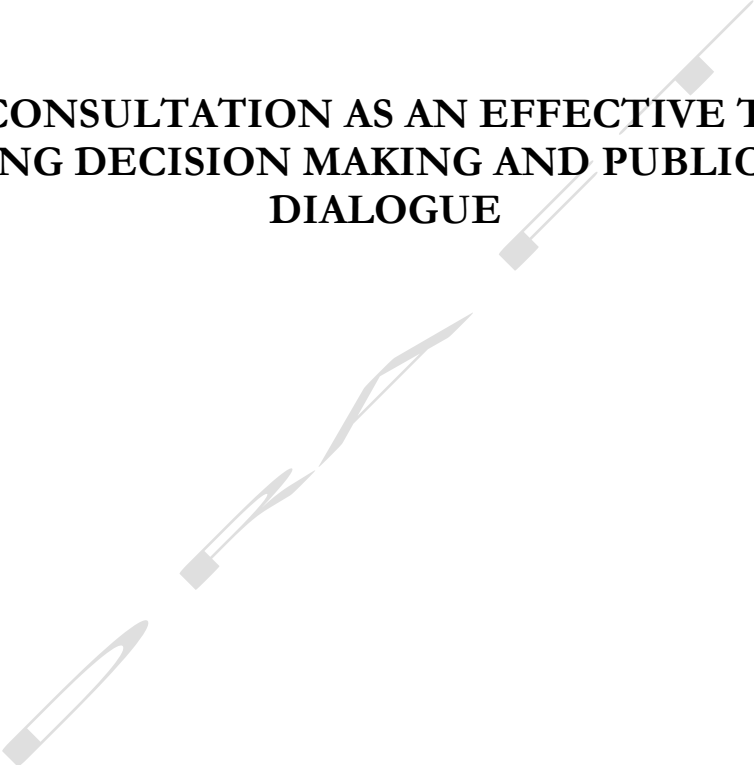


TECHNICAL NOTE

PUBLIC CONSULTATION AS AN EFFECTIVE TOOL FOR IMPROVING DECISION MAKING AND PUBLIC-PRIVATE DIALOGUE



Tirana
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TABLE OF CONTENT

I. INTRODUCTION	4
II. METHODOLOGY	5
III. CONTEXT	6
IV. LEGAL AND INSTITUTIONAL FRAMEWORK	9
4.1 LAWS AND BYLAWS.....	9
4.2 INSTITUTIONAL FRAMEWORK	15
V. FINDINGS.....	16
VI. RECOMMENDATIONS	24
VII. BIBLIOGRAPHY.....	28
ANNEX I	29

ABBREVIATIONS

CoM	Council of Ministers
DDW	Directory of Development and Welfare
DRC	Directory of Regulatory and Compliance
EBRD	European Bank for Reconstruction and Development
EU	European Union
IC	Investment Council
ICT	Information and Communication Technology
IDPC	Information and Data Protection Commissioner
MFE	Ministry of Finance and Economy
MIE	Ministry of Infrastructure and Energy
NAIS	National Agency for Information Society
PAR	Public Administration Reform
RIA	Regulatory Impact Assessment
RPNC	Register for Public Notification and Consultation
WB	World Bank

I. INTRODUCTION

Public consultation is one of the key regulatory tools employed to improve transparency, efficiency, and effectiveness of regulation besides other tools such as Regulatory Impact Analysis (RIA), regulatory alternatives and improved accountability arrangements¹. In this sense, public consultation is essential in the process of drafting public policies, as it enables the identification of real problems or data, integrates transparency in the stages of their preparation, and it gives the opportunity to stakeholders and the public to contribute to the implementation of reforms.

Specifically, in the framework of the measures taken or expected for the country's EU integration, it is required that the processes be based on a sustainable dialogue with partners/stakeholders outside institutions (such as employers' unions, business and trade organisations, academia, NGOs). This should be done in coherence with the criteria for the discussion of the economic, political, legal, and institutional chapters of the "acquis" and according to the legal framework for the right to information and notification and public consultation².

The Albanian legal framework for notification and public consultation was endorsed in 2014. The level of its implementation into practice has been improved, as already evidenced in the last SIGMA report³. Albania's performance in policy development and coordination has been strong and has shown improvement. *However, many challenges have yet to be addressed, particularly by ensuring systematic implementation of all new processes and tools in areas such as centre of government (CoG) coordination, strategic planning, regulatory impact assessment and public consultation*⁴. EU Progress Report for Albania (2021)⁵, while analysing the process of public consultation for the three levels of governance, underlines that: *"while the 2014 Law on public consultation, laying down the procedural norms for transparency and public participation in decision-making, is generally in line with European standards, while consultations often remain artificial exercises"*. In fact, consultation remains a complex process for societies in transition, both for institutions and stakeholders, as it requires not only sustainable will and commitment but also expertise and technical capacities.

As a public-private dialogue platform, the IC has promoted public consultation of draft acts with an impact on business, using evidence through inclusive participation and provision of systemic recommendations at both strategic and technical level regarding the content of specific acts⁶. Since 2015, the Secretariat has identified concrete cases by the private sector on consultation or non-consultation of certain acts at the central level (e.g., fiscal package) and local (e.g., imposing temporary tariffs). Currently, the public consultation comes at the centre of the work of the IC Secretariat as part of the IC agenda approved by its members, where the topic of public notification and consultation was the most voted for 2022. Also, it reflects a concrete sensibility of representatives of the business community (Association of Producers, Tirana Chamber of Commerce, and Industry) raised at the January 2022 IC meeting.

Based on the above, the Secretariat has prepared this analysis aiming to timely evidence key challenges related to the business-public institutions interaction with reference to legal and formal standards for public consultation as provided by law no. 146/2014 "On Notification and Public Consultation" and by specific laws, as well as the need for clear and comprehensive identification and contribution of the parties in public consultation.

The ultimate objective is the elaboration of priority interventions, aiming to support trust-building in the process of public consultation while speeding up improvements on (a) the level of transparency and implementation of public consultation procedures; (b) clear identification of the role to be played by business representatives; (c) effectiveness of existing mechanisms and/or the provisioning of new mechanisms; (d) raising awareness on public consultation procedures and accountability of the parties involved through public reporting to increase trust in public consultation.

¹Background Document on Public Consultation-OECD

²Order No. 113, dated 30.08.2019 - On the Forms of Participation, Functioning and Institutional Structure of the Partnership Platform for European Integration

³ 2019 SIGMA Monitoring Report -Albania

⁴<https://www.sigmainvest.org/publications/Monitoring-Report-Executive-Summary-2021-Albania.pdf>

⁵ EU Progress Report for Albania 2021

⁶ Strategy on BIDS 201-2027, Law On MSME, Law "On Insolvency", Law "On Start-ups", etc.

