter to effectively exercise these rights. Certainly, respecting the deadlines set by the law prevails in order to ensure the efficiency of the process, but the principle of effectiveness forces the public authority to take measures from the start of the procedure to allow for the necessary time span, and have the appropriate human and logistical resources to carry out an effective public consultation regardless of its size. Also, the procedure should be conducted with minimal cost for the public authority and the parties in order to achieve whatever is needed for a lawful outcome (Article 18 of the CAP).

c) The Responsibility of Public Bodies towards the interested parties/ stakeholders;

The definition of what is meant by public bodies responsibilities is found in Article 15 of the Code of Administrative Procedures, which stipulates that public bodies and their employees, when carrying out an administrative procedure, are responsible for the damages they cause to the parties, in compliance with the relevant legislation. Of course, in the case of public consultation, it is not easy to determine whether damage has been caused and quantify it, but the principle of liability is also related to the sanctions provided by the law for violating its provisions, since it is presumed that the violation of the provisions impair public interest.

In addition to the above principles, which are provided by the law itself in its Article 5, should be also respected, to the extent they can be implemented, the principles laid down in the Code of Administrative Procedures or special laws governing the organization and functioning of various public institutions. Such are the principles of information, proportionality, providing active assistance, objectivity, control, etc.

Some of these principles are important for public consultation and are applicable, like for example:

1. The principle of information

This principle guarantees the right of every person to request public information concerning the activity of a public body without being obliged to provide reasons for doing so in accordance with the applicable legislation governing the right to information. This principle is foreseen in Article 6 of the CAP, and is specifically regulated by Law no.119/2014 "On the Right to Information". This principle, as well as the legal framework governing this field, helps to create a better idea about the public body activity before the public

participates in a public consultation. For example, when consulting the draft law that allows the waste import in Albania, the people called to participate in the public consultation table should have accurate information on integrated waste management in the country, the policies on the incinerator's network that the government plans to build, the size of the country's waste recycling market, the level of pollution in different cities, etc. Without providing this preliminary information, the public is not capable of providing valid opinions about the proposed draft and public consultation would fail.

2. The principle of proportionality

Any administrative action which, by reason of protection of the public interest or the rights of others, may limit an individual right or may infringe legitimate interests, shall be conducted in accordance with the principle of proportionality (Article 12 of the Code of Administrative Procedures). In cases of limiting the right to participate in a public consultation of a draft act, the public body must balance the reason for limiting the right with the need that dictated it. Thus, for example, the Ministry of Justice can take the initiative for an amnesty and restrict public consultation with the justification that there is no time to carry it out because the amnesty is planned to be approved in the framework of November feasts. This is not a valid argument for restricting public consultation, as the dictated need (adoption of the draft for the feasts) is not a strong reason to limit the need for consultation. The draft can be approved even after the holidays. Different is the case when due to a situation where armament warehouses have been broken down and weapons have been stolen by a large number of persons, the Ministry of Justice or the Ministry of Internal Affairs uses the amnesty as a means of inviting citizens to give back as quick as possible the weapons without any criminal consequences. In this case the public interest may prevail over the interest of public consultation.

3. The principle of active assistance

The public body should ensure that all parties involved in the process are able to practice and defend their rights and interests in the most effective and easy way possible. For this reason, the public body should inform the public on the draft for consultation by including all the related information. The public body that carries out the consultation procedure should ensure that the lack of knowledge of the public does not impair the protection of the rights and interests of different groups, therefore measures should be taken to explain the information in very simple and comprehensive terms for the public, so that he is understandable even by individuals with secondary or lower education.

OBLIGATION TO PUBLIC NOTIFICATION AND CONSULTATION

Në kreun II të ligjit parashikohen detyrimet që kanë organet publike në lidhje me zbatimin e ligjit për njoftimin dhe konsultimin publik. Chapter II of the law provides for the obligations of public bodies with regard to the implementation of the law on public notification and consultation. In this chapter are prescribed in general the obligations of public bodies, whereas specific procedures on how to carry out the notification and public consultation are detailed in the following chapters.

1. Means of notification about draft acts

Each public body is obliged to take all necessary measures to give the opportunity to the citizens and interested parties to participate in the consultation process. The law leaves the means to ensure the participation of all citizens and interested parties in the public consultation process to the discretion of public bodies (Article 6, point 1).

However, the law provides two ways for informing the public on draft acts and annual plans being drafted, that are not exclusive but complementary such as:

1. For draft acts, publication should be made in the *Electronic Register for Notifications and Public Consultations*;
2. The annual plans of public bodies related to the decision-making process should be published in the *transparency program*.

But what does an "electronic register" mean, and where can it be found? The electronic register is a website that serves as a database and as a place to display drafts. This register is stipulated by the Decision of the Council of Ministers to be: **www.konsultimipublik.gov.al**. The rest of this document will provide wider information on the register.

Meanwhile, the term "transparency program" is explained by Law no. 119/2014 "On the Right to Information". According to this law, with "transparency program" we understand the entirety of the information and the ways of making it public by the public authority, without a request from the public. To better explain it, public information is divided into two types: information that can be accessed without having to submit a written request (or email); and information accessible only if the person concerned submits a request. The first category includes information that is frequently requested, related to the organizational structure of the institution, the budget, the audit reports, information on public procurements, the types of subsidies provided, the working hours and office addresses, the name and contacts details of the Coordinator for the Right of

Information, etc. All this information is published in a special column that should be found on each institution's website and should be organized in a form approved by the Commissioner for the Right to Information. The entirety of this information, in the right format, in the appropriate column comprises the so called "Transparency Program" (Article 7 of Law No. 119/2014). One of the categories of information that should be included in the transparency program are the annual plans related to the decision making process that is subject to public consultation.

Some of the ways that public institutions can use to notify the public on draft acts are through displaying it in their premises, by informing through audio-visual media, newspapers, online portals, or by sending draft acts via email. Public authorities, as a rule, should be careful as they should provide the opportunity for all citizens to participate in public consultations, taking into account the specific capacities of specific target groups. For example, a draft that affects the interests of the Roma community should not be simply communicated online, but measures should be taken to notify the organizations and community activists.

2. Conducting public consultations (Article 6, point 2)

After the procedure of notification of draft acts, the public body has the right to organize public meetings with the interested parties. As mentioned, the law lives it to the choice of the public body whether or not to organize public meetings for consulting draft acts. The law does not provide for an mandatory mechanism for the public body to unavoidably organize a public meeting. However, if no public meeting is organized, the body is not freed from the obligation to conduct public consultation. In these cases, the consultation is conducted by submitting written opinions and recommendations, by submitting them to the public body office, by post or email.

In the following chapters we will analyze concretely the procedure followed by the public body for organizing consultative meetings.

The law provides that public meetings may, whenever possible, be broadcast in the public audiovisual media, in order for the roundtable to be followed by the public at large. In cases when important drafts are being consultation, the public body is obliged to broadcast the consultation table, however, this decision rests with the public body itself and in simple words is the public body

deciding whether a table will be broadcasted in the media or not. In practical terms, broadcasting does not depend solely on the will of a public authority, but also on the public media's ability to be present at the consultation place with the appropriate technicians and staff, on the given date and time. Certainly, the public authority cannot dictate the public media (Albanian Radio and Television) to automatically transmit the consultation session. For this reason, the people responsible for advocacy activities should also consider meeting the public media leaders prior to requiring that a consultation session be necessarily transmitted.

Regardless of whether the round table is broadcasted in the media, public bodies should take minutes for public consultation meetings. The minutes of the meeting are considered an official document, and this document, based on the law on the right of information, may be made available to citizens or persons who have an interest in getting to know it. The law does not make it clear whether or not this document is part of that category of information to be published without a request in the "transparency program" column.

3. Electronic Register for Notification and Public Consultations (Article 7)

The electronic register is a website (*www.konsultimipublik.gov.al*), which should serve as a point of contact between public authorities and the general public, where will be published the draft acts that will be subject to public consultation. On the one hand, the register serves as a place where interested parties can become familiar with the draft acts that are in consultation and on the other hand the authorities can receive comments and recommendations from stakeholders on specific draft acts. The online site system is intended as a dynamic platform, which functions the same way as online forums, where any interested person can leave real time comments.

It should be emphasized that the authorities need to take measure that this register ensures equal access for all citizens, taking into account the specific needs of specific persons or groups. In practice, this is not so easy since not only people with specific needs may not access the online site but also people who for other reasons have no internet access or lack the knowledge to use this page. The law does not provide the details, but leaves the technical solution to the competence of the Council of Ministers. More precisely, the Minister of State for Innovation and Public Administration takes care of the site, as it possesses the necessary knowledge to bring the latest technical developments to provide the optimal technical solution.

It is item 2 of Article 7 which provides that rules for the administration of the register are defined by sub-legal act. Based on this provision, DCM no. 828, dated 07.10.2015 "On the adoption of rules for the creation and administration of the electronic register for notifications and public consultations", entered into force, which specifically provides for the ways of creating an electronic register, how it operates, how it is managed, etc.

According to the DCM, in addition to the Minister of State for Innovation and Public Administration, the National Agency for Information Society (NAIS) shall also be responsible for maintaining the web site (electronic register).

The Minister of State for Innovation and Public Administration shall oversee the creation, operation, administration and ongoing monitoring of the Electronic Register of Public Notifications and Consultations.

Whereas, the coordination and adjustment of the data in the Electronic Register, is done by NAIS, which is an authority created by DCM no. 703, dated 29.10.2014 "On the National Agency for Information Society". NAIS is also responsible for hosting the Electronic Register

and guarantees its continuous operation, protecting the site from viruses and different cyber attacks. NAIS will also perform periodical data backup.

The Electronic Register will contain two categories of data, based on the time and place of publishing of the draft acts. More specifically, the register will contain:

a) Primary data
b) Secondary data

a) Primary data shall mean all notifications and draft acts that are published for the first time in the register such as:

- all strategic, national and local draft documents, as well as policies of high public interest;
- all draft acts, notifications for consultation and data related to the consultation of draft acts;
- public bodies annual plans related to the decision-making process;
- information about the process of public notification and consultation at all stages.

b) Secondary data shall mean all those draft acts, which have been initially published in the official website of the institutions, based on the laws that govern their organization and functioning and are afterwards published in the Electronic Register for Notification and Public Consultation.

This division seems to have been done for practical reasons. In the understanding of the law, there is no need to make such a division, since the Electronic Register is a unified public consultation platform. But since some acts may have been published on the public bodies' websites, where information may be changed or comments may be

added, the Electronic Register takes the information from another source and this provides enough technical reasons for this separation.

In addition to the above information, the Register shall include a few other sections that shall provide information about:

- Publication of the draft act;
- Addresses for receiving comments and recommendations for its improvement;
- The date and place of organization of public debates;
- Information regarding the adoption of the final act.

All draft acts published in the Electronic Register must be complete, divided in separate files / folders.

They should be stored and easily accessible and downloadable by the interested persons. At any time, the interested person has the right to access these documents, has the right to print and reuse these documents.

Fig.3 - The official site of the Electronic Register for Notification and Public Consultation

Currently, the Electronic Register for Notifications and Public Consultation, as the above figure shows, is divided into 4 sections. A section is "consultation with citizens", where all the draft acts that are subject to public consultation are published. The next section is "consultation with the experts", which enables remote communication with experts who have worked or presented arguments in favor of the draft act. In the "Consultations by Institutions" section, the potential institutions are listed. At present, only the ministries are included, and if an institution is clicked, a list of all the draft acts that this institution is in the process of drafting is shown. The last section is that on "Surveys", where questions are asked to the public on different draft acts, in order to take a general opinion from the public on specific issues of the draft acts. The latter is an intelligent section because often the public does not take the initiative to give certain opinions. But if asked, members of the public are ready to answer. This method is the same as "the Socratic method" to draw out ideas, which is frequently used in education. The method is used to collect the feedback from those individuals who for various reasons are passive, although they are interested in the consultation procedure.

Although the DCM has entered into force in October 2015, the Electronic Register for Notification and Public Consultation is not yet operational. Public authorities continue to not use the Electronic Register and some of them publish the drafts on their official websites. On these pages, authorities have created columns dealing with public consultations, in some of which can be found and information on the contacts details where the recommendations / comments should be sent, deadlines within which to be sent, etc. Anyhow, it should be mentioned that these authorities do not fully comply with the obligations deriving from the Law on Notification and Public Consultation.

4. "Publeaks.al" as an alternative to public consultation

Because the Electronic Register is not yet functional, Res Publica has created several columns to public consultation on its portal **www.publeaks.al**. This portal is mainly dedicated to the right of information, but the following columns, "Draft-laws in consultation", "Recommendations for drafts" and "Consultation guidelines" are dedicated to public consultation.

Fig.4 - The site www.publeaks.al

On this site, Res Publica has published various drafts that are in the consultation, which are collected from the various public authorities' official websites. Interested persons may download the drafts and may post their recommendations in the form of comments. Additionally, Res Publica offers the possibility of developing and elaborating the various raw ideas from the public and then submitting them to the public authorities in the form of structured recommendations. For the latter, it is necessary to contact the Res Publica Center, at the email address published on this site.

PARTIES IN PUBLIC CONSULTATION

Article 8 of the Law on Notification and Public Consultation defines the subjects on which the rights and obligations provided by this law are exercised. The subjects involved in public consultation are classified according to their type, the duties, rights and competences they have.

Based on the above criteria, the subjects are classified into two main categories:

1. Public bodies
2. Individuals and legal persons

1. Public bodies

The law does not specify which public bodies are obliged to develop a notification and public consultation procedures. If we refer to Article 3, point 6 of the Code of Administrative Procedures, with public bodies we understand:

a) Central Government bodies;
b) Local Government bodies;
c) Any organ of the Armed Forces;

d) Public entities;
e) Any natural or legal person who is granted by law, sub-legal act or any other form provided by the legislation in force, the right to exercise public functions.