II. METHODOLOGY

The analysis is based on an all-inclusive methodology which consists in:

- i. *Desk Research* - Consultation of documents, laws and bylaws, national and international reports on public consultation in Albania, practices, and decisions on reviewing complaints regarding the violation of the right to notification and public consultation at Information and Data Protection Commissioner.
- ii. *Synthesis of the findings and recommendations so far, presented in national and international reports from several actors about the public consultation.*
- iii. *Review and Synthesis of quantitative and qualitative indicators of public consultation according to official reports published by the Centre of Governance-Council of Ministers and other reports published in the electronic register as of the end of April 2022.*
- iv. *Questionnaire/Survey* - sent to a group of business associations (110) identified by the Secretariat based on several indicators, such as the number of members, interaction with public institutions on issues affecting the private sector, consultations with the IC Secretariat in various instances, etc. *Out of 110, we received 26 filled questionnaires.*
- v. *30 consultation meetings* held during the period February - April 2022 with public bodies at different levels of government, associations and business chambers, various experts in the field, and projects of donors working in the area of public consultation.
- vi. *Organization of 2 focus groups* with business associations (28 participants) and government and experts in the field (4 participants) representing the business, business associations and chambers of commerce, experts, selected institutions at the technical and political level, NGOs, development partners, academia, etc.
- vii. *Review of Public consultation practices and models implemented in Croatia, Estonia, and North Macedonia*⁷.
- viii. *Concrete examples of positive and negative cases of public consultation with IC stakeholders, mainly business associations, IC proactive partners in the field of investment climate improvement such as UCCIAL, ACER, ICC Albania, KASH, AREA, Advantage Austria, CCI Tirana, DIHA, Association for Local Autonomy, Association of Albanian Municipalities, independent experts, and projects like "Strong Municipalities", "RISI Albania", etc.*
- ix. *Review of written comments received from (a) archive of IC Secretariat since 2015; (b) from AREA/FIAA; (c) selected chambers of commerce or KASH d) SWISS projects like Strong Municipalities and RISI Albania focusing on non-compliance with deadlines or information on important legal packages for both central and local government levels.*
- x. *For the purposes of our analysis and in view of the preparation of recommendations, good consultation practices are considered as recommended by OECD in the "Background document on Public Consultation"*⁸. This crucial document explores various public consultation mechanisms and good practices in the selected OECD countries.
- xi. *Monitoring of some public consultation practices as published in RNPC or evidenced from time to time.* Secretariat has not performed monitoring of all the practices followed by the Ministries nor a full qualitative and quantitative assessment of notification and public consultation but focused mainly on those practices with reference to the draft-acts impacting business.

The Secretariat would like to thank business associations, development partners/projects, and government representatives for their valuable inputs and active engagement during individual consultation and two focus groups, thus helping us further validate preliminary findings and elaborating the below priority interventions. A special thanks also to the public institutions for their cooperation, such as Prime Minister's Office, MFE, NAIS, etc.

⁷North Macedonia: Online Consultation Portal (Sources: Gapikj-Dimitrovska, G. & Lazarevski, G., 2015; Open Government - Partnership, 2016; OECD, 2019

⁸ <https://www.oecd.org/mena/governance/36785341.pdf>

III. CONTEXT

Preliminary and qualitative consultation of legal and regulatory acts is part of the monitoring, findings, and suggestions of some important national and international actors, including analysis of civil society and business organisations. *Public consultation gives the opportunity to citizens and businesses to make an active contribution to regulatory decisions. It can improve the reliability and legitimacy of government action and increase acceptance from the affected persons. It can promote high-quality regulations, identify the most effective alternatives, lower costs for business and administration, better compliance, and faster regulatory responses to changing conditions. The OECD recommends that “to enable a country’s legal framework improvement, the consultation process should include primary and secondary legislation”.*

In this context and for a more all-inclusive analysis of the problems related to public consultation, the following reports have been specifically considered:

A. INTERNATIONAL REPORTS

In general, relevant international reports highlight that although progress is evidenced in terms of alignment of the legal framework of public consultation with the EU, still significant efforts are needed regarding the institutional framework, level of inclusion and transparency, provision of feedback, and more specifically building a culture and promote public consultation as a key feature of the Albanian society.

(1) **EU Progress Report for Albania 2021**¹⁰, by analysing the process of public consultation, identifies positive aspects and those that need further improvement by emphasising qualitative and content aspects of public consultation, transparency, as well as increasing the impact and inclusion of the parties’ comments in the consulted document. The report highlights that:

- (i) “Parliamentary documentation, such as the minutes of plenary sessions and committees’ meetings, leaves room for greater transparency. Although the Albanian Parliament has created a platform for consulting the draft laws, public consultation with civil society and stakeholders remains formal and limited in its impact”.
- (ii) “Despite recent attempts of the central government, public consultation on policies and legislation should be more substantive so as to further enhance inclusiveness and transparency, in particular on issues related to EU-oriented reforms.”
- (iii) “Despite the pandemic, local self-government units have encouraged public participation.”
- (iv) “In their decision-making by organizing online municipal council meetings open to the public. However, the institutional framework for effective and inclusive participation needs further empowerment. Local implementation of the Law on Public Consultation remains unsatisfactory. In terms of transparency, there is some improvement as the 61 municipalities now publish municipal council decisions online.”

The regulatory framework for the functioning of the Public Consultation Registry has improved through the adoption of guidelines for the preparation of annual plans and reports by public institutions. *However, quality control in public consultation should be still strengthened to focus more on the content than on the process. The government should continue its efforts to institutionalise Regulatory Impact Assessments, also improving the central quality control function.*

(2) **The US State Department’s Report on Investment Climate 2021**, although it does not thoroughly analyse the public consultation, evidences an aspect directly related to the business community. *The business community often complains that the final versions of laws and regulations do not address their comments and concerns and that deadlines for presenting comments are often not respected*¹¹.

⁹ OECD in the ‘Background document on Public Consultation’

¹⁰ Progress Report for Albania, October 2021

¹¹ <https://www.state.gov/reports/2021-investment-climate-statements/albania/>

(3) **The Sigma Monitoring Report “On Public Administration Principles”¹²** assesses the current situation and progress in improving the quality of national public administration in six thematic areas. Public consultation and evaluation of regulatory impact assessment are under the Development and Coordination of Policies as one of the principles of public administration.

- (i) Regarding public consultation, it is emphasised that “... public consultation on key policies has not been successful in generating comments and reactions from stakeholders and ensuring meaningful contribution to the drafting of final policies. In the past, the process has not had a strong impact on policymaking”. Although public consultations are conducted for all RAP fields, non-governmental representatives have raised concerns that government institutions do not answer the recommendations and suggestions they submit to public consultations.
- (ii) Meanwhile, for the Regulatory Impact Assessment (RIA), it is underlined that: “RIA as a key component of evidence-based policy-making, is relatively recent, but is in force: the regulation requires impact analysis for all draft acts Submitted to the Council of Ministers (CM). Now it is a priority, to ensure that line ministries have the skills and resources to prepare good quality analysis and that quality control is ensured systematically. The implementation of RIA for secondary legislation, however, has not yet started, although this is required by regulation. As with other aspects of policy development and coordination, progress has been made since 2017 and the challenge for the Government is to build a culture and routines that will help ensure that recent efforts bring their full benefits.

B. NATIONAL REPORTS

Following the adoption of the “Law on Notification and Public Consultation”, several evaluation reports (some of periodic character) on the implementation of notification and public consultation were drafted. Although these reports do not exclusively focus on the consultation of draft laws with the business community, they are a very good monitoring base for lighting progress and key problems such as lack of interactivity between the parties during the consultation phases; low promotion and usage of electronic register functionalities; limited scope with a focus on draft-laws and strategies.

(1) **Reports published by the Centre RES Publica¹³** on the challenges of public consultation in Albania.

The March 2019 report underlines the perception that the process of public consultation more than a legal issue, is a political one and relies on the good will of lawmakers. The main issues and facts identified by the report on public consultation are (i) the low rate of use of the public consultation register by both public institutions and stakeholders; (ii) the lack of identification lists of stakeholders involved in the consultation; (iii) lack of transparency regarding the publication of the minutes of the consultations implemented, as well as deficiencies in returning responses from public institutions about suggestions given by stakeholders.

(2) **The report “Challenges of implementation in practice of the Law “On Notification and Public Consultation”** October 2016, prepared by the Open Society Foundation for Albania, refer to the time that (a) the electronic register was not yet operational and (b) reports of the institutions regarding the implementation of the law were missing. It identified as the main problems of public consultation: (i) the lack of stakeholder identification for consultation; (ii) implementation of public consultation on selective bases; (iii) shortcomings in notifications and materials published for consultation; (iv) lack of institutional responses regarding the argumentation on considering or not the suggestions given.

(3) **Report published by the EDEN Centre “On the Implementation of Law 146/2014 “On Notification and Public Consultation”¹⁴** published in March 2017, as an initiative of environmental

¹² <https://www.sigmaxweb.org/publications/Monitoring-Report-2021-Albania.pdf>

¹³ “Public consultation. Challenges of the first year of law enforcement” (June 2016), “Public Consultation 2017- 2018 (March 2019)”, *Commentary on the law 146 / 2014* (March 2017).

¹⁴ March 2017

organisations to monitor the law implementation and public involvement in decision-making processes, especially in the field of environmental policies.

(4) **Reports on the business climate.** *AmCham*¹⁵ considers that the law on information and public consultation lacks binding procedures for ensuring effective implementation. *An effective public consultation process on public decision-making would increase civic engagement to satisfactory levels.* AmCham also estimates that the legal acts initiated by the Council of Ministers should also be the object of the law on consultation. The report also includes a series of recommendations for improving public consultation. *FLAA* emphasises the need for prior consultation of drafts, as well as their coordinated consultation with interest groups *“Frequent changes in tax legislation, often contradictory to each other that are applied without proper consultation with stakeholders, have created a chaotic legal framework which is not only an additional administrative burden and financial cost for taxpayers, but also in many cases, it violates legal security, a constitutional principle in the Republic of Albania.”*¹⁶

(5) **Semi-Annual Performance Reports for Public Consultation - Governance Centre, Council of Ministers** -July 2021 Based on the Public Consultation Instructions approved by order no.3 dated 29.01.2021 “On Approval of the Instruction for the Public Consultation Process” of the General Secretary of the Prime Minister, these reports use the new methodology of reporting the results of public consultations, *which is based on a series of performance indicators that contribute to a full monitoring of line ministries in the implementation of approved public consulting standards.* According to the Instruction for the Public Consultation Process, the Annual Report of Public Consultation Performance is prepared at the central level by the DDW and DRC, which coordinate the collection of information according to the individual reports of the Ministries and Central Institutions under the Prime Minister Office. The Annual Report for the previous year is approved within 15 February and should be widely published through the Electronic Register and other important means of communication. The report has not been published yet. In its absence, below are some statistics and indicators assessed by the 6-month Report for Public Consultation Performance¹⁷ as published by the Centre for Governance in July 2021.

**Statistics and main Indicators evaluating the Public Consultation Process of public entities in
Albania
Centre of Governance, Prime Minister’s Office
July 2021**

- *It is noted a slight decrease in the quantity (frequency) of public consultation in 2021. The frequency Index of Public Consultation¹⁸ is 72.22% compared to 79.57% in 2020, or declining by 7.35 percentage points.*
- *The decline of 0.72 percentage points also results in the quality of public consultation, with a total score of 4.94 points for the first six months of 2021 compared to 5.66 in 2020 and 5.12 in 2019.*
- *13 of the 14 acts consulted are published in the Electronic Register for Public Consultation, or 92.85% of all acts consulted, which indicates a very high level of compliance with the legal obligation of the publication of the acts in the electronic register.*
- *Of the 14 acts consulted in total, public meetings have been organised for 11 acts—making the frequency index for the organisation of public meetings reach the rate of 78.57% compared to 63.01% in 2020.*
- *In 2021 (the first half of the year), all ministries reported 267 participants in public consultation through various methods of consultation. This is in decline compared to 2020; however, the number of participants who contributed to public consultation with their comments is 54% compared to 14.4% of all participants in 2020. This shows an increasing interest in the parties of interest to take an active part in open consultations on the draft legal and policy initiatives.*
- *The total number of comments “fully accepted” and “partially accepted” for draft laws and draft strategies consulted in 2021 (the first half of the year) is 124. When divided by the total number of comments collected (150), the*

¹⁵ “Investment Agenda 2021”, AmCham Albania

¹⁶ WhiteBook202-2025 FLAA Albania

¹⁷ 6-Month Report of Public Consultation Performance, Centre for Governance

¹⁸ Number of draft laws, draft strategies and policy documents adopted through the public consultation process during one year / Total number of draft laws, strategic documents and policies approved by the government that had to be submitted for public consultation

acceptance rate of the contribution made by interested parties in public consultations of draft laws and strategies in 2021 (the first half of the year) is 82.66%, compared to 59.79% in 2020.

- Out of the 13 consulted and published acts in RPNC for 11 acts of line ministries, reports on public consultations are prepared and published - which is 84.61% of all acts - a good and growing performance compared to 2020, 82.43%.
 - The Ministry of Interior, the Ministry of Justice, the Ministry of Health and Social Protection and the Ministry of Agriculture and Rural Development have demonstrated the best performance by publishing reports for all acts consulted.
 - On the other hand, the Ministry of Finance and Economy, and the Ministry of Environment and Tourism, have the lowest rate of published consultation reports.
- Regarding the consultation on RLA reports, out of 4 draft laws with RLA, only 3 of them were consulted. No RLA report was changed as a result of contributions made during public consultations.
- 12 acts out of 13 that were subject to public consultation (92.3%) were part of the Annual Public Consultation Plan.
- In 2021 (the first half of the year), the number of draft decisions which were subject to public consultation process is higher than the number of draft laws, data resulting for the first time in the public consultation process. The total number of draft decisions subject to the approved consultation is 14, of which consulted 10. From the later 6 are policy documents and national plans.

IV. LEGAL AND INSTITUTIONAL FRAMEWORK

4.1 LAWS AND BYLAWS

Consultation at the executive level of government

1. Cross-cutting Public Administration Reform Strategy 2015-2020¹⁹ (“the Strategy”)

The strategy identified as a challenge the broad discussion of sectoral and cross-sectoral strategies, policies, and legislation with civil society, parliament, and donors, in order to develop comprehensive and transparent policies. According to the Strategy *“...all cross-cutting policies and strategies, as well as laws and bylaws, should be consulted extensively with all stakeholders as well as civil society through publication on the web pages of relevant institutions”*. Objective 2 of the strategy was to establish a transparent, comprehensive, policy-based law-making system that ensures alignment with the *acquis*, which would be enabled, inter alia, through the following measures:

- i. Completing with bylaws and ensuring the implementation of the law on public notification and consultation, creating a platform to enable electronic consultation, creating a database of stakeholders and standard procedures to be followed by each institution for consulting strategic documents and legislation.
- ii. Improve the procedure for conducting assessments on the expected impact and compliance with the *Acquis*, as well as linkages of the regulatory acts to policies in place²⁰.

2. Law no.146/2014” On Notification and Public Consultation” (“Law”)

¹⁹ Approved with CoM Decision no.319, dated 15.04.2015

²⁰ The strategy states, among other things, that: Ex ante impact analyses are a general weakness of public administration. Even when performed, their quality in only a few cases has been to the proper degree. Also, in drafting the legislation, not all possible consequences and connections with other acts have been taken into account. This has led to frequent changes in legislation or the creation of undesirable effects. It is necessary to clearly define the obligations for conducting preliminary analyses of the draft legislation and the expected effects, including the assessment of compliance with the *acquis*. Special formats can be prepared to unify the analysis.

The law was prepared in the framework of the first action plan drafted by the Albanian Government in the framework of the *Open Government Initiative* and the Minister of State for Innovation and Public Administration. The law was preceded by discussions during the stages of draft law discussions in terms of scope of implementation, control and monitoring mechanisms and consultation deadlines²¹. The law constitutes the basic framework for the notification and consultation of draft acts, without excluding public bodies from the implementation of obligations related to consultation arising from specific laws.