In the understanding of the Law on Public Consultation, a public body is any such body that initiates the process of drafting a draft law, strategic document or policy of high public interest. Under the umbrella of "public bodies" are included many institutions, but in order to make a fair analysis we have to evaluate to what extent these bodies are obliged to abide to the law on notification and public consultation, since not all institutions have the power to draft acts that are subject to public consultation. However, the division into types implies the parties in the consultation process, which are public bodies on the one hand and the public on the other.

The law does not provide for restrictions on authorities that shall not be subject to the law enforcement, but based on the type of draft acts that are subject to public consultation, it results that some institutions are exempt from the obligations arising from the law on notification and public consultation. Article 81, point 1 of the Constitution stipulates that:

The right to propose laws rests with the Council of Ministers, every MP as well as 20 thousand voters.

Based on the law on public consultation, in compliance with the above provision of the Constitution, we conclude that the only entity that proposes acts is the Council of Ministers. But this body is the crown of a larger apparatus that includes all ministries whose activity is regulated by the Law no. 9000, dated 30.01.2003 "On the organization and functioning of the Council of Ministers". Each minister has the obligation to propose draft laws to the Council of

Ministers and only if approved by this collegial body, draft laws are proposed to the Parliament. The draft laws drafted by the ministries should undergo the public consultation process. Subsequently, by submitting the draft to the Council of Ministers, the law does not provide for the possibility of participation in the consultation. Public consultation at this stage and in the further stages (Parliament discussions in committees or plenary sittings) is closed.

As noted above, the draft laws proposed by MPs and 20.000 voters are not subject to public consultation.

While it is reasonable that the draft laws proposed by the voters are not subject to public consultation because they come from the public itself, the problem rests with the fact that the draft laws proposed by MPs are not subject to the provisions of this law.

Another element that is noticed in practice is that the standing parliamentary committees, which review the laws in principle, article by article and as a whole, are not subject to public consultation as they are not public bodies in the strict sense of the law, and given that this stage is excluded from the field of implementation of the law for public consultation.

Although referring to the Rules of Procedure of the Albanian Parliament, it is foreseen that:

1. *The committee may organize public hearings with the members of the Council of Ministers, high representatives of the state or public institutions, experts, representatives of the civil society, representatives of groups of interest or other interested groupings. The committee is obliged to hold such hearings, according to the provisions of this article, if one-third of the members of the committee so demand in a motivated written form.*

2. *During the legislative process, the committee may organize public hearings, as defined in paragraph 1 of this article. The committee cannot prepare the report for plenary session without conducting the hearing session.*
3. *In preparation for the public hearing, the chairperson, in cooperation with the deputy chairperson and the secretary of the committee, introduces to the invited people the issues on which the information is required.*

As noted above, we conclude that the Committee conducts a hearing session whenever it deems it reasonable, leaving it at the discretion, on a case by case basis, of the members of the Committee to decide whether to hold a hearing session. The only case when the Committee is obliged to hold a hearing is when this is required by 1/3 of the members who have to motivate in writing the reasons why the hearing should take place.

However, the Parliament has developed a methodology to address these issues by publishing a handbook for the consultation of drafts when they are under review in the Parliament. Further in this document a special chapter has been dedicated to this aspect (see pages 76-93).

2. Physical and legal persons

The right to participate in public notification and consultation is granted to:

a) Citizens of the Republic of Albania, including every Albanian citizen and any legal person registered under the Albanian legislation;
b) Interest groups, meaning any organization representing the interests of a group of natural or legal persons, as well as any

other entities that is affected by or interested in the draft acts that are subject to the public consultation process. Interest groups can also be organized through informal organizations, which are created by the interested persons themselves as *ad hoc* groups for a particular purpose. In this case, it will be more difficult to follow the appeal steps provided by law as an unregistered entity would not be eligible to file a complaint. This problem is solved through the representation of the interest group by an individual or registered organization, which will also file the eventual appeal;

c) Foreign natural persons with permanent residence in the Republic of Albania;
d) Foreign legal entities, registered in the Republic of Albania. For the latter applies the *"representation offices"* rule as per legislation on entrepreneurs and commercial companies as well as tax legislation.

Other foreign persons may participate in the consultation process in accordance with international agreements or upon direct request of public bodies, whenever they consider it necessary.

While foreigners residing in Albania and stateless persons are not eligible to be involved in the process of public notification and consultation.

3. The Coordinator for Notification and Public Consultation (Article 10)

The coordination and administration of the notification and public consultation process in any public body shall be carried out by a responsible person, who shall have the status of the *coordinator for notification and public consultation*. Article 10 of the law provides for

the obligation of any public body to appoint a notification and public consultation coordinator, which will guarantee the notification and public consultation procedure.

The law only foresees the obligation of the bodies to appoint a coordinator, while the duties and competencies of the coordinator are defined in the DCM no. 828, dated 07.10.2015.

According to the DCM, the coordinator for notification and public consultation has the following duties and responsibilities:

1. He is responsible for collecting, systemizing, adapting all draft acts initiated by all structures and departments of the respective authority;
2. Uploads draft laws in the appropriate format on the website;
3. Updates the Register continuously;
4. Makes sure deadlines provided by law and DCM are respected.

DCM stipulates that the notification and public consultation coordinator should be provided with a "username" and "password" by the administrator of the Electronic Register for Notification and Public Consultation, which is appointed by the National Agency for Information Society.

The coordinator should also be provided with the manuals for data entry into the system, operation, use of the website, so that he is trained to use the register and properly enforcing the obligations deriving from the law.

For various violations of the law, the coordinator is the person who is personally responsible and to whom the following sanctions apply. (See pages 54-55)

4. Rights of the interested parties (Article 9)

The purpose of the law on notification and public consultation is to preserve and guarantee the right of public participation in policy-making and decision-making processes.

Article 9 defines the rights recognized to parties interested in being involved in public consultation. Specifically, the following rights are known:

a) *The right to request information regarding the process of notification and public consultation;*

The right to seek information is also provided in the law on the right to information, which sets out the procedures for requesting information, the deadlines within which a public authority must respond, the administrative steps that can be undertaken when the public authority refuses to respond, etc.

In order for the parties to be able to contribute effectively in the process of preparing the act, public bodies have the obligation to make available all the necessary information. Also, depending on the complexity of the draft act, the interested parties have the right to get explanations for the purpose, problems to be addressed, general ideas, studies, analyzes, etc. which were carried out for drafting the draft act. (Article 14)

b) *The right to propose the initiation of procedures for drafting and approving draft acts published by public bodies;*

One of the items that are included in the notification and public consultation is the publication of annual plans related to the decision-making of the public authority, which should be published in the "transparency program". Based on the annual plans, each subject

has the right to propose to the public authority the initiation and approval of the draft acts, which are foreseen in the annual plan of the public body.

This right that is provided in this article is blanket, as there is no mechanism in the law on how to proceed with the proposal, what are the obligations and procedures that the institution will undertake regarding the proposal. Currently, the law lacks a procedure on how to proceed in the case of proposals coming from the public and this is one of the problems that should be addressed by an amendment.

c) *The right to make available to public bodies recommendations and comments on those draft acts which are in the process of public notification and consultation.*

Once the parties are acquainted with the draft acts, they have the right to express their opinions about the draft act, by attending public meetings (when they are organized by the public body), or by sending comments and recommendations to the public body that is preparing the draft act.

It should be noted that the abovementioned rights are not absolute; they are subject to the limitations provided for in Article 4 of this law, or the restrictions provided for in specific laws.

However, the restrictions should be proportionate to the situation that dictated them and should not violate the essence of the right to participate in the public bodies policymaking and decision-making processes.

RULES OF THE NOTIFICATION AND PUBLIC CONSULTATION PROCESS

Up above, we analyzed in general terms the obligations that public bodies have regarding the notification and public consultation procedure. This chapter of the law provides for specific notification rules to be followed by public bodies while carrying out the public notification process.

1. Means of notification and receiving comments / recommendations (Article 11)

Article 11 of the law provides the means by which the public body should make notifications for public consultations. As analyzed above, each public body should publish the draft act in the Electronic Register, giving each party the possibility to access it and submit comments and recommendations.

Paragraph 1 of this article provides for several ways to make notifications, which can be realized through:

1) Electronic mail;
2) Displaying the notification in the premises of the public body;
3) Notification through the local, national or regional audiovisual media;
4) Publishing in local newspapers or in at least two of the most read national newspapers.

Although the law does not specifically speak about the online portals, notification through these portals is also an acceptable way to make notifications in view of the spirit of the above point of the law.

The notification via e-mail and the displaying the notification in the premises of the public body is a limited means of notification, as the notification by e-mail is addressed to a certain number of people, while the notification by posting in the premises of the public body, although principally addressed to the general public, for practical reasons is very limited as it is highly unlikely that people would go to the premises of the public body every day just to learn if this body is starting to draft a new law or not.

Despite this, it should be noted that these notification means are complementary to the notification made in the Electronic Register for Notification and Public Consultations and these methods are used when public bodies deem it necessary to additionally use them. Furthermore, in other cases, other means of notification may be used, as provided for in specific laws that regulate their functioning.

The publication of the draft acts in the Electronic Register, their publication by hierarchy and by field of activity of the public body, is regulated by DCM no. 828, dated 07.10.2015.

In point 2 of Article 11, it is foreseen that the same method is used for receiving comments and recommendations for draft acts. Based

on the DCM, issued in compliance with the law, the notification should specify the contact and the address where the interested parties can send their comments and recommendations. In cases where recommendations /comments are given during public roundtable meetings, they are recorded in the minutes of the meeting, which are publicly available and also serve as a valid proof for the *verbal delivery* of the recommendations.

2. Preliminary notification (Article 12)

The above paragraphs detail the process and the method of notification in the normal cases for conducting of a public consultation procedure. Article 12 provides for a special procedure for conducting public consultation, which takes place before the public body starts drafting the draft act. In special cases, before starting the procedures for drafting the draft act, the public body, when it deems it necessary, requires preliminary opinions and recommendations from the interest groups. The public body notifies the draft act adoption plan in the manner provided for in Article 11. Interested parties have the right to make recommendations and comments on the act planned to be drafted.

This article is ambiguous when referring to the cases when this procedure will be followed, by only mentioning the term "in special cases" and leaving the public authorities entirely free to judge on a case by case basis the use of this procedure.

3. The content of the notification regarding the decision-making initiative (Article 13)

Above we discussed the means and the process of notification that the

public body should follow in order to carry out the public consultation of draft acts. Article 13 provides for some of the elements that the notification should contain. These elements are not exhaustive, but represent the minimum standard that any notification for a draft act subject to public consultation should contain. These elements are:

a) The reasons for the necessity of issuing the draft act

In addition to the publication of the draft act, the public body is obliged to make available to the public an explanatory report by which the public body explains the necessity of drafting this act, it's scope and the scope of its implementation, the impact it will have on regulating a given situation, the legal relations that the draft regulates or changes, it's impact on citizens' rights and freedoms.

b) Deadlines

In the notification of the draft act it should also be set a deadline within which the interested parties should send their recommendations and/ or comments. Further down in this document will be addressed the procedural deadlines for each public consultation process stage. (Pages 45-46)

c) The ways in which interested parties should present or submit their recommendations

Among other things, the notification should also include how interested parties should send recommendations / comments. Article 11 of the law stipulates that comments should be submitted in the same way that notification of the draft act is made. Since the different types of notifications can be made in a number of ways, public authority should clearly define how it will receive comments, whether in writing, online or through public hearings.

d) The place where the comments / recommendations will be submitted

In addition to the deadline and the ways of receiving comments, the notification should specify the place where the interested parties should send comments/recommendations. Since any public body should designate a person responsible for coordinating public consultation, the notification should also contain the information regarding the name of the responsible person and his contact details. If the coordinator or other contact person is not assigned, comments/ recommendations can be sent to the head of the responsible authority.

In cases where the public body organizes public meetings for discussing the draft act, the notification should include information about the place, date and time of the meeting will be organized.

4. Deadline for submission of comments and recommendations (Article 15)

For an effective consultation, the interested parties should be given a reasonable amount of time to get acquainted with the draft act and prepare the relevant comments and /or recommendations. Article 15 provides for deadlines within which interested parties should submit their recommendations. These are the usual deadlines, which may be extended in cases where it is considered important and necessary by the public body.

Depending on the stage and type of public consultation that will take place, the respective time frames have been provided. Paragraph 1 of Article 15 provides for the general deadlines:

a) When the public body uses the "preliminary-notification" procedure, before starting the drafting of the act, the interested

parties should send recommendations and comments within 20 working days, starting from the date of notification for the preliminary notification process;

b) For notifications on public consultation process for draft acts, the deadline is also 20 working days from the date of notification of the public consultation process.

As stated above, deadlines are common, but they can be postponed with a decision of the public body, especially when acts are complex or important. The law specifies that this deadline may be extended to 40 working days starting from the moment of notification for public consultation. If the public body decides to extend the deadlines, it should notify the interested parties.

Also, the public body has the right to extend the deadline or to reiterate the notification when the comments are not qualitative or when new important issues have emerged from the comments that were not included in the original draft. In this case, the law has *almost* guaranteed a mechanism that makes public consultation more effective, giving more opportunities for the new elements proposed by the public to undergo extensive consultation and given the opportunity to the rest of the public to participate in discussing the new elements / issues. We say "almost" because the law does not guarantee this aspect by obliging the public body, but only by giving it the right to act in this way. If the public body does not exercise this right, the consultation is done within the normal deadlines.

A specific deadline regarding the publication of the draft act is foreseen in the DCM no. 828, dated 07.10.2015, which provides that the coordinator for notification and public consultation should publish the draft act *within 48 hours* from the moment of its approval by the public body. In cases where the public body orders that the publication should be made in the shorter time, the coordinator

publishes the draft act within the prescribed timeframe. This 48-hour or 2 working-days term does not extend the overall consultation deadline, as the deadline starts from the moment the public body has taken action to publish the initiative in one of the ways provided by law. This is exactly the reason the Council of Ministers has foreseen a shorter term, so that the public does not lose valuable time. The 48-hour deadline is more than reasonable to technically complete the uploading of the relevant documents in the Electronic Register.