- (a) **Subject.** The law regulates the process of notification and public consultation of draft laws, draft national and local strategic documents, as well as policies of high public interest, without including in its scope of implementation bylaws (normative or individual) as well as some categories of decision-making in the area of national security, international relations, and emergencies²². Public consultation is the withdrawal of opinions and suggestions of stakeholders/groups of interest on the content and improvement of the draft acts, from the moment of publication of the draft act until its final approval.
- (b) **Electronic register - Register on Notification and Public Consultation (RPNC)**²³. To increase transparency in the decision-making phase, the law considers that each draft act subject to the law should be published in the electronic register for public notification and consultation.

(1) **Model**

This register is an [official website](#), which was conceived as a central point of consultation that enables access and communication opportunities for all interested parties with the public body. This form ensures and strengthens equality in terms of access to information and service, taking into account the specific needs of certain persons or groups. It seems that the chosen model is very similar to the [Croatian model](#) of public consultation, which is also carried out through an active electronic platform since 2015. The electronic register was enabled and made fully accessible only a few years after the adoption of the law, in May 2018.

(2) **Access**

Access to the register is done through registration and verification through e-Albania central platform. While looking back (until 2018, the register was not fully functional), the electronic register has been improved both in terms of the possibility of registering legal entities and NGOs as well as access to its content.

(3) **What should be published in the register**

Public bodies are obliged to take all necessary measures for the publication in the electronic register of the draft act, of the consultation notice and data related to the consultation of draft laws/draft strategies, information related to the notification process and public consultation at all stages, starting from the publication of the draft act, receiving comments and recommendations for its improvement, until the adoption of the final act. Annual reports on transparency in the decision-making process (Annual Public Consultation Reports) for each central institution should also be published in the register. In addition to what is provided by law, public bodies must publish in the register the Explanatory Note of the Consultation (Consultation Document) and the RIA

²¹ Refer to the minutes when draft law was discussed and reviewed on 08.09.2014 and 21.10.2014 in Assembly Permanent Commission on Legal, Public Administration and Human Rights.

²² Article 4- Restrictions

²³ CoM Decision no. 828 dated 07.10.2015 " On the Approval of the Rules for the Establishment and Administration of the Electronic Register for Public Notifications and Consultations on mainly regulates the technical aspects of the administration and access of public bodies to the electronic register. The Electronic Register for Notifications and Public and Consultations will be hosted on the servers of the National Agency for Information Society (NAIS). The Electronic Register for Notifications and Public and Consultations provides open and free access for information, printing and reuse of documents published in it for all users, and interest groups.

report²⁴.

- (c) **The parties and entities to be consulted.** Spirit of the law provides for a wider base of entities that should be involved in the decision-making phase for a draft act, therefore it creates the opportunity to any entity (stakeholders or group of interest), natural or legal person, to be part of the consultation. Access to consultation is also provided for foreign entities. On one side of the consultation must necessarily be the public body which includes any central government body, public entities and every local government body performing administrative functions.
- (d) **The rights of interested parties.** The latter not only have the right to submit to public bodies comments and recommendations on drafts that are in the process of public notification and consultation, but on the other hand, can also become initiators for the drafting and approval of drafts. Specifically, according to Article 9/b of the law, *interested parties have the right to propose to public bodies the initiation of the procedure for drafting and approving of draft-acts according to the annual plan of the decision-making process* (Annual Plan of Public Consultation), which must be published regularly on the official website of the public body as well as in the RPNC.
- (e) **The standard of public consultation regarding the notification of the parties. The law stipulates that the mandatory minimum standard for consulting draft acts is their notification in the electronic register.** Alternatively, and at the discretion of the public body, the consultation can be done in one or several other forms such as electronic mail, public notification in the premises of the public body, notification in the national, regional or local audio-visual media, publication in local newspapers or in the two most widely read national newspapers. Receipt of comments and recommendations in the public consultation process is done in one of the forms mentioned above, and in some cases orally and/or in writing and recorded in the minutes of public meetings.
- (f) **What is consulted?** The law provides an opportunity to consult with stakeholders not only the draft acts prepared by the working groups in public bodies, but also the ideas or options before the public body starts the process of drafting the relevant act. For this purpose, prior notifications shall be published in the register in accordance with Article 12, *based on which the public body may collect information and/or preliminary opinions.*
- (g) **Deadline for consultation.** The standard deadline for submitting comments and recommendations is 20 working days from the date of notification, and for particularly complex or important acts, it can be extended up to 40 working days.
- (h) **Public Meetings.** The law also regulates the manner of organising consultations through public meetings. During the consultation period, given the importance of the draft act and the high public interest, the public body can organise public meetings, where stakeholders present their opinions and data on the draft to be drafted. *Interested parties, invited to attend public meetings, are given the necessary time to prepare. In any case, they are informed not less than 20 working days before the public meeting, making available copies of the draft act to be discussed.*
- (i) **Coordinator on Public Notification and Consultation.** Each public body subject to this law appoints a person as coordinator of public notification and consultation, who is responsible for the coordination and general administration of work to guarantee the right to public notification and consultation. During the meetings of the Secretariat, it came out that those functions of the coordinator are performed by specialists within the public body and not as a dedicated function.

²⁴ *Instruction for Public Consultation Process, pages 20, 21*

- (j) **Complaints.** The law provides for a grievance mechanism at two levels in cases where interested parties allege violations of public consultation procedures:
- (1) directly to the chair of the public body responsible for the public notification and consultation process, when the draft act has not yet been approved.
 - (2) to the Information and Data Protection Commissioner (“Commissioner”), within 30 days from the date of adoption of the act.

The grievance mechanism is not accompanied by clear sanctions in the case of violations by the public body but by solutions of a self-correcting nature. Specifically:

- (1) The responsible public body, upon receiving the complaint, shall take immediate measures to correct and reflect the observations presented in the complaint of the interested party. In any case, the public authority notifies the interested party of the measures taken and invites it to provide comments and recommendations on the draft act.
 - (2) When the commissioner concludes that there is a violation of the provisions of this law, he proposes to the responsible public body to take administrative measures against the responsible person/persons, according to the legislation on civil service in force.
3. **CoM Decision no. 828 dated 07.10.2015 “On the Approval of the Rules for the Establishment and Administration of the Electronic Register for Public Notification and Consultations”** regulates mainly the technical aspects of administration and access to the electronic register. The Electronic Register for Public Notification and Consultations is hosted on the servers of the National Agency for Information Society (NAIS) and is intended to provide open and free access for information, printing and reuse of documents published in it for all users, groups of interest. The Minister of State for Innovation and Public Administration according to the CoM Decision leads the process of creation, operation, administration and continuous monitoring of the Electronic Register for Public Notification and Consultations. As a matter of fact, the Minister of State for Innovation and Public Administration no longer exists as a public body from September 13, 2017.
 4. **CoM Decision no. 653 dated 14.09.2016 “On Some Changes in Decision no. 584, dated 28.8.2003, of the Council of Ministers, “On the Approval of the Regulation of the Council of Ministers” (amended),** created a new standard to be respected by the Ministries in relation to public consultation and a mechanism that promotes awareness for the consultation process. In the case of draft acts to be consulted with the public, the report submitted to the Council of Ministers for consideration must be accompanied by data on the notification and public consultation process according to a template format in which Ministries must provide details on the consultation process, methods, deadlines, comments and recommendations collected, etc.
 5. **CoM Decision no. 197, dated 11.4.2018 “On Some Additions and Changes in Decision no. 584, dated 28.8.2003, of the Council of Ministers, “On the Approval of the Regulation of the Council of Ministers”, (amended)** imposed the obligation on the Ministries to accompany the drafts with the Impact Assessment Report (RIA/VNR) which is intended to be a very important analytical document²⁵. The preparation of the RIA at its core constitutes a thorough process of consultation with stakeholders and experts in the field according to the proposed regulatory intervention as the analysis requires data and statistics which should be collected from the widest possible base of actors involved in the interventions. As a matter of fact, in March 2018 was approved the Impact Assessment Methodology prepared by SIGMA and the Programming Unit of the Regulatory Acts in the Council of Ministers.