In cases where special laws provide for deadlines that are different from those provided for in this law, according to the *lex specialis derogat lex generalis* principle (the special law has precedence over the general law), the deadlines laid down in the special laws will prevail. Among the special laws we can mention the Aarhus Convention, which will be discussed more in detail further in this document. (See pages 63-76)

5. Participation of the interested parties in public meetings (Articles 17, 18)

The public body, when it deems it necessary and when dealing with draft acts of a special importance and high public interest, aside notifications on public consultation, also holds public meetings with the different entities, groups of interest, experts, NGOs, etc.

In order to ensure that the interested parties have time to prepare and have the opportunity to attend the meeting, the public body should make the notification for the public meeting, not less than 20 working days before the meeting takes place.

Alongside the deadline, the notification should be accompanied by information on the place, date and time of the meeting as well as a copy of the draft act that will be subject to public consultation.

Public consultation meetings are open events that can be attended by anyone who is interested. The meeting is chaired by a representative of the public body and is organized as per regulations governing the public body. Participants have the right to express their views on the draft act and the issues under discussion while respecting the other speakers and communication ethics.

During the meetings, minutes are taken that keep a record of the attendance and the discussions of the participants. In practice, it may happen that the minutes include only parts of the discussions, by presenting a shortened version or a summary. To have a more complete document on the discussions, it is recommended that the meeting be recorded with audio or video since this action does not conflict with the law.

The meeting may be registered even if the public body deems it necessary. In these cases, the public body may decide to broadcast the meeting in the public audiovisual media, Radio Tirana, Albanian Television, other channels on the digital platform of this institution or the local radio and television centers of RTSH). The law does not foresee broadcasting in private media, but such action is not forbidden. If private media are interested, they can also broadcast the meeting.

6. Review of the comments and recommendations (Article 19)

Once the interested parties submit their comments/recommendations in the form and address specified by the public body, the notification and public consultation coordinator assembles all the comments and recommendations sent by the interested parties in a structured and transparent manner.

Once the comments/recommendations are gathered, they are reviewed by the public body's responsible structure. After review,

the public body decides whether the recommendations will be accepted or not, and to what extent they will be accepted. At the end of the process, the public body prepares as summary about the recommendations/comments that were considered as well as the reasons why the other recommendations were not accepted. This principle extends equally to public consultations regulated by other laws, as discussed on pages 63-93 of this document.

Summary of reasons for non-acceptance shall be notified to the parties in one of the ways of notification provided for in this law.

In practice, it may happen that the number of recommendations made by a large number of interested persons is too high. For example, in the case of draft acts in the framework of the reform for justice, the number of recommendations for a given article was over 5, all different from one another. In these cases the public body may take the time and make a summary of the reasons for the non-acceptance of the whole set of recommendations. The law does not provide for the public body to respond to the interested person, but only to the recommendations. In cases where the recommendations are similar in nature, despite modest changes in modalities, the public body may give a unified response. Subsequently, it is up to the interested person to identify the reasons that are consistent with the recommendations he has given.

7. Transparency Reports in the Decision Making Process (Article 20)

Alongside the development of public notification and consultation procedures, public bodies should draft and publish annual reports on the decision-making process and policy-making. The reason why the law provides for drafting and publishing annual reports is to inform the public about the transparency of the public bodies in the development of notification and public consultation processes.

The annual report should contain:

a) the number of acts adopted by the public body during the reference year;
b) the total number of recommendations received from interested parties;
c) the number of recommendations and comments received and rejected during the decision-making process;
d) the number of public meetings organized.

The annual report on transparency in the decision-making process is public. It is published in the Electronic Register for Notifications and Public Consultation, on the official website of the public body or in any of the other ways provided in Article 11 of the law. These reports are a very good tool for assessing the effectiveness of public consultation. However, it is not excluded that public bodies include in the report recommendations made by consultative organizations that are technical drafters of the act and not part of the public. Another element that may appear in the report may be the number of public meetings organized without respecting the ways and principles of the law on public notification, notifying only selected persons to conduct a fictitious consultation. In this case it is the duty of civil society to indentify and denounce cases of fictitious consultations.

REVIEW OF THE COMPLAINTS

Chapter 5 of the Law on Notification and Public Consultation provides for procedures for reviewing complaints of subjects whose rights to be included in public consultation have been violated. Depending on the phase of the draft act the law provides for two institutions responsible for reviewing the complaints:

1. The head of the responsible public body and;
2. The Commissioner for the Right to Information.

1. Review of the complaint by the head of the responsible body (article 21, item 1 / a and 2)

In cases where the draft has not yet been approved (with approval we understand the moment when the draft act is sent for further action to the Council of Ministers and not when the draft is approved in the Parliament), it's in the process of being drafting by the competent public authority and the rights of the interested parties provided for in this law have been violated, for example, they have not been notified for the consultation process or for the public meetings held, they have the right to make an administrative appeal to the head of the institution responsible for drafting and consulting the draft.

The law does not provide for deadlines within which the interested party must submit the administrative appeal to the head of the institution but from the interpretation of the provision it results that the appeal must be filed before the draft act has been approved by the public body and sent for further action in the superior body (e.g. the Council of Ministers).

Article 21, point 2 of the law provides for actions to be undertaken by the public body head:

> *"The responsible public authority, upon receipt of the complaint, shall take immediate measures to correct and reflect the objections laid down in the complaint of the interested party. In any case, the public authority notifies the interested party about the measures taken and invites them to give the comments and recommendations for the draft act"*

As above, we conclude that upon receipt of the complaint, the head of the public body takes measures to reflect the complaints. This law does not provide for procedures on how to handle the complaint, therefore we will refer to the regulations provided for in the Code of Administrative Procedure (Articles 130-140) regarding the review of complaints as well as the organic laws regulating the organization and functioning of the relevant public body.

Also, the law does not provide for the form and content of the administrative complaint. Referring to article 131 of the Code of Administrative Procedures, the complaint should contain:

a) the subject that makes the complaint, giving the generalities of the complaining person, postal address or e-mail;
b) the body that reviews the complaint, which in this case will be the competent public body that is drafting the draft act;
c) the object and the reasons for the complaint. This includes

explanations on concrete public body violations regarding the implementation of the public consultation process. According to Article 21, the parties may complain in cases when the draft act has not been published, the notification procedures for the consultation process and/or public meetings have not been respected, in case the deadlines for the implementation of the consultative processes have not been respected.

Since the law does not provide for the form an administrative appeal should be files, referring to Article 131 of the CAP and the elements that the complaint should contain, it should be in the written form, so it cannot be done verbally.

After reviewing the complaint filed by the subject and establishing the violations found by the public body during the implementation of the public consultation procedures, the head of the public body takes immediate measures to correct and reflect the remarks submitted by the interested party. The measures taken are then made known to the complainant (Article 21 (2)).

An important element of the provision in question is that the interested party to whom the rights have been violated is given the opportunity to submit its recommendations. This is also the main purpose of the complaint, to enable effective participation in the consultation process.

2. Review of the complaint by the Commissioner for the Right to Information and Protection of Personal Data

In cases when the draft act is approved and the interested party finds that the rights related to the public consultation process involvement have been violated, he has the right to address the Commissioner for the Right to Information, who is the institution responsible for reviewing the complaints at this stage.

The deadline within which the party must submit the complaint is 30 calendar days. This period starts from the day the draft act was adopted.

In this case, the complaint can be sent by mail to the Commissioner for the Right to Information and should contain the applicant's generalities, the public body against which the complaint is made and an explanation of the causes and reasons for the complaint. Contact details can be obtained from the Commissioner's website www.idp.al.

Once the Commissioner receives the complaint, he requests the parties, both the complainant and the public body, to provide written submissions within 10 days. The provision of written submissions is not mandatory, but it is recommended in cases when the complaint does not contain sufficient information.

As a rule, the Commissioner reviews the complaints based on the documentation that is without holding a hearing with the parties but in cases when the Commissioner consider it necessary to hear each of the parties, he may additionally organize a hearing, which is public.

The law does not provide for a deadline within which the Commissioner should express himself about the complaint, and the type of administrative act to be taken by the Commissioner in the cases of acceptance or rejection of the complaint. The law provides that in case of found violation of the provisions of the law on public notification and consultation, the Commissioner proposes to the competent public authority the taking of administrative measures against the responsible persons.

The Commissioner may also decide the refusal to review the complaint in cases where the formal criteria have not been met, such as: the complaint has not been filed within the legal deadline, it does not contain information on the generalities of the complainant or

when the complaint sent by post is not signed by the complainant, or when its completely out of the scope of the law.

The types of measures and the concrete measures taken in the case of violation of the provisions of the law on public consultation are laid down in the provisions of the civil service legislation.

Referring to Law No.152 / 2013 "On civil servants", the administrative measures taken against public servants are:

a) *warning;*
b) *deducing up to one third of the full salary for a period of up to six months;*
c) *deferral from promotion, including the salary increase for a period of up to two years.*
ç) *dismissal from the civil service.*

This law provides for rules and procedures to be followed for the imposition of the disciplinary measures and the concrete measures proportional to the committed violation.

Unlike Law no. 119/2014 "On the right to information", which provides for fines for the right to information coordinators, Law no. 146/2014 "On Notification and Public Consultation" does not contain sanctions related to fines, but only the aforementioned administrative measures.

3. The appeal to the court

The law does not provide for the right to address the court in the case when the head of the public body or the Commissioner for the Right to Information does not express themselves upon the complaint or when they reject the submitted complaint.

Although the law does not explicitly provide for the right to go to court, in the case of violation of the right to be involved in the public consultation process, the right to address the court to protect the rights, freedoms and legal interests is provided for in principle in Article 42 of the Constitution and then in Article 21 / b of the Code of Administrative Procedures.

Additionally, Articles 7 and 15 of Law no. 49/2012 "On the organization and functioning of the Administrative Court and the resolution of administrative disputes", provide for the right to address the court when the subject maintains that his rights or legitimate interests have been violated by the acts or omissions of a public body.

Regarding the setting of the deadline for filing a lawsuit for violation of the right to be involved in the public consultation process, we have to analyze two moments, as the law provides two deadlines, one within 45 days from the moment of getting acquainted with the act and the 1 year term.

The 45 day deadline applies only to the cases where the administrative act that is challenged provides for the right to appeal to the court and the deadline within which to address the court. For example, the decision of the Commissioner for the Right to Information contains a point in the end which states that the person has the right to appeal to the court within 45 days.

If there is no action (in the case of omission), and in the case when the rejection decision contains nothing regarding the right to address the court and the deadline for this action, the deadline for filing a lawsuit in court is 1 year. In the present case, since the Law on Public Consultation has not provided any mechanism for the type of action to be taken by the head of the public body and/or the Commissioner for the Right to Information, the deadline for filing a lawsuit is presumed to be 1 year in every case.

Problematic are the cases when the act has been approved and has entered into force. This legal vacuum results in a non-effective implementation of the law on notification and public consultation. However, when the act has entered into force, it may be challenged at the Administrative Court of Appeals. In this case, the act is not challenged for non effective participation in the consultation, but for problems related to violation of rights by the content of the act itself. The competent court for the review of the lawsuits is the First Instance Administrative Court of the district where the public organ has violated the rights of the person concerned. For example, if the violation was committed by a ministry, the competent court will be the First Instance Court of Tirana, in Tirana.

4. Examples from the practice. Cases followed by Res Publica and other law enforcement NGOs

Example 1 - the full text of the letter of the Commissioner for the Right to Information and Protection of Personal Data sent to the Ministry of Justice regarding the complaint filed by Res Publica.

"Res Publica" has filed a complaint to the Office of the Commissioner for Right of Information and Protection of Personal Data for not announcing and publishing the draft act "On Amnesty".

Based on the Law No.146 / 2014 "On Notification and Public Consultation", the complainant, "Res Publica", addressed the Ministry of Justice through the request no.193 / 15 Prot, dated 09.12.2015, to be involved in the notification and public consultation process for the draft on amnesty.

In response to the request, the Ministry of Justice on 18.12.2015 informed the applicant via electronic mail that the ""Draft Law on Amnesty" was approved by the Council of Ministers on 11.12.2015

and that the project is being reviewed in the parliamentary committees and as such, the Center "Res Publica" may address the Parliament to be a part of public consultations if it wants".

Upon receipt of the response, because the draft act was notified as approved, the complainant filed a complaint with the Office of the Commissioner within 30 days, pursuant to Article 21/1 / b of Law No.146 / 2016 "On Notification and Public Consultation" .
Under such conditions, he is legitimated for the continuation of the review of this process.

In the explanations given, the complainant lays down that none of the obligations set out in the aforementioned law was fulfilled by the Ministry of Justice since the draft law proposal was not published on the official website of the Ministry of Justice which did not consult the groups of interest, according to the provisions of Article 6 of the Law.

The Commissioner, in accordance with Article 3 of this Law, "... upon receipt of a complaint, asks the complainant and the public body against which the complaint has been made, to provide written submissions within 10 days. Whenever appropriate, the Commissioner organizes a hearing with the parties' participation.

Under these conditions, in order to be as objective in the evaluation of the case, the Commissioner reviews the submissions provided by the public body, the Ministry of Justice.

The submissions should reflect the fulfillment by your institution of the obligations provided for in Article 6 of the Law on Notification and Public Consultation regarding the measures taken to allow for the possibility of involving the public and the interested parties in the notification and public consultation of the draft act. The object of complaint, the provision of information about the process of notification and public consultation at all stages, starting

from the publication of the draft act, the receipt of comments and recommendations for its improvement, until the adoption of the final act. The submissions should provide evidence whether public meetings have been organized with the interested parties to gathered opinions on the draft act, if it was met the deadline provided for in Article 17 of the law to make available the draft act for discussion prior to the organized meeting, if enough time was given to submit comments/ recommendations as per provisions of Article 15, etc. So, in general, they should outline the stages of drafting the law in the framework of notification and public consultation.

In such conditions, before concluding the review of the complaint, to ascertain whether there is a violation of the law on notification and public consultation, in accordance with point 4 of Article 21, the Commissioner requests your written submissions on this complaint, within 10 days from receiving this request. (Refer to this Article 24/3 of Law 146/2014).

In case you fail to act within the set deadline, the Commissioner's Office will consider the organization of a hearing session.

Finally, we would like to draw your attention to apply and enforce the obligations required by the law on appointing a coordinator for notification and public consultation.

Example 2

From the verifications carried out by the Office of the Commissioner for the Right to Information and Protection of Personal Data it results that the project "On Copyright and Related Rights" has been filed in the Parliament by the initiator on 25.09. 2015 and is currently in the discussion phase in the relevant Committees.

Based on the complaint filed in the Commissioner's Office, No.138. Prot., dated 05.02.2016, to the Public Body/Ministry of Culture with the subject "Complaint for failure to notify and publish the Draft Law on "Copyright and related Rights", please find below the procedure followed on its handling.

From the moment of its approval, you are granted the right to file a complaint in accordance with Article 21/1/b of the Law No.146 / 2016 "On Notification and Public Consultation" to the Commissioner for the Right to Information and Protection of Personal Data.

Despite the above, you can contact the Ministry of Culture in the capacity of the drafting authority, the Council of Ministers in the capacity of the proposing authority or the Parliament, to become part of the draft-law discussions.

In the above two cases, we conclude that the Commissioner has not taken a final decision about the public authorities non-compliance with the legal obligations.

In the first case, the Commissioner has found that Res Publika is legitimated to request the Commissioner to ascertain the violations committed by the Ministry of Justice. In this case, the Commissioner has asked the public authority to file a rebuttal but from the facts that Res Publica possesses it does not result that the Ministry has submitted any rebuttal and the Commissioner has not yet taken any final decision on this case.

Whereas in the second case, even though the Commissioner found that the law was passed from the institution without undergoing public consultation, he limited himself to giving a recommendation for inclusion in the draft law discussions in the relevant Committees. This recommendation does not effectively enforce the law.

Example 3

The Association "Young Intellectuals, Hope" (YIH) filed a complaint with the Commissioner for the Right to Information with the subject "Complaint about the violation of the right to notification and public consultation for the 2017 budget and the mid-term budget plan 2018-2019 of the Shkodra Municipality ".

With regard to this complaint, the Commissioner for the Right to Information with Decision no. 54, dated 21.03.2017 stated:

Public consultation is a process that should be implemented within the framework of transparency, recognition, consultation and legal education of the interested persons, a category defined in this law. In this case, the notification for the public consultation on the 2017 Budget and the 2018-2019 medium-term budget plan of the Municipality of Shkodra for the date 24.01.2017 was done on 21.01.2017, while the 2017 draft budget was approved at the City Council meeting dated 30.01.2017 (according to Shkodra Municipality official site / deposited and printed by the complainant).

The Law on Notification and Public Consultation, Article 17, paragraph 2, provides for the mandatory notification deadlines for the interested parties invited to attend public meetings, giving them the necessary time for preparation and making available copies of the draft act to be discussed. (See Article 17 of Law no.146/2014)

Follow-up of the process of co-ordination and general administration of work to guarantee the right to public notification and consultation shall be done by the coordinator for notification and public consultation which, in terms of Article 10 of the law, is responsible for this process.

After consulting the law and referring to the submissions of the public body that do not prove the follow up and enforcement of requirements and procedures of the law for notification and public consultation, the Commissioner has concluded that the public consultation process of the draft budget by the public body is an infringement to the law.

Example 4

The Albanian Helsinki Committee (A.H.C) filed a complaint with the Commissioner for the Right to Information, with the subject "Complaint regarding the violation of the right to notification and public consultation on the draft law "On Amnesty".

By Decision No. 28, dated 13.02.2017, the Commissioner for the Right to Information stated: Public consultation is a process that should be implemented within the framework of transparency, recognition, consultation and legal education of the interested persons, a category defined in this law. Law No.146/2014, in its Article 4, introduces limitations in the holding of processes in respect of draft laws, draft by-laws or important strategic documents.

After consulting each of the limitations provided for in this provision and the definitions specified in them (national security, individual administrative acts, civil emergency etc) but also by referring to the submissions of a public body that give no arguments on this provision, it does not result that the draft law is subject to the definitions of this provision. In these conditions it is ascertained that the process of consultation of the draft law by the public body has been made contrary to what is provided by the law on notification and public consultation. Also, article 8 of the law, clearly defines the meaning of the interested parties. According to this provision they are: "public bodies, citizens of the Republic of Albania and interest groups".

Contrary to this provision, the public body pretends to treat as an interest group only the beneficiaries of this draft law, by excluding the other categories of this definition from the draft act consultation. Based on the findings made and in support of the law "On Notification and Public Consultation", the Commissioner has accepted the complaint made by the Albanian Helsinki Committee, as well as the taking of administrative measures against the responsible persons.

SPECIAL PUBLIC CONSULTATION PROCEDURES

In addition to the Law on Notification and Public Consultation, other laws and sub-legal acts may provide for specific procedures for the organization and development of the notification and public consultation procedure. Here are two typical examples:

1. Public Consultation on Environmental Issues

One typical case regards acts that have as their object environmental issues. Aarhus Convention (adopted by Law No. 8672, dated 26.10.2000 " "On the Aarhus Convention Ratification on public right to information, to participate in decision-making and to have access to justice in environmental matters") is one of the main mechanisms in the field of environment, which aims to guarantee public access to information on environmental matters, to participate in environmental decision making and to access the justice in environmental matters when the two aforementioned rights are not respected.

Public participation in the earliest stages of the environmental decision-making procedure must be carried out by means of public or individual notifications and in an appropriate, effective and timely manner, by informing them of the:

1. Proposed activity and application upon which a decision will be taken;
2. Nature of possible decisions or draft decision;
3. Public authority responsible for taking the decision;
4. Prescribed procedure, the manner and the time when this information may be provided, including:
   a. initiation of procedures;
   b. the possibility of public participation;
   c. the time and place of each anticipated public meeting;
   d. addressing the public authority from which relevant information can be obtained and where the information is stored for public review;
   e. addressing the public authority or any other official body to whom comments or questions may be made, as well as information on the timing or deadlines for submitting such questions or comments;
   f. making available the environmental information at hand on the proposed activity and the fact that the activity is subject to a national or trans-boundary environmental impact assessment procedure.

The public participation procedure must be carried out within reasonable timeframes, which allow sufficient time for the public to prepare and effectively participate in environmental decision-making.

Public participation in the preparation of plans and programs related to the environment should be done within a transparent and honest framework, providing them with the necessary information.

In addition to the foregoing, states have the obligation to ensure effective public participation in a suitable period also during the preparation by public authorities of executive regulations and other general and binding legal rules that may have a significant impact on the environment. To do this, the following steps should be taken:

1. Should be set reasonable timelines, sufficient for an effective public participation;
2. Should be published or made available to the public draft legal regulations;
3. Should be given to the public the opportunity to comment directly or through representative advisory bodies.

Also Law no. 10431, dated 09.06.2013 "On Environmental Protection" provides that during the institutional resolution of the environmental protection issues, the relevant public authorities shall ensure that the public and interested parties have a real opportunity to participate in:

1. Procedures for assessing the state of the environment;
2. Drafting and approving strategies, plans and programs related to environmental protection and environmental components;
3. Drafting and adopting regulations and acts of a general character related to environmental protection, decision-making for the issuance of the relevant environmental permits, in accordance with the provisions of this law and the legislation to which it refers.

One of the sub-legal acts, where a specific procedure for the development of the public consultation procedure is envisaged, is the Decision of the Council of Ministers no. 247, dated 30.04.2014 "On the definition of rules, requirements and procedures for informing and involving the public in environmental decision-making".

The purpose of this decision is to define the rules, requirements and procedures for public information and its involvement in environmental decision-making. Also, this decision aims to increase the transparency and accountability of public authorities, increasing the role and participation of the public.

In Law no. 10440, dated 07.07.2011 "On Environmental Impact

Assessment", the procedures for environmental impact assessment are divided into two categories, in *preliminary procedures* and *in-depth procedures*. This division is based on the type of project that requires environmental impact assessment. Based on this division of legislation, DCM provides different procedures for conducting public consultation for both types of procedures. Below, each procedure will be detailed separately, as there are differences in the type of public consultation that takes place.

1.1 Public information during the Environmental Impact Assessment preliminary procedure

The environmental impact assessment *preliminary procedure* is carried out for projects listed in *Annex II* of the Law on Environmental Impact Assessment like projects in the field of agriculture, extracting industry, energy industry, metal processing and production, any change or addendum to the projects listed in Annex I or II, previously licensed, as well as for projects that may have significant adverse impacts in the environment, etc.

The competent public body for carrying out the procedures for public consultation regarding the preliminary procedures is the National Environmental Agency (NEA), which has to implement the steps provided in the DCM.

The first phase - the first step undertaken by the NEA is to inform the public about the project / procedure underway and to get feedback on this project. Within 5 days from the time NEA receives an application from the developer (which may be a public body, such as a municipality or a private legal person, for example, a commercial company that will build a technological oil processing plant) should publish on the website the complete information about the project. The published information should include:

a) the details of the procedure that will be followed;
b) the deadline for making the decision and its publication;
c) the modality of public involvement in decision-making by submitting his opinion;
d) the deadline within which such opinions may be given;
e) the manner and the deadline for exercising the right to appeal against the decision.

Informacioni qendron i publikuar në faqen zyrtare për 20 ditë (kalendarike) rresht. Afati për të dhënë mendime mbi projektin është 20 ditë (kalendarike) nga momenti i publikimit.

The information is published on NEA official website for 20 calendar days. The deadline for giving feedback on the project is 20 calendar days from the moment of publication.

The second phase - after NEA has completed the first phase of information, by giving the opportunity to the public to get acquainted with and comment on the project and after the decision's approval, it is published on the Agency's official website. The announcement of the decision allows the public or the interested parties to be informed on the Agency's final decision-making on the project, giving the parties the opportunity to obtain a copy of the decision.

As noted, publications are made on the websites and the public is not expected to have the due attention to catch these developments in time. For this reason, we assume that it is the primary task of organizations that protect the environment to engage in periodically monitoring the websites and then notify the other interested public members. Another solution that is in the free choice of the public authority is the information via email. In this case, care should be taken to ensure that NGOs are not selected by the authorities intentionally for carrying out a fictitious consultation.

1.2 Information, consultation and public hearing during the in-depth EIA procedure

The *in-depth procedure* for assessing the impact on the environment is conducted for the projects defined in *Annex I* of the law like projects for crude oil refineries, power plants, nuclear power stations, etc., as well as in cases where NEA anticipates the need for implementing the in-depth procedure.

Involvement of the public during the *in-depth procedure*, unlike the *preliminary procedure*, contains more phases, because the project proposed by the developer is already in a more advanced stage. Information and documentation to be made available to the public is wider and the importance of its participation in decision-making is greater.

The first phase - the first step taken by NEA is to inform the public about the proposed project and to get its opinion on the issues to be addressed in the EIA's in-depth report, together with the relevant clarifications for the procedure under way;

Likewise the preliminary procedure, even in this procedure, the National Environmental Agency must within 5 days from the moment of receiving a request from the developer, provide full information about the project, by publishing the information on its official website. The information remains published for 20 consecutive days.

More specifically, the information published by NEA should contain:

a) The procedure to be followed for information, consultation and public hearings to be held for the project up to the adoption Environmental Declaration;
b) The modality and the procedure to be followed by the public, interested groups or different NGOs to present their opinions;

c) The deadline within which the opinions must be presented, which is 20 days;
d) The deadline within which the Environmental Declaration is foreseen to be adopted and published on the website;
e) The manner and time within which may be exercised the right of appealing the procedure.

In cases of a proposed project of a national character, NEA notifies the developers of the project on the obligation to inform and guarantee public participation. One of the developer's obligations is the inclusion of all local administrative units affected by the project.

The second phase - after notifying and informing about the project and receiving opinions from interested parties, NEA publishes all the communication it has made with the developer. Published communication contains issues that need to be addressed in the in-depth report and opinions and requirements submitted by the public. Through this public procedure the aim is to guarantee the right of the public to follow each step of the project design procedure.

Third Phase - In addition to NEA, the DCM extends the effects of the law even on the developer of the projects, which has the obligation to develop a number of procedures within the project public consultation. During the drafting of the in-depth report, the developer has the obligation to inform the public and collect its thoughts on the project and its potential impact in the environment. Public opinion and requirements, if any, should be considered during the drafting the EIA's in-depth report.

The developer has the obligation to inform the public about the draft act he will prepare. The notification of the public can be done in several ways, namely by:

1. Publishing complete information about the project, exposing it

in the office of the local government unit where the project is being implemented, or to a designated office;
2. Direct surveys with citizens of the area where the environmental project may have an impact;
3. Developer's explanations for the purpose of the project, and the provision of contact details where citizens can send their opinions. Contact details include postal address, phone number, and email.

At the end of this phase, the developer collects all the materials he has used for the notification as well as the statistics he has produced, attaching them to the application documentation to the Environmental Declaration.

Fourth stage - After the notification and public consultation procedures have been carried out by the public or interested parties, public meetings are held. In order to carry out public hearings, DCM stipulates cooperation between developers, NEA, Regional Environmental Agency (REA), local government units (LGUs).

In the DCM are provided the duties and responsibilities that each of these institutions will have in the development of public consultation procedures.