²⁵ The main elements that RIA should contain are:

- (a) The problems examined and what are the causations. Why is government intervention necessary?
- (b) What are the objectives and intended effects of the proposal?
- (c) What are the main policy options, including ways to regulate? The paper should analyse the advantages and disadvantages of intervention options.

RIA is not mandatory to be prepared for:

- (a) Draft acts addressing issues related to classified state information, national security and international security organisations' issues.
- (b) Draft-acts related to emergency situations, natural disasters, or crisis situations.
- (c) Draft acts related to international and diplomatic relations, in particular ratifications of international agreements or matters arising out of international conventions.
- (d) Draft acts related to budget management, the draft law on the annual budget and its implementing bylaws, draft acts related to medium-term budget programming, drafts affecting taxes and customs duties.
- (e) Draft acts affecting criminal legislation.
- (f) Draft acts that have the effect of temporary and transitional implementation.

It is not clear whether RIA shall be prepared in the future for bylaws as well. According to the DCM, it seems that this possibility has been left open as long as it foresees that **"...until 2019, the draft laws that will be subject to the impact assessment process, will be only the draft laws."** Secretariat did not find any case of RIA applied for bylaws from 2020 until now.

6. **Order no.3 dated 29.01.2021 "On the Approval of the Instruction for the Public Consultation Process" ("The Instruction")**

The above instruction filled the lack of bylaws since the adoption of the law in 2014, as it made more effective the implementation of public consultation standards. It also filled the institutional gap for monitoring the implementation of the law created in 2017 with the merger of the State Ministry for Innovation and Public Administration. It also provides detailed methodological guidelines for Ministries and central institutions under the Prime Minister, to harmonize the planning, communication, management, monitoring, reporting and evaluation of the public consultation process, as well as defines the methodology for preparing periodic consultation performance reports. For the purposes of the Secretariat analysis, the instruction has identified the most important elements as well as the tasks of the institutions which must be fulfilled in the function of public consultation. More specifically:

- (a) **Public consultation, as well as regulatory impact assessment, are data-driven policy-making mechanisms.** The three lines that need to be followed for the successful development of the consultation are:
 - (1) Standardize the consultation process by developing a simple but comprehensive regulatory framework.
 - (2) Sustainable work to strengthen the participatory culture of regulators and decision-makers;
 - (3) Strengthening civil society and other key actors.
- (b) **Duties of the coordinator for public notification and consultation:**
 - (1) The main contact point of the institution for supervising the implementation of the law and its bylaws;
 - (2) Prepare the annual consultation plan of the institution;
 - (3) Prepare 6-month and annual consultation reports of the institution;
 - (4) Publish the consultation reports in the electronic register.
- (c) **The deadline for the preparation of the annual consultation plan is within 30 working days from the approval of the General Analytical Project Program. The latter must be approved by January of each year.** The Secretariat notes that the General Analytical Program of Projects for 2022 has been approved since December 29th, 2021.

- (d) **The Annual Public Consultation Plan shall be published on the institutions' websites and in the register for public consultation and notification in accordance with a standard format approved for the institutions and integral part of the Instruction.**
 - (e) **The instruction also details in a dedicated section the deadlines and procedure for the preparation of the Annual Report of Public Consultation Performance (report with specific indicators) based on the institutions' reports.** The Report prepared as per the obligation deriving from Article 20 of the law, must be finalised by February 15 and published in the electronic register.
 - (f) **Identification of actors to be consulted. For this purpose, an Orientation Matrix for the analysis of stakeholders has been prepared in the Instruction. This process should be carried out to include as many of them as possible.** Institutions should not be limited to those with whom they cooperate or to the interest groups defined in specific laws but:
 - (1) Use the lists of stakeholders who have participated in the drafting of previous or similar proposals.
 - (2) Check the logs of comments and proposals submitted by the organisation, individuals.
 - (3) Seek assistance from umbrella organisations, chambers of commerce, trade unions, etc.
 - (4) Preliminary consultations should include stakeholders, business associations, study groups, research institutes, etc.
 - (g) Institutions should develop a stakeholder/expert consultation database for draft acts/policy initiatives according to their area of responsibility, which is updated after each completed public consultation. For this purpose, the Instruction provides for a standard template.
 - (h) The consultation on the draft acts starts with the publication in the electronic register of the Consultation Explanatory Note (Consultation Document) according to the standard template, the RIA report, the accompanying documents, and the draft act itself. The report on the results of the public consultation in the electronic register and its distribution to all those who submit comments is recommended to be done before the draft act is sent for approval to the Council of Ministers.
7. **Manual for Drafting Legislation.** It is prepared by the Ministry of Justice with the assistance of EURALIUS and constitutes the unified methodology for the legislative process in Albania, the drafting of normative acts and legal terminology, serving as a guide for public administration. For the first time, the Manual highlights in a systematic and clear way the role that the public consultation procedure, in general, should have and the transparent publication of drafts in the electronic register, as mechanisms for managing the complex regulatory legal framework and avoiding mistakes or wrong assessment in drafting legal norms²⁶.

Consultation at parliamentary level

8. Regulation of the Assembly of Albania²⁷ ("Regulation").

The consultation for the draft laws which are subject to the review of the bodies of the Assembly of Albania is done according to the provisions of the Regulation. The main rules of consultation of draft laws in the Assembly are defined in Article 36 according to which: *The Committee may organise public hearings with members of the Council of Ministers, senior representatives of state or public institutions, experts, representatives of civil society, representatives of groups interest, as well as other interested groups. The Committee is obliged to conduct the hearing, according to the provisions*

²⁶ Manual for Drafting Legislation, vol. III, pg.115

²⁷ <https://www.parlament.al/Files/sKuvendi/rregulloria.pdf>

made in this article, in case one-third of all the members of the commission request it in a motivated way in writing. Although the process of consulting draft laws is mandatory only if 1/3 of all members of the committee motivates it in writing, from our consultations, it results that hearings in the Assembly committees are a common practice. This is especially evident in the case of fiscal packages or initiatives that have an impact on business. The latter, as in the case of the fiscal package 2022, although not consulted at the executive level, found space for discussion in the committees of the Assembly in a series of meetings. Moreover, the hearings in the framework of the budget discussion have a special provision in Article 80, according to which: "Committees of the Assembly may organise public hearings to receive remarks and opinions from institutions, persons or interested groups for the draft law of the State Budget and the financial draft laws that are directly related to it".

Consultation by self-government units

9. The Role of Municipalities Councils ²⁸

Local government bodies are public bodies as per the definition of law 146/2014 "On Public Notification and Consultation". Since the object of the law are the draft acts (draft laws and strategies) which are generally not related to the decision-making of local government bodies, their intersection in relation to the law is mainly related to the obligation to appoint a coordinator of public notification and consultation, publication of reports on annual consultation and for the publication and consultation of drafts according to specific laws on their operation. The main specific laws in this sense are: law 139/2015 "On Local Self-Government", law no. 68/2017 "On Local Self-Government Finances" and Law no. 107/2014 "On Territorial Planning and Development".