A. Duties of developers

For the conduct of public hearings, the developer must perform the following tasks, namely:

a) Notify the NEA about the public hearing

In the notification that the developer should send to NEA, he should attach the hearing organization program, EIA in-depth report, as well as a non-technical summary of the report.

b) Notify the public about the organization of the public hearing

The developer has the obligation to take all measures to notify the public. The notification can be done by setting up information tables in the place where the project will be developed or by displaying the hearing materials in the local government units' offices, publication in the audiovisual media, local media, etc. The notice stands for 20 consecutive days. At the disposal of the public should be made available also a copy of the EIA report and its non-technical summary, which the developer sends to the LGU-s and are publicly accessible. Printed copies of the report should be sent to the REA, about 100 copies.

c) Ensure a venue where the meeting will take place

The developer has the obligation to find the venue where the hearing will be held. Additionally, the developer should ensure the presence of the expert/experts who drafted the EIA in-depth report in the hearing day.

d) Get feedback from the public

Opinions given by the public on the day of the meeting takes place should be considered and reflected in the in-depth EIA report. In cases of opinions not taken into consideration, the developer must provide arguments for the reasons why these opinions were not reflected.

The developer has the right to refrain from carrying out the hearing session by notifying NEA. The notice of revocation cannot be made later than 20 days from the date the NEA was notified about the hearing. In this case, NEA informs REA about the interruption of the process of organizing the public hearing.

B. Duties of NEA

Upon receipt of notice by the developer, NEA should undertake the following steps:

1. Within 5 days of receipt of the notice by the developer, NEA must issue guidelines for the relevant REA about the role it would have in the conduct of the public hearing.
2. Publish on its website the notice of organizing public hearing within 5 days from the notification of the developer;
3. Officially send a copy of the notification to the relevant structure for communicating with the public in the Ministry (the Ministry of Environment), within 5 days of receiving the notification;
4. Cooperate with the developer by providing the contact addresses of NGOs and parties that may have interest in the public hearing;
5. Receive public opinion at the review stage of the Environmental Declaration project;
6. Consider the results and requirements of the public during the review of the Environmental Declaration and the Environmental Impact Assessment process;
7. Publish on its website the available information for public participation during the project's Environmental Impact Assessment process.

As above, NEA's role is the management and coordination of other public bodies in the implementation and fulfillment of the obligations to notify and involve every person in the process of consulting a project.

C. Duties of the Regional Environmental Agency

Upon receiving guidelines from NEA, in addition to the tasks specified in the guidelines, REA has the responsibility to fulfill the following obligations:

1. Cooperates with the developer and LGU-s on the organization of public hearing;
2. Displays in its premises and publishes on its website the relevant notification of public hearing, within 3 days from the date of notification by NEA;
3. Exposes in its working premises copies of the non-technical summary of the EIA report;
4. Participates in the hearing and keeps notes of the discussions made by the participants;
5. Sends to NEA a report on the discussions made during the public hearing within 15 (fifteen) days from the public hearing;
6. Collaborates with the developer by providing the contact addresses available to the NGOs and parties that may be interested in the hearing.

D. Duties of the Local Government Unit

Another authority involved in the process is the local government unit where the project will be developed. Being closer to the public, the unit can contribute to raising awareness and the extent of its involvement in activities that affect the environment. The Regional Environmental Agency shall inform the local government unit within three days of receipt of the notification by the National Environmental Agency of the above responsibilities and make available a full copy of the information received from the NEA.

More specifically, the LGU should fulfill the following obligations:

1. Publishes in its premises and website the relevant notification for public hearing within 3 days from the date of notification from REA;
2. Exhibits in its offices copies of the non-technical summary of the EIA report, within 3 days from the date of notification from REA;

3. Cooperates with the developer by providing the available contact addresses of the NGOs and parties that may be interested in the public hearing;
4. Encourages the community to participate in the public hearing;
5. Takes part in the public hearing.

As noted above, the role of the local government unit is that of the facilitator in the process of public information and notification for participating in the consultation process.

E. Conducting a hearing session

The hearing session should take place after 30 day from the day the developer notified NEA for the hearing. The hearing session should take place at a venue situated the closest possible to the location of the project.

The meeting is attended by:

a. the project developer together with the experts who have drafted the in-depth report;
b. representative of NEA and REA;
c. representative of the LGU in the area where the project is being developed;
d. interested parties.

Initially the findings of the EIA in-depth report are presented, and then the interested parties express their opinion on the report.

Representatives of the REA take notes on the discussions made during the session and reflect them in a separate report, which is sent to NEA, which than publishes it in the official website.

Fifth Phase - At this stage, the process of public information and consultation on the Environmental Declaration takes place.

After following the above procedures, the developer applies for the receipt of the Environmental Declaration. Within 5 days of receipt of the Environmental Declaration application, NEA publishes a notification informing the public and interested parties that the project has entered the final review phase for the issuance of the Environmental Declaration.

In addition to the above, the notification also contains information about the manner and timeline for providing feedback on the environmental impact of the project. Feedback can be sent via post or the email address that is made available. The deadline for providing feedback is 20 days from the moment of publication of the notification. After reviewing the opinions, comments of the interested parties, NEA gives arguments for the opinions / comments that have been considered and the reasons why the other comments were not taken into account.

Upon the issuance of the Environmental Declaration, it is made public on the NEA website and each party has the right to access it.

1.3 Information and participation of the public during the monitoring phase

In addition to the obligation of the bodies to involve the public in the process of drafting and issuing the Environmental Declaration, the DCM has foreseen the right of the public to participate in the *monitoring* process phase of the environmental impact of the project.

Monitoring the impact of the project on the environment is the task

of the developer, which should send the monitoring results with the relevant data to the National Environment Agency, the Regional Environmental Agency and the Local Government Unit.

In order to have a transparent process, these bodies should immediately publish their monitoring data on their website. Subsequently, each interested party has the right to obtain a copy of the monitoring data provided by the developer after submitting the application to the National Environment Agency or the Regional Environmental Agency.

Involvement of the public at this stage is accomplished by giving him the right to comment and send opinions on the monitoring data to these institutions.

1.4 Administrative appeal procedures

The DCM provides for the right of each subject to file a complaint for the public authority's actions or omissions related to the conduct of the notification and public consultation procedure. The competent body where the complaint is filed is the Minister. Although the DCM has not defined the competent minister also referring to the public bodies over which extend the obligations provided for in the DCM, the competent minister is the Minister of Environment.

The DCM does not provide for the procedures for reviewing complaints and therefore we will refer to the rules provided for in the Code of Administrative Procedure for reviewing the complaints.

2. Consultation of drafts for review at the Parliament

As explained above, the Public Consultation Law foresees the

obligation of public authorities to hold public consultations on the drafts, as long as they have not been sent yet for further approval, to the Parliament. However, discussions in the Parliament are of particular importance because:

a. Drafts proposed by MPs do not undergo any of the public consultation phases;
b. Drafts proposed by the Council of Ministers may have been subject to changes from the initial draft consulted with the public by the drafting public authority;
c. Drafts may undergo substantial changes in discussions in the Standing Parliamentary Comittees;
d. The laws returned by the President of the Republic, in cases when the decree of the President has not been overturned by the Parliament, may change;
e. Drafts may be subject to changes even in plenary sittings.

For these reasons, since the law does not provide for an effective remedy for this instance, the Parliament has developed a special public consultation procedure for reviewing the draft laws that are being reviewed by him. The Parliament has adopted a *manual* for public participation in the decision-making process of the Albanian Parliament.

The Manual of Public Participation in the Parliament's decision-making process is a starting point for promoting and ensuring the participation of civil society in the legislative and supervisory function of the Albanian Parliament. The participation, especially that of civil society in the legislative process of the Parliament, helps to improve the quality of legislation reviewed and adopted. It becomes of particular importance when discussing issues related to vulnerable groups such as people with disabilities, women, children, minorities, etc.

The purpose of this manual is to give the opportunity to the public, from the simple citizen to non-profit organizations, to become active participants in the development of the community they belong and providers of improved legal policies by which they are affected.

2.1. Principles

In this manual, public participation is dealt with on the basis of information, consultation, dialogue and partnership. Some of the principles on which public consultation is based, have been analyzed in the first chapter of this commentary, such as transparency, promotion of public participation, non-discrimination, information, consultation, dialogue, partnership.

2.2. Transparency of the Parliament

The Parliament has an official website www.parlament.al, which is a functional site where all draft laws and information on their approval are published, as well as any information needed on the Parliament's activity.

Specifically, the website of the Parliament contains:

- The text of the draft laws filed, together with the accompanying report;
- The work schedule of the standing committees and the progress in the review of draft laws;
- The text of the amendments filed in the committees and those of the amendments adopted by them;
- Reports of parliamentary committees, which review the draft law;
- Minutes of meetings of the Conference of Chairmen, of the

Committees and of the Councils;
- Laws adopted after the announcement by the President of the Republic;
- The committees order of business;
- The plenary sittings order of business;
- As well as any other material deemed necessary for parliamentary transparency.

The open and transparent activity of the Parliament is made through:

a. public participation in the legislative process;
b. reflecting the activity of the Parliament and its bodies in the print and visual media;
c. publications of parliamentary documentation;
d. the Parliament website;
e. the internal audiovisual network.

In addition to the website, those interested in the work of the Albanian Parliament have the opportunity to obtain quick, useful, orienting, updated and transparent electronic information through two information points *Info Point* located in the premises of the Parliament. This information system contains, among other things, the main information on the place, time, order of business of the plenary sitting proceedings, parliamentary committees, but also with regard to other parliamentary activities.

Moreover, the activity of the Parliament can be broadcasted by the audiovisual media. The Albanian Public Television (already on the digital platform) has the obligation to broadcast the plenary sittings, which discuss:

- the approval of the political program and the composition of the Council of Ministers;

- questions sessions;
- weekly question-answer session;
- interpellations;
- urgent interpellations;
- motions;
- confidence and no-confidence motion;
- committees of inquiry reports;
- Constitution review initiatives.

2.3. Public consultation conducted by the Parliament

a. Issues subject to public consultation

According to the manual, the Parliament conducts public consultations on the following issues:

- issues related to controlling the implementation of the legislation in force;
- review of draft laws;
- issues related to the activity of the Parliament of an educational, promotional, scientific character, etc.

As stipulated in the Law on Notification and Public Consultation, are excluded from public consultation:

- issues related to national security;
- issues related to state secrets as per law on information classified as "state secret";
- international relations and bilateral and multilateral agreements;
- decisions of the Parliament.

In addition to the above mentioned cases, the Parliament may decide that an issue is not subject to public consultation in the cases set out in the Rules of Procedure of the Albanian Parliament.

b. Parties in public consultation in the Parliament activity

According to the manual, the parties entitled to participate during the public consultations in the Parliament activity are:

Interested parties from public authorities

This category includes members or representatives of the Council of Ministers, as well as senior representatives of public authorities.

Interested parties from the public

This category includes individuals, experts, civil society representatives, representatives of the interest groups as well as other interested groups. These may be citizens' representatives (including children accompanied by adults) who are affected by a particular law or policy; civil society organizations; independent experts; experts from the civil society organizations; employee organizations; business associations or various professional associations; etc.

Civil society organizations have a greater importance and priority in the conduct of public consultations. For this reason, the Parliament has created an Electronic register of Civil Society (the information of this register has been provided by the General Directorate of Taxation, fed from the Integrated Tax System, where all civil society organizations are active). This register is a key element for identifying these organizations and serves as a connecting and communicative tool with the Albanian Parliament.

Interest Groups Coordinator

To facilitate and co-ordinate the relations of cooperation between the Parliament and the interested parties, a responsible person is appointed to be Coordinator for the interest groups.

The manual defines the main tasks to be performed by Coordinator for the interest groups, namely:

- Inform the interest groups, civil society and social partners on draft laws to be reviewed and discussed at the Standing Parliamentary Committees;
- Contact with the interest groups to gather their written opinions on draft laws that are reviewed and discussed in Parliamentary Committees;
- Convey in time to the staff of Standing Parliamentary Committee, the opinions and suggestions of interest groups, civil society and social partners;
- Notify in time the the interest grups, civil society and social partners for their participation in parliamentary committee meetings, when deemed reasonable by the heads of parliamentary committees;
- Inform the interest grups, civil society and social partners on the adopted laws and whether or not their suggestions have been taken into account and the reasoning for the latter.

c. Public hearings

In order to carry out public consultation with the interested parties, the Parliament conducts a hearing session, as provided in the Internal Rules of Procedure of the Parliament. The cases when the Parliament conducts these hearings are grouped as follows:

a) to obtain information on issues related to controlling the law enforcement in a given field;

b) during the process of reviewing a draft law (during the legislative process).

The conduct of hearings is a condition for passing the draft law for consideration in the plenary sitting. The committee cannot prepare the report for plenary sitting without conducting the hearing session.

In the manual are also defined some of the reasons why it is important to hold hearings. Below we are listed some of the reasons:

Exchange of information

MPs and the public benefit from the information exchange process. The public hearing allows MPs to present the legal initiatives to the public in a formal and organised way. They also have the opportunity to obtain valuable information from all the interested parties for formulating alternative policies, while discussing the effectiveness of a law in force, or reviewing a draft law. The information provided by the interested parties comes in the form of experiences of people affected by the implementation in practice of an adopted law or affected by the definitions of a draft law. The information presented to the members of parliament gives the opportunity to the interested parties to participate actively in reviewing the legislation and at the same time makes them more accountable for observing the legislative policies affecting them.

Alternative knowledge or data and the provision of solutions

During a hearing session, the policy implemented by a law adopted or proposed through a draft law is viewed from different perspectives: on the one hand, it is the information of those who have drafted it, while on the other hand is the information of those which will be affected by it. The information provided by the

interested parties is made up of local values and knowledge often 'ignored' by experts during the process of drafting a draft law with the aim of being more inclusive and generalizing in the drafted norms. Civil society organizations have as their scope of work the creation and promotion of a multitude of values for the benefit of society and they have, in most cases, developed and advanced their profiling in a given field, so much that, through their expertise they can provide valuable alternatives for consideration by the parliamentary committees.