4.2 INSTITUTIONAL FRAMEWORK

The draft law "On Public Notification and Consultation" was proposed in the Albanian Parliament by the Minister of State for Innovation and Public Administration in 2014 and by the Minister of State for Relations with the Parliament, as it was directly related to his area of responsibility. The responsible minister is the minister who covers the information technology. According to CoM Decision no. 828/2015, the Minister of State for Innovation and Public Administration leads the process of creation, operation, administration and continuous monitoring of the Electronic Register for Notifications and Public Consultations, while the Electronic Register for Notification and Public Consultations will be hosted on the servers of the Agency for the Information Society (NAIS). Meanwhile, with the merger of the State Ministry for Innovation and Public Administration in 2017, it is not clear in the institutional plan which Minister follows and implements the obligations arising from this law. Perhaps this may be one of the reasons why until May 2018, the electronic register had not yet become effective, while the law was adopted in October 2014. In the institutional frame, it is evidenced that since 2021 with the approval of the Instruction on Public Notification and Consultation by order of the General Secretary of the Prime Minister's Office, there is more focus by institutions regarding the follow-up, implementation and monitoring of the obligations deriving by the law. The instruction clearly provides for the tasks of the Ministries and defines the structures in the Prime Minister's Office which deal with the preparation of annual performance plans and monitoring of the related deadlines. It is also noted that for a part of the grievance procedure, as explained in the legal analysis above, Information and Data Protection Commissioner is included, though been given limited powers.

²⁸A significant number of Municipalities have been assisted by development partners such as Helvetas Swiss Intercooperation, in the preparation of Practice Guides for Public Consultation of Municipal Councils, as manuals for public consultation at the local level.

V. FINDINGS

The findings in this working document are the result of an analysis based on a defined methodology with a twofold objective (i) improving the process of business-institution consultation in coherence with the objective of the law and (ii) strengthening the private sector awareness and contribution to public policies. As above mentioned, important resources in identifying the main findings include: (a) analysis of the legal, regulatory and institutional framework of public consultation; (b) business perceptions evidenced in questionnaires filled out by 26 chambers and business associations with activities throughout the country and over 30 meetings held during period February - April 2022 with public bodies at different levels of government, associations and business chambers, various experts in the field, projects of donors working in the field of public consultation as well as (c) the organisation of two focus groups with business associations (28 attendees) and experts in the field (4 attendees).

A. The quality of the public-private dialogue and its impact on the decision-making process remain limited, despite recent improved monitoring aspects and improved evaluation indicators of the public consultation process²⁹. This is mainly due to the shortcomings to meet legal and institutional obligations. More specifically:

1. In recent years, there has been an increased number of notifications and publications in the electronic register, as well as improvement in the central institutions' performance in the public consultation process, as evidenced by 2021 published indicators. However, **there are cases of draft legal acts that, although subject to public consultation procedures in the electronic register, have neither been notified nor published as such³⁰**. Sometimes, the business community became aware of the new draft laws through the media and got involved in the consultation process only in the phase of discussion of the respective draft laws within the legislative jurisdiction in the committees of the Albanian Parliament. Meanwhile, there are evidenced public consultation practices of draft legal acts which, although not subject to public consultation law, in practice have set a new positive standard, for example *Draft DCM "Criteria for exercising, approving and monitoring research activities in the National Forest Fund"* notified by the Ministry of Agriculture and Rural Development or *"Draft-manual for legislation drafting"* dated 06.10.2021 notified by the Ministry of Justice, etc.
2. **Annual Public Consultation Plans are not published systematically and according to the approved standard in the electronic register, according to the provisions of the Public Consultation Guideline.** The Secretariat noted that until 1 April 2022, only the Ministry of Interior (in the approved standard format) and the Ministry of Agriculture and Rural Development (in excel format) had published the Annual Public Consultation Plans for 2022. To verify whether these plans were published on institutions' official websites as part of the transparency program, the Secretariat monitored the official websites of several ministries. From a partial monitoring of the official websites of the Ministry of Finance and Economy and the Ministry of Infrastructure and Energy, it results that until 11.04.2022, the annual public consultation plans were not published on their official websites. *The lack of publication of Annual Public Consultation Plans makes it difficult for the business community to monitor the public consultation process and limits its involvement in a timely and effective manner to promote public consultation of legal initiatives.*
3. **In general, institutions are respecting the law standards on the notification and public consultation, referring to the minimum deadline of 20 working days of consultation, but they are not unified in terms of documentation published in the electronic register.** For example, in

²⁹ Quantitative and qualitative indicators developed and subject to the Public Consultation Performance Reports prepared by the Centre of Governance, Prime Minister's Office.

³⁰ For example, fiscal package 2022.

many cases, the Consultative Explanatory Note (Consultation Document) and the Regulatory Impact Assessment (RIA³¹) are missing at the initial stage or are published in the register after the completion of the public consultation procedures. RIAs, in many cases, are drafted at the end of the process when in fact, they should be drafted at the start. There is an underestimation of RIAs and/or inability of institutions related to financial and human resources to prepare them in time. RIA by itself implies a procedure of public consultation of different alternative regulatory solutions and their potential impact as their preparation requires data, statistics, meetings with experts and stakeholders, as well as elaborating at an early stage potential solutions to address specific issues. According to the 6-months Report of Public Consultation Performance, a very significant indicator is that in no case RIAs have been subject to comments or changes³². Meanwhile, it is not clear how it is monitored whether RIAs are published or not at the initial phase of public consultation of a draft act.

4. **There are only a few cases of preliminary consultations on draft legal acts.** According to the law, the public institution, in special cases, can collect preliminary information and/or opinions from stakeholders before starting the process of drafting the relevant draft legal act. In the initial stages, when deemed necessary, the public institution publishes in one of the forms provided in Article 11 of the law, a preliminary notice or intention of the act that it will draft to receive information from interested parties. Any interested party may respond to the notification within the time limits provided for in the law, by submitting comments and recommendations. A positive example in this regard is the preliminary discussion at the expert level in the Ministry of Justice of the need for a law in the field of arbitration. There have been commitment and contribution from actors such as ICC Albania, Chambers of Commerce and Industry, Academy, etc. Another positive example is the very wide discussion in several phases of the law no.7/2017 “On Promoting the Use of Energy from Renewable Sources”
5. **During the period 2020-2021 there is an increase in the number of Consultation Reports (6-month and annual) of different ministries which are published in the electronic register, meanwhile till the end of April 2022, the Annual Performance Report for 2021 was not yet published in the RNPC.**
6. **The lack of obligation of institutions to consult draft bylaws such as CoM decisions, instructions, and regulations, basically those that affect/impact a wide range of businesses is considered/perceived as a fundamental lack of public consultation process.** We emphasize that normative bylaws such as CoM decisions, instructions, etc., are not subject to public consultation, although in some cases they have shown to have a greater impact on businesses and the investment climate than the laws (e.g., Instruction no.24 dated 02.09.2008 “On Tax Procedures”, CoM Decision no. 953, dated 29.12.2014 “On Implementing Provisions of Law no.92/2014 “On VAT”, Instruction no.5 dated 30.01.2006 “On Income Tax”, bylaws for the energy sector.) Subject to the consultation are only the draft laws (even those, as explained above, with some restrictions), draft strategic documents, national and local, policies of high public interest, drafted by public body. The above concern relies upon issues raised during our analyses/consultations and comments provided through questionnaires. Referring to our questionnaires, we note a positive perception (about 92%) regarding the level of recognition by the private sector of the existence of the law on public notification and consultation, but there is still insufficient recognition of its content (to the question “Do you know the procedure of public consultation of draft legal acts?” only 58% of the respondents answered positively while 42% of them answered negatively).
7. There is an improvement in the publication of the results of public consultation by the institutions through the publication in the register of Individual Public Consultation Reports, such as: in the case

³¹ Refer to the procedure of public consultation by the Ministry of Finance and Economy for the draft law “On the Establishment and Functioning of Technology and Science Parks” in which the draft is accompanied only by the report, or the procedure of public consultation by the Ministry of Health and Social Protection for the draft law “On Hospital Service in the Republic of Albania”.

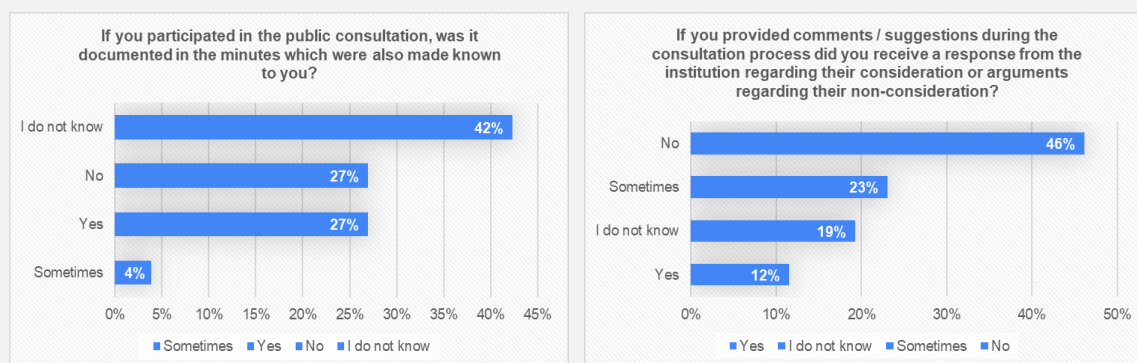
³² Page 29 of the Report

of public consultations conducted by the Ministry of Finance and Economy on the “Strategy for Business Development and Investment 2021-2027” (BIDS) and the draft law “On the Development of Enterprises, Micro, Small and Medium” (MSME). In these cases, the public consultation was conducted according to the minimum legal standard (publication in the electronic register) but also through meetings dedicated to actors and interest groups in special forums and platforms such as the case of the Investment Council. *Individual Public Consultation Reports* provide sufficient information on the comments, suggestions and recommendations collected, the subjects and groups involved in the consultation, which recommendations were accepted, and which were not, and the main argument for each case.

8. A quick monitoring shows that the above mention is not the prevailing standard in public consultation practices, where: (1) **Individual Public Consultation Reports are often lacking and (2) institutions do not provide answers and arguments on concrete comments, suggestions or recommendations given by groups of interest. Getting responses to comments/suggestions sent to institutions remains a challenge for the private sector.** Business associations highlight the facts that: (a) even when they participate and provide comments, their contribution is not evidenced and (b) there is lack of response from the institutions to their suggestions at all stages of the public consultation. In general, it is perceived that documents regarding the consultation processes, minutes and/or feedback given by the relevant institutions are not found/published in the RPNC. However, several good practices such as those related to BIDS and MSMEs have been identified.

Referring to the data of the questionnaires, 69% state that their comments are not reflected in the minutes made public for them, or they do not know whether there are minutes regarding the comments given. Meanwhile, 46% of those who admitted that they provided comments state that they have not received a response from the relevant institutions regarding whether they have considered their comments/suggestions. *This reduces the interest of the private sector in participating in consultations and increases their distrust of public consultation practices.*

Figure 1. Transparency on private sector contribution to public consultation



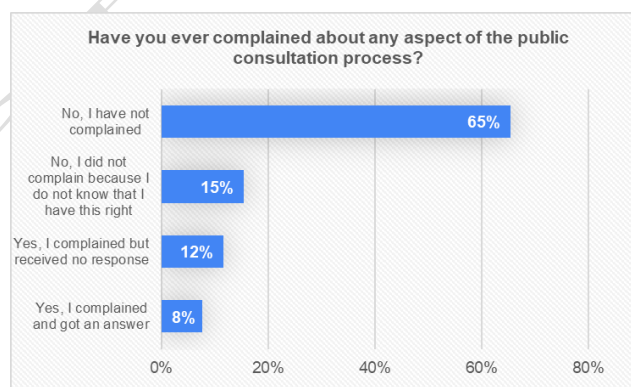
Source: IC Secretariat's Questionnaire "On Public Consultation" (2022)

Meanwhile, assisted by various projects, local self-government units have intensified the publication on their websites of minutes of their open consultation meetings, as well as the rationale for the endorsement or not of the public comments/suggestions. However, even in these cases, the business community has not been identified/evidenced as a specific group of interest, while the proactive representation of business associations is perceived as modest. The consultation process mostly benefits from public comments rather than from the business. Also, it is evidenced that in many cases the chambers of commerce do not participate in the consultation of draft acts at the level of local government.

9. Central institutions have already appointed the coordinators of public notification and consultation, a position which until a few years ago was not covered in institutions according to the provisions of the law. In most cases, **the functions of coordinators are performed by the specialist level within the institutions and not in a dedicated way, but as part of a series of other tasks within the institution. Notification and public consultation coordinators often do not have complete information on the draft legal acts being consulted and the consultation plan, while their role within the institutions and within the public consultation process is not framed with any internal regulation** (e.g., MFE). However, Secretariat could not determine/confirm if this finding is relevant and the same for all institutions. This creates coordination difficulties within the institution regarding materials to be published in the register, responsibilities of dealing with the public consultation of the draft legal act, the authority that reviews the letters of interest groups and/or organizes and participates in meetings.
10. **There is a lack of an efficient mechanism for imposing administrative measures in case of non-implementation of the provisions of the law.** The grievance mechanism is not accompanied by sanctions in the case of violations by the public body, but by solutions of a self-correcting nature. The grievance process against the non-implementation of the public consultation process as above explained includes direct complaints to the public body and complaint to the Commissioner. At the end of the investigation, the Commissioner, when concludes that there is a violation of the provisions of the law, has the right to propose to the responsible public body to take administrative measures against the responsible person/s, according to the legislation on civil service in force. No concrete case of a complaint to the Commissioner by any chamber of commerce/business association against the violation of notification and public consultation procedures has been identified (according to the questionnaire, 15% of the surveyed chambers/associations state that they have not complained as they do not know they have this right).

According to our survey, when asked “Have you ever complained about any aspect of the public consultation process?”, 65% of responders answered negatively while 12% did complain, but did not receive any response to their complaint. *The main complaints of the private sector have been in the non-consultation of draft legal acts of central and local government, non-compliance with the consultation deadline as well as non-involvement in consultation of parties affected by the consulted draft acts.*

Figure 2. Complaint to limitations of public consultations process



Source: IC Secretariat's Questionnaire “On the Public Consultation” (2022)

11. From the verification of the institutions listed in the RNPC, no public body of local self-government is listed. The latter treats the notification and consultation process of draft acts according to their specific laws on local self-government as above detailed and based on public consultation manuals prepared with the support of different projects. Meanwhile, referring to the legal standard, the main instrument for public notification and consultation is the [Public Consultation Register](#). The law regulates the process of notification and public consultation of draft laws, draft national and local

strategic documents, as well as policies of high public interest. **Based on the law definition of the *public body*³³, the local government bodies of the representative and executive-level both at the regional level and at the level of the municipality would have to apply the minimum legal standard for publication in the electronic register (Register for Notifications and Public Consultations) of draft acts subjects to consultation, notification of consultation and data related to the consultation of draft acts according to the obligations of Article 6.** In addition, this process could facilitate unification of the source of information for consultation with entities as well as optimize the level of use of the register and would enable more transparency/accountability.