It may also be the case when, the interested parties' opinions, although given, were not taken into consideration by the drafting group of the draft law at the consultation stage and so a hearing in parliamentary committees is a second chance for submitting alternative proposals. Hearing two different perceptions and interpretations gives the MPs the opportunity to assess the impact of the implemented or proposed legislation and consequently make better decisions.

Public hearings are also often the roundtable where debates between government representatives and interested parties take place, for issues related to the content of a draft law, or even those on the law implementation. They serve to resolve the tensions created and to provide solutions accepted by all parties.

Empowering Public Involvement

Empowering public involvement in the process of controlling the implementation of legislation and especially in the legislative process is the central purpose of this manual. Public hearing is the mechanism to strengthen public involvement in terms of consultation and dialogue. Empowering public participation in the Parliamentary activity increases the accountability and transparency of MPs' activities in representing the interests of their constituents.

Trust

The conduct of hearings sessions creates and increases public confidence in the institution of the Parliament as a representative institution and in particular in the MPs. The conduct of hearings gives the public the opportunity to evaluate the will and ability of MPs to listen to the voice of those they represent.

The culture of participation

Public hearing helps in transforming the technocratic and political culture for reviewing an issue into a culture of open dialogue and cooperation between the interested parties and the Parliament. The development of this culture aims to provide professional services and expertise by the civil society organizations, through building partnership and mutual trust, and most importantly, without budget costs.

d. The time of conducting public hearings

The timing of hearings is defined in the Internal Regulation, although we have to emphasize that there is no concrete regulation for scheduling the conduct of hearing sessions, but from an interpretation of the regulation it results that the hearing session takes place after the moment of review in principle of the draft law and before the Committee reviews it by article.

e. *Notifying the parties about the hearing sessions*

Before the Parliament makes the announcements for organizing public hearings, it should identify the interested parties. The process of identification is essential, as the duration of a hearing session is between 2 to 3 hours and the Committee can only hear a limited number of people, therefore it is important to select those interested

parties from the public that are directly affected by a law or draft law, or those who have proper field expertise to evaluate its quality.

After identifying the interested parties and the determining what issues will be reviewed, the date and time of the hearing, the Parliament makes the due notifications. The notification should contain:

1. The reasons why the participation of civil society in the process of discussion of the draft act is considered necessary;
2. The deadline and manner by which the interested parties present or submit their recommendations;
3. Address of the contact person for the collection of recommendations and comments for the draft act;
4. Place, date and time of the organization of the hearing;
5. A copy of the draft act to be reviewed;
6. Minutes at disposal of parties to express their opinions.

The notification can be made in one or more of the following forms:

- By email;
- By phone, fax
- By postal service when notification cannot be done by other means.

Also, the notification about the hearing session is published on the Parliament official website.

f. Expression of interest to participate in the hearings by the interested parties

Parliamentary committees are considered as connecting bridges between the public and the Parliament, as they consist of a small group of MPs, and this facilitates the dialogue between the interested parties and the public.

Apart from the groups of interest identified by the Parliament itself, any other interest group or person has the right to participate in hearings held by the Parliament. The only condition to be met by the interested person/group is the submission of a request expressing an interest to participate. The request must contain the following elements:

- A presentation of the civil society organization, grouping or group of interest. In the case of NGOs, the request should contain data of the registration act according to the applicable NGOs legislation in force;
- The issue for which participation is required according to the standing committee's working calendar;
- Reasons why participation is required;
- Names of persons who will represent the interested parties, their exact address and contacts;
- Other additional documents that provide reasons for participation, if the interested parties deem it necessary.

The request must be well-argued in order to be taken into consideration by the Parliament, as public hearings have a limited duration and committees try to select those interested parties who can more clearly express the problematic related to certain issues or that are well-known in the field they operate.

Upon receipt of a request for participation, the Chairmanship of the Committee decides whether to extend the list of invitees from the interest groups of the public, or not. For hearing sessions while reviewing a draft law, the Chairmanship of the Committee may decide not to invite the interested parties to attend the hearing, but that the recommendations presented to it be submitted to the Committee during the by article review of the draft law.

g. Conducting a public hearing

Public hearings are held mainly in the Parliament premises that usually present the best technical and logistical opportunity to hold them. But they can also be held in other locations outside of the premises of the Parliament so that citizens can find it easier to participate, whenever the presence of a certain group of people is needed. An example of this is that of the conduct of public consultation on judicial reform, where public meetings have been held in the university premises of different cities.

The conduct of a hearing session is subject to the rules set out in the Rules of Procedure of the Parliament for the committees issues review. The Chairman of the Committee gives the floor to all guests within the time scheduled for discussion (usually up to 10 minutes), in the order set by him for the discussions. In cases where the invitees have prepared written discussions, a copy thereof is made available to the Committee secretariat, which then distributes it to the MPs in the committee.

During the hearing sessions, minutes (process verbal) are kept, that reflect the discussions held. The minutes of the hearing are published on the official web site of the Parliament and the secretariat of the Committee sends it to the invited participants in the hearing session within 2 days from its publishing.

h. Submission of recommendations from the civil society

In the manual are provided rules on how to make recommendations and their review from the Parliament.

Civil society through its recommendations may participate in the legislative process in these phases:

- During the preparation / drafting phase of a draft law
- During hearing sessions

Recommendations for amendments to a draft law should be properly referenced in the article that is proposed to be amended and should be written according to rules of legislative technique. For this reason, civil society organizations and interest groups need the assistance of one or more experienced lawyers who will need to prepare the relevant material, given that the legislative techniques require specific knowledge and experience.

i. Deadline for submitting recommendations

Recommendations should be sent within 10 days from the date when the draft law was published on the Parliament official website or after the request announced by the Parliament.

This deadline may be reduced in cases of urgency or when the interested parties are ready to submit their recommendations sooner. However, the submission of written recommendations, if any, from the interested parties shall be made no later than 3 days before the conduct of the hearing session.

The 10 day deadline may be extended in these cases:

- Due to the special nature of the draft law being discussed (the complexity of the issue that has been put forward for public discussion, the diversity of civil society groups that have expressed interest, etc.);
- In cases when it coincides with the MP-s holiday period.

Upon receipt of the recommendations, the Parliament Committee staff confirms their receipt, by replying by email or by other means. Upon

completion of the deadline for submitting recommendations, the committee closes the consultation process for the draft law in question and continues its review at the other stages of the legislative process.

j. Review of recommendations

The recommendations submitted by the interested parties should be sent to the MP-s at least one day before the hearing session.

Following the hearing session during the legislative process, the Committee staff prepares a summarized material with all recommendations put forward by the interested parties from the public by categorizing the proposals into *substantive proposals*, related to the substance of the issues reviewed and *technical proposals*, related more to the language aspects, or corrections of the text.

At the end, a working paper is prepared including all the recommendations, which are sent to the members of the responsible committee, and to the Chairperson of the Committee for giving his opinion as well as to the Committee's rapporteur/rapporteurs for the issue in question.

During the by the article review of the draft law, the Committee also considers the material with the recommendations of civil society and by majority of votes decides on the position it will hold regarding the recommendations in question.

In cases when it is decided that the recommendations presented shall are not be taken into account (completely or partially), applies the same rule as in the case of the Public Consultation Law, that of explaining the reasons why such a position has been maintained.

The decision of the Committee shall be made known to the representatives of the interested parties that have submitted the

recommendations. In the Committee final report on the draft law it should be included a summary of civil society recommendations that have been considered.

k. Expression of interest by the interested parties for the conduct of hearings

In addition to conducting hearings, on the initiative of the Parliament, the interested parties may ask the Parliament to hold a hearing session upon their request. Interested parties should submit a request for expressions of interest, in which they should determine the topic / issue for which they request the conduct of the hearing session.

In the manual it is specified that the parties should be careful in selecting the topic, which should be within the scope of the Committee's responsibility and that has not been treated lately by that same Committee. In practice, it may happen that there are many committees reviewing the same draft, and the topic of discussion in each of them is different, even though the draft is the same. For example, the amendment to regulate the import of waste should go through the *Productive Activities, Trade and Environment Committee* to address the industrial aspect and the environmental impact, the *Legal Issues, Public Administration and Human Rights Committee* to handle technical and legislative aspects, its compatibility with other laws and its impact on human rights, the *Committee for European Integration* to address the aspect of compliance with European Union legislation, etc. The discussion in each committee is different and the public representatives should address the topic according to the scope of each committee to avoid having the same discussion in each of them.

The parties should also bear in mind the time of the hearing. Upon approval of the request for the conduct of the hearing, it shall be

conducted in accordance with the rules governing hearings initiated by the Committee.

l. Public participation in Standing Committees and Plenary Sittings

Standing committee sessions and plenary sittings are open to the public, except when due to the nature of the draft act it is decided that they will be closed for the public. The decision to hold a closed session is taken by the majority of member votes.

Any interested person must submit a written request, at least 5 days before the session is held in the case of standing committees and 7 days in advance in the case of plenary sittings, which should contain the person's data, the date and the meeting which he/ she wants to take part in, as well as his address or contact number.

The request shall be considered by the Secretary General of the Parliament, in cooperation with the Parliament services, taking into account the capacity of the room used by the committee during its meetings or plenary sittings, wherein participation is required. In case a lot of requests for participation have been submitted for that meeting, the Secretary General shall evaluate the requests by the order of submission. After this evaluation, the requesting persons are notified.

m. Submission of petitions

By petitions we mean those documents signed by a group of individuals who ask the Parliament to take or refrain from taking a certain action.

Article 104 of the Internal Rules of Procedure of the Parliament

sets out the procedures for the submission of petitions and their consideration by the Parliament.

The petition addressed to the Parliament should be sent in writing and contain the following elements:

- The sender's name;
- Relevant signatures;
- Should be understandable;
- Should clearly state his object.

Petitions are reviewed by the respective standing committees which are dealing with the issues presented in the petition. No later than 45 days from the date of receipt of the petition, the respective committee chairman submits the petition to the committee, proposing at the same time the possible legal solution or the rejection of the petition. The chairman of the committee may return the petition to the senders for redrafting it or may ask for additional clarifications. As noted, the 45-day deadline is long and imposes patience on the signatories who should wait so that there is a co-operation in order to achieve the petition's objective. Therefore, it is recommended that petitions be sent as soon as possible, so as to gain time for the issue at hand.

If the committee deems it appropriate, to resolve the case, it may authorize the chairman of the committee to present a statement at the plenary session of the Parliament. The steps taken and the resolution of the issue raised in the petition are made known to the petitioners.

COMPARATIVE ANALYSIS OF THE FIRST TWO YEARS OF APPLICATION OF THE LAW ON PUBLIC CONSULTATION

1. Methodology

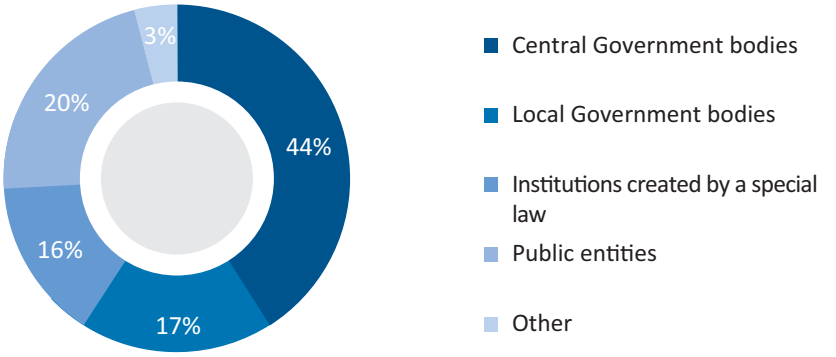
Res Publica has tested the law no. 146/2014 "On Notification and Public Consultation" by collecting data in two different 7-month periods, namely for the period November 2015 - May 2016 and the period September 2016 - March 2017.

For the second period, September 2016 - March 2017, Res Publica has monitored 61 public authorities, keeping the same number of monitored public authorities as in the previous period, in order to have as accurate comparative data as possible. The selection of public authorities was made on the basis of the number and importance of the draft acts they have handled.

Likewise, the official website of the Commissioner for the Right to Information and Protection of Personal Data www.idp.al, and the Electronic Register for Notification and Public Consultation website www.konsultimipublik.gov.al, which is the common web site of all public authorities, have been monitored in order to compare their functionality during the above mentioned periods.

2. Monitored public authorities

Fig.5 – Monitored public authorities



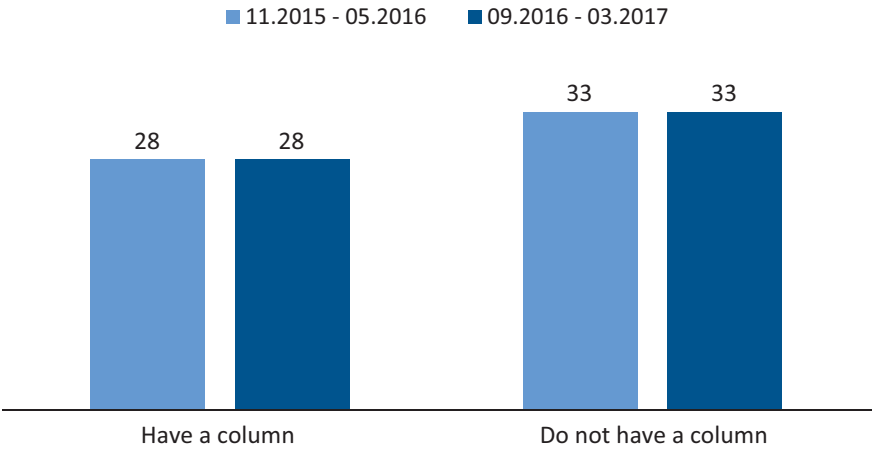
Given that the public bodies that draft and propose the majority of draft acts are the central government bodies, mainly the Ministries, the number of monitored public authorities that fall under this category is higher, that is to say almost half of the total number of the monitored public authorities.

3. Include a section for public consultations on institution websites

The Law on Notification and Public Consultation stipulates that all public bodies shall publish draft acts in a single register, which is currently the official website of the Electronic Register for Notifications and Public Consultations. The site operational procedure is provided for in the DCM no. 828, dated 07.10.2015. Given that setting up and activating of a common site required time, the DCM allowed the public authorities to continue to publish draft acts on their official websites.

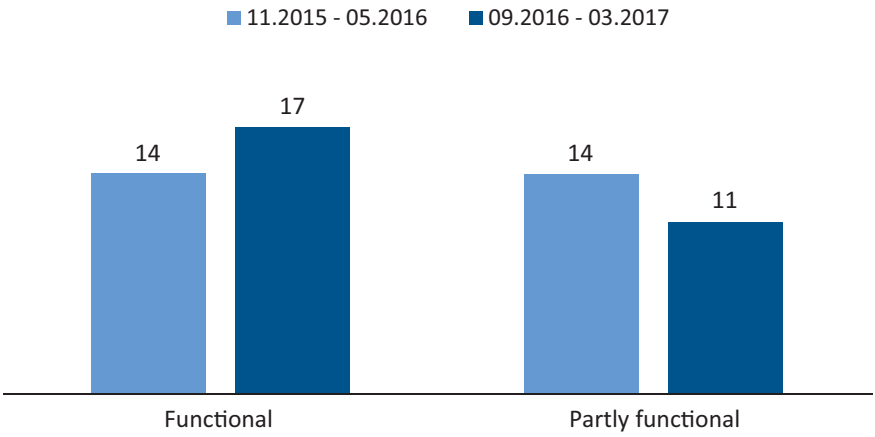
Although the DCM has been in force for more than a year, the Electronic Register is not yet active and functional. For this reason, for the second consecutive year, Res Publica has monitored the official websites of public bodies in order to assess the fulfillment of the obligations deriving from the law on notification and public consultation, comparing the data with the previous period monitoring.

Fig.6 - Columns about public consultation on authorities' websites



As the graph above shows, the situation continues to be exactly the same. More than half of the public authorities continue to disregard the law on notification and public consultation, thus violating the right of citizens to get acquainted with and be involved in the policy-making processes. Out of the 61 monitored public authorities, it results that only 28 public authorities have published on their official websites columns on notification and public consultation of the draft acts, while 33 authorities continue to not publish any information regarding the draft acts they are drafting.

Fig.7 – Functionality of websites regarding public consultation

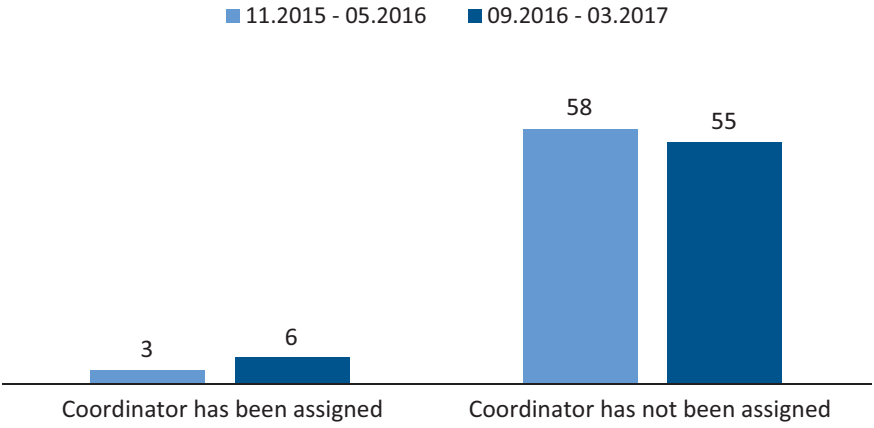


As the chart shows, 61% of the public authorities have a functional official website with regard to the columns on the public notification and consultation, while 39% of them have a column on public notifications and consultations but this column is not functional. By comparing these results with the results of the previous period, we come to the conclusion that the number of institutions that have an improved and more effective column on public consultation has increased by 11%. This is an indication of a slight improvement but insufficient to be considered significant.

Meanwhile, is to be mentioned the fact that public authorities often do not care about publishing drafts at the right place, but drafts are rather located in different corners of the website without a special a rule. Published documents are often partial and do not provide details on the time of consultation and other details that would enable the public to fully get acquainted with the draft initiative.

4. Coordinators for notification and public consultation

Fig. 8 – Assigning coordinators for notification and public consultation

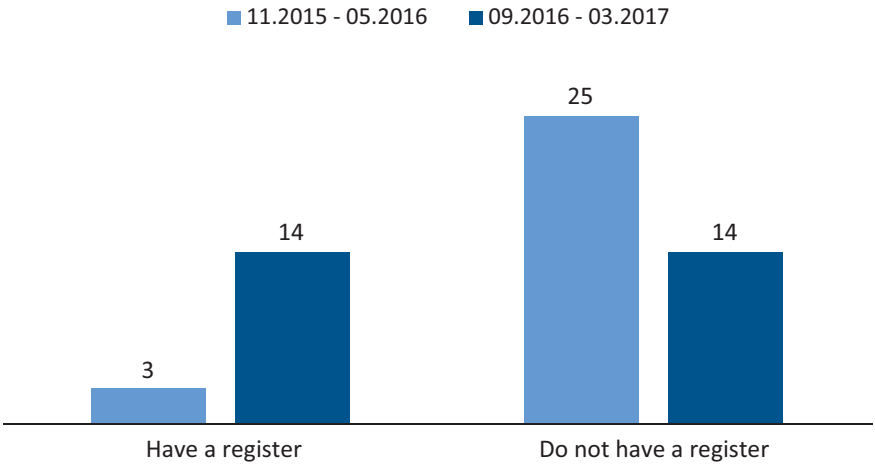


From the chart above it results that only 1/10 of the monitored authorities have assigned the coordinator for notification and public consultation. By comparing this data with the previous ones we conclude that although the number of authorities that have assigned coordinators has doubled, the number still remains very low. It should be noted that the law on notification and public consultation entered into force in May 2015, that is nearly 2 years ago and public authorities continue not to comply with the minimal obligations arising from this law.

5. Register for the list of draft acts for public consultation

Above we have analyzed the obligation of each public body to publish in the Register the draft acts it has compiled. As this site is not yet functional, the official sites of the authorities have been monitored to find out whether in the columns about public consultation are hierarchically published the acts that are in the process of being consulted or that have been approved.

Fig.9 - Registers for the list of draft acts for public consultation



As it can be seen from the graph above there is an improvement with regards to the organization of draft acts which are subject to public consultation. Of the 28 institutions that have columns or contain information on public consultations, it results that 50% of them have sorted and organized draft acts that are subject to public consultation. The comparison with the results of the previous period shows a significant improvement of the situation. However, there is still a long way from the complete fulfilment of the obligations that derive from the law on public notification and consultation.

6. Case studies from the Commissioner's decisions

Pages 57-62 above provide an overview of the decisions of the Commissioner for the Right to Information and Protection of Personal Data, which is the body that reviews the complaints and requests the taking of administrative measures against the responsible persons.

Until now it turns out that the number of filed complaints is a very low, while the Commissioner has not taken measures. Only in one case the Commissioner has decided to take action against the responsible persons and this has happened almost 2 years after the law entered in force.

In summary, we find that the Commissioner expresses concern that there is not much legal room to make this law functional. The non imposition of sanctions makes the law 'without teeth" and therefore facilitates its disregard. The Commissioner's tepid decisions discourage future complaints, thus resulting in a situation where only those organizations that have a specific support to follow these issues are motivated to pursue complaints, while others, and especially individuals from the interest groups, do not even take the trouble to do so.

A similar situation has resulted in Law no. 8503 dated 30.06.1999 "On the right to information on official documents", which remained in force for 15 years and was not used by the public. Initiatives to amend this law were rejected by the lawmaker with the justification that the law was not criticized by the large public, ignoring the fact that that law was not criticized because it was not used. This is also the most serious criticism that a law can receive that of perceiving it as unusable.

7. Conclusions of the monitoring

Although the law has been in force for 2 years, it is not being implemented by public bodies, and does not serve as an effective tool for the citizens.

The official website of the Electronic Register for Notification and Public Consultation is not functional. It has just been set up as a site

but none of the public authorities are fulfilling their legal obligations to publish the draft acts they have at hand in this Register. It is not clear whether there is a lack of willingness from the authorities to publish the draft acts in the Register or whether the website is still dysfunctional for technical problems. For a long time the site has been under construction and in the testing phase. Given the fact that only 10% of the monitored public authorities have appointed a coordinator, it is clear that the number of people who can access this site is small. In some cases, the coordinators are appointed by authorities that do not usually produce acts that are subject to public consultation, like in the case of ADISA (Agency for Delivery of Integrated Services Albania)

Public authorities not only fail to publish draft acts in the Register, but less than half of them have published draft acts subject to public consultation on their official websites and only 1/4 have a special column for public notification and consultation.

On the other hand, it results that the citizens are not using this law because of the fact that the law is very evasive, as it does not provide for concrete mechanisms when authorities refuse to implement the obligations deriving from this law. Consequently, the number of complaints about the violation of the right to be involved in the consultation process is very low.

The only complaints to date are those submitted by civil society organizations, such as the Res Publica, which had as their primary purpose the testing of the law. The Commissioner for the Right to Information has come to the same conclusion, stating that:

> *"Citizens' sensitivity and civic engagement continues to be law as shown by the low number of complaints regarding the implementation of the Law No.146 / 2014" On Notification and Public Consultation ". Two complaints were filed, in which the complainants have alleged*

failure to consult the draft act with the public. A complaint referred to the adoption of the draft law "On Amnesty" and the other on the draft law "On Copyright".

Res Publica, in its study "Public Consultation - The First Challenges of Law Enforcement" published in June 2016, has issued some recommendations, that have not yet been taken into account by the relevant authorities, with the scope of improving the law and turning it into an effective tool in the hands of citizens.

THE FULL TEXT OF THE LAW NO. 146/2014 "ON NOTIFICATION AND PUBLIC CONSULTATION"

LAW
No. 146/2014
ON NOTIFOCATION AND PUBLIC COSULTATION

Pursuant to Articles 78 and 83, paragraph 1, of the Constitution, upon proposal of the Council of Ministers,

THE PARLIAMENT OF
THE REPUBLIC OF ALBANIA
DECIDED:

CHAPTER I
GENERAL PROVISIONS

Article 1
The object

1. This law regulates the process of notification and public consultation of the draft laws, national and local strategic draft documents, as well as policies of high public interest.

2. This law establishes procedural rules to be followed to ensure transparency and public participation in policy and decision making processes of the public bodies.

3. This law aims to promote the transparency, accountability and integrity of the public authorities.

Article 2
Definitions

In this law, the below terms have the following meanings:

1. "Individual administrative act" is every expression of will of the public authority in the exercise of his public function, to one or several individually defined subjects of the law that creates, alters or terminates an actual legal relationship.
2. "Subsidiary normative act" is every expression of will of the public authority in the exercise of his public function, which regulates a relationship defined by law, by establishing common rules of conduct and that does not wear out upon its implementation.
3. "Civil emergency" is a situation caused by natural, ecological, industrial, social factors, terrorist acts, military actions (during a war), which bring immediate and severe damages to life, to health of the population and that of the livestock, to the wealth, cultural heritage and to the environment.
4. "Interest group" is any non-profit organization that represents the interests of a group of natural or legal persons and other entities, affected or interested in the draft acts subject to the public consultation process.
5. Public consultation" is getting the opinions and suggestions of the interested parties on the content and improvement of the draft act, from the moment of publication of the draft act to its final adoption.
6. "Responsible Minister" is the minister responsible for the field of information technology.

7. "Preliminary notification" is the formal invitation to participate in the process of providing information or preliminary opinions, prior to starting the designing of the draft act.
8. "Public Notification" is the formal invitation to participate in the consultation process of the proposed draft act and the initiations of public consultation procedures.
9. "Public authority" means any organ of the central government, which performs administrative functions, any organ of the public entities to the extent that they perform administrative functions, any organ of local government, which performs administrative functions, any of the bodies of the Armed Forces and any other structure, as long as they exercise administrative functions, as well as any natural or legal person to whom it is given by law, bylaw or any other form provided by the legislation in force, the right to exercise public functions.
10. "The decision-making process" is a process that includes the processes of drafting and approving of the draft acts by the public authorities.
11. "The draft act" is the project of a law, of national and local strategic documents, policies of high public interest drafted by public bodies.
12. "The Electronic Register" is the official website where the draft acts will be published as per provisions of Article 7 of this law.
13. "Recommendation" is any suggestion, proposal or opinion of a consultative character about the draft acts, expressed either verbally and/or in writing from the interested parties.
14. "Public meeting" is any open meeting organized with the interested parties to discuss the draft acts subject to the notification and public consultation process, with the objective of clarifying and informing public opinion about these draft acts as well as collecting relevant feedback and recommendations for their improvement.
15. "Transparency" is the open activity of a public body to inform about the acts of high public interest, policy and decision making processes, which provide an opportunity for the interested parties to participate in these processes.

Article 3
Scope

This law applies to the rules and procedures on notification and public consultation carried out by public authorities in policy and decision making processes.

Article 4
Limitations

The provisions of this law do not apply to the decision-making process related to:
a) national security issues, to the extent that they constitute a state secret, according to the law on information classified as "state secret";
b) international relations and bilateral and multilateral agreements;
c) individual administrative acts and administrative acts of a normative character, except when otherwise provided by a special law
ç) Normative acts, with the force of law, approved in the Council of Ministers;
d) civil emergency;
dh) other exceptional cases provided by law.

Article 5
Principles in the process of notification and public consultation

The process of notification and public consultation is carried out on the basis of the following principles:
a) transparency in the process of notification and public consultation with an all-inclusive and non-discriminatory participation;
b) effectiveness of the decision-making process of the public bodies;
c) responsibility of public authorities towards the interested parties.

CHAPTER II
OBLIGATION FOR NOTIFICATION AND PUBLIC CONSULTATION

Article 6
The obligation for notification and public consultation

1. Public bodies are required to take all necessary measures in order to create opportunities for participation of the public and all interested parties in the process of notification and public consultation, including:
a) publication in the Electronic Register of the draft act, the notification for consultation and of all information related to the consultations of the draft acts;
b) publication of the transparency program, as per Law no. 119/2014 "On the right to information", of the annual plans of public bodies related to the decision-making processes, in terms of this law;
c) providing information about the notification process and public consultation at all stages, starting from the publication of the draft act, receiving comments and recommendations for its improvement, organization of public debates until its final approval.
2. The public body, after publication of the notification in the Electronic Register, may organize direct consultations and public meetings with the interested parties. Direct consultations and public meetings with stakeholders are documented by minutes. The minutes on the public meetings organized under this law, are an official document. For particularly important consultations as well as whenever possible, upon decision of the public authority, the public meetings are broadcasted in the public audiovisual media, to facilitate their attendance by the general public.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, public bodies are not exempt from the obligation of publication and consultation of the draft acts, according to the special laws that regulate their functioning.

Article 7
Electronic Register for Notifications and Public Consultations

1. Every draft act is published in the Electronic Register for Notification and Public Consultation. This register is an official website, which serves as a central consultation point, and provides access and an opportunity for all parties concerned to communicate with the public body. It ensures and strengthens equality in access to information and services, taking into consideration the specific needs of particular persons or groupings.

2. The creation and rules for administering the Electronic Register for Notifications and Public Consultations are defined by the Council of Ministers, on the proposal of the responsible minister.

CHAPTER III
PARTIES INVOLVED IN THE PUBLIC CONSULTATION

Article 8
Interested parties

1. Interested parties in the process of notification and public consultation are:
a) public bodies;
b) citizens of the Republic of Albania and interest groups;
c) foreign natural persons with permanent residence in the Republic of Albania, as well as foreign legal persons registered in the Republic of Albania.
2. Other foreign persons may participate in the consultation process, in accordance with international agreements or by direct request of the public authorities, when they deem it necessary.

Article 9
The rights of interested parties

The interested parties in the process of notification and public consultation are entitled to:
a) request information on the process of notification and public consultation, including access to the draft acts, pursuant to letter "a" of paragraph 1 of Article 6 of this law, except in cases provided for in Article 4 of this law;
b) propose to public bodies the beginning of the procedure for the drafting and adoption of the draft acts, according to the annual plan of the decision-making process, published by the public authority, as per provisions of the letter "b" of paragraph 1 of Article 6, of this law;
c) submit to public bodies comments and recommendations on the draft acts undergoing the process of notification and public consultation.

Article 10
The coordinator for notification and public consultation

Each public body shall assign a person as coordinator of notification and public consultation, who is responsible for the overall coordination and management of the work to guarantee the right of notification and public consultation, provided by this law.

CHAPTER IV
RULES OF THE NOTIFICATION AND PUBLIC CONSULTATION PROCESS

Article 11
Ways of notification and receipt of comments and recommendations

1. The notification for the draft acts that will be subject to public

consultation procedure is done through the Electronic Register. When the public authority deems it necessary, the notification can be performed in one or several of the following forms:
a) by mail;
b) by a public announcement, which is posted in the premises of the initiating public authority;
c) by an announcement in the national, regional or local audiovisual media;
ç) by publication in local newspapers or in the two most read newspapers at national level.

2. The collection of comments and recommendations during the process of public consultation is done in one of the aforementioned forms and in certain cases in a verbal and/or written form and documented in the public meetings minutes.

Article 12
Preliminary Notification

1. The public body, in some cases, can collect information and / or preliminary opinions from interested parties before starting the process of drafting the relevant act.

2. In the initial stages, the public body, when it deems it necessary, publishes in one of the forms provided for in Article 11, a preliminary notification for the act to be drafted in order to gather information from the interested parties.

3. Any interested party may respond to the preliminary notification within the time limits provided in this law, by submitting comments and recommendations.

Article 13
The content of the notification regarding the decision-making initiative

1. In the notification for the launch of a public consultation process should be defined at least:
a) the reasons on the necessity of issuing the draft, and the impact it will have;
b) the time, place and manner in which the interested parties submit or send their recommendations;
c) the contact address of the coordinator for notification and public consultation of the public body responsible for collecting recommendations and comments on the draft act;
ç) the place and date of the organization of the public meeting when the public authority decides to organize one.
2. Access to documentation related to the draft act is also provided in the manner specified in the applicable Right to Information Law.

Article 14
Information necessary to be provided

1. The interested parties to be consulted are provided with the necessary information that will enable them to contribute in the most effective possible way in the process of preparation of the draft act both electronically and / or by post.
2. In addition to relevant documents, depending on the complexity, volume and other characteristics of the draft act, are provided explanations on the purpose, problems to be addressed, general ideas, the main changes and / or possible alternatives and, where possible, studies or analyzes carried out while drafting the draft act.

Article 15
Deadline for submission of comments and recommendations

1. The parties concerned shall be given a reasonable time to send

the comments and recommendations to the public decision-making body:
a) within 20 working days from the date of notification of the preliminary notification process;
b) within 20 working days from the date of notification for the process of notification and public consultation.
2. For particularly complex or important acts, according to the decision of the public body, the deadline for submitting comments can be extended up to 40 working days from the date of notification.
3. The above provisions do not circumvent the deadlines set out in specific laws for consultation and public information procedures.

Article 16
Duration and reiteration of the consultation phase

A public body may extend the deadline for sending comments or may reiterate the stage of receiving comments and recommendations when:
a) the public authority is not satisfied with the quality of the comments received;
b) in the comments and recommendations arise new important issues that were not part of the initial consultation.

Article 17
Notification for public meetings

1. During the consultation period, given the importance of the draft act and the high public interest, the public authority may organize public meetings where interested parties submit their opinion and input for the draft to be developed.
2. The interested parties, invited to participate in public meetings, are given the necessary time for preparation. In any case, they are informed at least 20 working days prior to the public meeting, and are provided with copies of the draft act to be discussed.

Article 18
Attendance at public meetings

1. Consultation at public meetings is open.
2. Notification on the organization of the public meetings is done by ways of notification provided for in Article 11 of this law.
3. The representative of the public body which chairs the meeting, in accordance with the rules of the public body, gives the participants the opportunity to express their opinion on the issues discussed.
4. In every public meeting are taken minutes, which are archived by the public body.
5. If deemed necessary, a public meeting may be recorded.
6. Minutes and records of public meetings may be made public upon request in accordance with the applicable legislation on the right to information on official documents.

Article 19
Consideration of comments and recommendations

1. Comments and recommendations received during the public consultation process are collected by the coordinator for notification and public consultation of the relevant public body in a structured and transparent manner.
2. Review of comments and recommendations is carried out by the public body responsible for preparing the draft, which decides whether to accept or reject the recommendations made by the consulted interested parties.
3. The draft acts are accompanied by a summary of the accepted recommendations as per provisions of this law. If the recommendations of the interested parties are not accepted, then the public body presents a summary of the reasons for their rejection in one of the forms of notification provided for in Article 11 of this law.

Article 20
Reports on the decision-making process transparency

1. Public bodies are required to prepare and publish annual reports on transparency of the decision-making process that include information on:
a) the number of acts adopted by the relevant public body during the reference year;
b) the total number of recommendations made by the interested parties;
c) the number of comments and recommendations accepted and rejected during the decision-making process;
d) the number of public meetings organized.
2. The Annual Report on transparency in the decision-making process is published in accordance with the provisions of Article 11 of this law.

CHAPTER V
COMPETENCIES AND PROCEDURES FOR COMPLAINTS HANDLING

Article 21
Procedures for handling complaints

1. If the interested parties consider that a public authority has violated their right to notification and public consultation, under the provisions of paragraph 1 of Article 6 of this law, and when deadlines defined in Articles 15 and 17 of this law are not respected, they may file a complaint:
a) to the head of the public body responsible for the process of notification and public consultation when the draft act has not yet been approved;
b) to the Commissioner for the Right to Information and Protection of Personal Data, within 30 days from the date of approval of the act.

2. The responsible public entity, upon receipt of the complaint, takes immediate steps to correct and reflect the observations submitted in the complaint of the interested party.
In any case, the public authority informs the interested party for the measures taken and invites him to provide comments and recommendations for the draft act.
3. The Commissioner for the Right to Information and Protection of Personal Data, upon receipt of a complaint, asks the complainant and the public body, against which the complaint was filed to present their written submissions within 10 days. When appropriate, the Commissioner organizes a public hearing with the participation of the parties.
4. At the conclusion of the review, the Commissioner, when he finds that there is a violation of the provisions of this law, proposes to the responsible public body the taking of administrative measures against the person / people responsible, according to civil service legislation in force.

CHAPTER VI
TRANSITIONAL AND FINAL PROVISIONS

Article 22
Final provisions

The Council of Ministers shall issue the necessary bylaws pursuant to paragraph 2 of Article 7 of this law, within three months from its entry into force.

Article 23
Entry into force

This law comes into force six months after its publication in the Official Gazette.

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DCM NO. 828/2015 FOR THE ELECTRONIC REGISTER FOR NOTIFICATION & PUBLIC CONSULTATION

DECISION

No. 828, dated 07/10/2015

ON APPROVAL OF THE RULES FOR THE CREATION AND ADMINISTRATION OF THE ELECTRONIC REGISTER FOR NOTIFICTIONS AND PUBLIC CONSULTATIONS

Pursuant to Article 100 of the Constitution, paragraph 2 of Article 7 of Law no. 146/2014 "On Notifications and Public Consultation", and Article 4 of Law no. 10325, dated 23.09.2010, "On the state databases", upon proposal of Minister of State for Innovation and Public Administration, the Council of Ministers

DECIDED:

1. The establishment, operation, management and monitoring of the Electronic Register for Notifications and Public Consultation (ERNPC) and its publication in the form of an electronic portal, web-page with the electronic address: http://www.konsultimi publik.gov.al.

2. Minister of State for Innovation and Public Administration manages the process of creation, operation, ongoing management and monitoring of the Electronic Register for Notifications and Public Consultation.

3. The Electronic Register for Notifications and Public Consultation will be hosted on the servers of the National Agency for Information Society (NAIS).

4. The Electronic Register for Notifications and Public Consultation includes:

a) as primary data, all notifications and draft acts published for the first time in the ERPNC, as defined in paragraph 9 of this decision;

b) as a secondary data, all the draft acts taken from the public authority databases which are published for the first time under the special /sectorial legislation for the functioning of the public body.

5. All public bodies responsible for the implementation of Law no. 146/2014, "On Notification and Public Consultation", are providers of information to the Electronic Register for Notifications and Public Consultations.

6. NAIS, as the regulatory and coordinating authority for the

state data bases, determines on a case by case bases, the degree of interoperability with other databases for the publication of the draft acts.

7. The Electronic Register for Notifications and Public Consultation offers open and free of charge access on information, printing and reuse of the documents published there to all users, groups of interest.

8. All public bodies responsible for the implementation of Law no. 146/2014, "On Notification and Public Consultation", have access to entering and editing of the respective data in the Electronic Register for Notifications and Public Consultation and bear responsibility for the information published thereof.

9. The Electronic Register for Notifications and Public Consultations contains in its database:

a) all draft strategic documents, both national and local, as well as those on policies of high public interest;

b) all draft acts, notifications for consultation and information related to drafts acts consultation;

c) the annual plans of public bodies related to the decision-making process, in terms of Law no. 146/2014 " On Notification and Public Consultation";

ç) information about the notification process and public consultation in all stages, starting from the publication of the draft acts, receipt of comments and recommendations for its improvement, the organization of public debates up to approval of the final act.

10. All draft acts published on the web should be complete. Every draft act should be published as a separate folder / file in an electronic format that can be easily stored, downloaded and reused according to open data regulation approved by NAIS.

11. Every public body in charge of implementing the Law no. 146/2014 " On Notification and Public Consultation " shall assign an administrative civil servant responsible to collect, organize, format and upload in the correct format in the web site, all draft acts initiated by all structures and departments of the institution concerned, as well as to make continuous updates of the register. This task should be included in the job description of the appointed civil servant.

12. The civil servant assigned by each public body is obliged to reflect the required data in the Electronic Register for Notifications and Public Consultations, no later than 48 hours from the approval of the document by the public body, unless by order of the public body or due to the type of the information, the registration should be completed within a shorter period.

13. The person assigned by the public body should be provided by the administrator of the Electronic Register for Notifications and Public Consultations with the "user user name" and "password", as well as with the manuals for entering data in the system, operating and using the web site etc.

14. Any public body involved in uploading the draft acts in http://www.konsultimipublik.gov.al is responsible for the completeness and typology of the draft acts, their quality, integrity, format and hierarchical ranking and the link between the different acts, their categorization by field of activity, institution etc.

15. The National Agency for Information Society (NAIS) is responsible for hosting the Electronic Register of Notifications and Public Consultations and guarantees its continuous operation, protection from the various viruses and attacks of this site and

the information contained therein, performing periodic backup etc. NAIS, according to its needs, responses and for the periodic development of ERNPC.

16. Until the creation and functioning of the Electronic Register for Notifications and Public Consultations, consultation according to the provisions of Law no. 146/2014, "On Notification and Public Consultation", shall be done through the official website of each institution.

17. The Minister for Innovation and Public Administration, all public bodies responsible for implementing the Law no. 146/2014, "On Notification and Public Consultation", as well as the National Agency of Information Society (NAIS) are responsible for enforcing this decision.

This decision enters into force after its publication in the Official Gazette.

PRIME MINISTER
Edi Rama

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