12. **According to our direct consultation with business associations, the consultation procedure of the Albanian Parliament is considered more consolidated and transparent than the procedures followed by other levels of government. The consolidated practice of hearings in parliamentary committees can be attributed to the fact that the stakeholder consultation process is an early parliamentary tradition, is enforced/supported by the individual engagement of Committees Chairs covering legal and economic issues, and by some practical aspects that bring stakeholders closer together, such as:**
 - a. Structured information, agenda of work in committees and plenary sessions, calendar of works and discussion of draft laws, minutes of discussion in committees and plenary sessions are all public and transparent on the [official website](#).
 - b. Publication of the [Manual of Public Participation in the Decision Making Process](#)
 - c. Transparent publication of the [register of civil society organizations](#) (CSOs) which contains all the data that the Albanian Parliament has on CSOs operating in the Republic of Albania, as well as the opportunity to register quickly and easily in this register.
 - d. Transparent publication of the [register of lobbyists](#) in the Albanian Parliament, as well as the opportunity to register in it.
 - e. Systematic annual reports in a section dedicated to [public participation in the decision-making process](#)
 - f. [Consultation platform](#) which enables consultation of all draft laws published by parliamentary committees.

While referring to data from the Secretariat questionnaires on consultation at different *levels of the government*, about 81% of the respondents admitted that they did not participate in any consultation/hearing procedure organized by the Albanian Parliament, 77% did not participate in any consultation/hearing procedure organized by the local self-government, while only *31% that did not participate in any consultation/hearing procedure organized by the central government*. This demonstrates the better position of the central government but also highlights the need for additional efforts in terms of business notification and inclusiveness, especially at the parliament and local government level.

- B. Notification and public consultation process as well as the electronic register as one of the structured public-private dialogue instruments, remain still unoptimized. Although there is awareness of the legal framework, we evidence that contribution of the business community to the electronic register remains low while the provision of comments/expertise is still mainly presented through mail or direct meetings.**

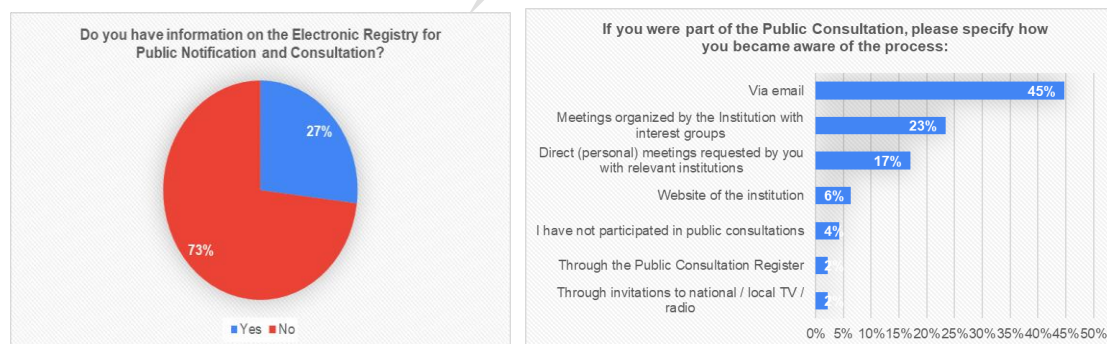
13. **The business community knows that a legal framework dedicated to public notification and consultation has been adopted in Albania.** According to questionnaires data, 92% of the answers confirm that private sector is aware of the existence of this law. Also, there is a high interest of stakeholders to participate in open consultations (confirmed in Secretariat's meetings as well as by

³³ Article 2 point 9 "Public body" is any entity of central government, which performs administrative functions, any entity of public entities, to the extent that they perform administrative functions, any entity of local government, which performs administrative functions, any entity of Forces Armed Forces and any other structure, as long as they perform administrative functions, as well as any natural or legal person, who has been given by law, sub-legal act or any other form, provided by the legislation in force, the right to exercise public functions.

questionnaires results where only 4% of respondents admitted that they had not participated in consultations). Cases of consulting some draft acts by MFE in IC meetings such as: “On the Unified Investment Law”, “On Support and Development of Innovative Start-ups”, “Business and Investment Development Strategy and Action Plan 2021- 2027”, the draft law “On the Development of Micro, Small and Medium Enterprises”, or the process of the draft law “On Renewable Energy Sources” showed great interest and involvement of the business community, experts in the field, development partners, etc. A growing interest in the consultation procedures of draft acts is also evidenced in the 6-Month Report for Public Consultations Performance prepared by the Governance Centre in the Prime Minister’s Office - July 2021, which states that: *During 2021 (first 6M), all ministries reported 267 participants in public consultations through various consultation methods. Although in absolute numbers there is a decrease in participation compared to 2020, there is an increase in the contribution to public consultations, about 54% compared to 14.4% of all participants in 2020*³⁴. **This confirms the growing interest of stakeholders to be active during open consultations on draft acts and policy initiatives.**

14. While there is an increasing number of draft acts that are published in the electronic register, the number of comments/suggestions, and actors involved in the consultations through the electronic register is negligible. **Private entities do not recognize or comment on the electronic register but are mostly oriented towards open consultations, direct meetings or still send their written recommendations for which they usually do not receive a response from the public institutions.** For example, the responses to the Secretariat’s questionnaire show that there is a low level of awareness of the instrument and the use of this register as an essential tool in public notification and consultation. To the question “Do you have information on the Electronic Register for Notification and Public Consultation”, 73% gave a negative answer confirming the above perception. Further, when asked about the main tool used during the consultation process, most of the respondents confirmed that email is the primary notification tool on the consultation process, emphasizing once again the fact that the consultation register is very little used (only 2% of respondents admit that they received the notification from the public consultation register). *From a broader perspective, while government is moving faster towards digitalization of all public services, we believe that this is an issue to be carefully analysed by both parties.*

Figure 3. Means of notification to public consultation



Source: IC Secretariat’s Questionnaire “On Public Consultation” (2022)

15. **The representative body/entity of the private sector remains somewhat unclear during the consultation process and the level of opposition/expertise is perceived as limited. Depending on the subject, public institutions are concerned that the quality of private sector observations is often conditioned by limited expertise and level of representation to inclusively protect their interests during the process of consulting draft acts.** From the consultation with partners/supporters of public consultation at the local level, as well as from a partial monitoring of the Secretariat, it results that the local government has made steps forward towards the publication and transparency of the adopted acts. Despite this, the Secretariat has received some concrete cases

³⁴ Page 28 of the Report

brought by IC partner business associations such as FIAA/Renewable Energy Association, etc. regarding issues of implementation in practice such as lack of timely information/notification on acts with financial impact, related mainly to temporary fees or taxes. At the local level, there have been some positive experiences of dialogue and consulting platforms such as the Economic Council of the Municipality of Tirana, but which either no longer meet or have never had a measurable public balance.

The above is also confirmed by the questionnaire data and consultative meetings – when asked “How do you assess the role of the business community, chambers of commerce and business associations and experts in the field in public consultation procedures?”, the respondents agreed that their role is a necessity and quite important, but there is lack of organization, representation as well as expertise. Among other things, it is argued that draft acts opposition requires expertise and funding that often exceeds the capacity of business associations. Despite the efforts of the associations, in many cases even when suggestions were sent to institutions, they were not taken into account, or no response was received. Consequently, the cost invested by them is not justified, for example in the cases of the last fiscal package, etc. Therefore, in these conditions, some representatives remain engaged in terms of reopening the debate and the work previously started by the MFE in terms of drafting the Law of Chambers of Commerce.

16. **In the electronic register was not identified any proposal or initiative from the business community to public bodies to start the procedure of drafting and approving legal acts, according to the annual plan of the decision-making process published by the public body.** Despite this, it turns out that in a considerable number of cases related to fiscal policy and justice, tax legislation, reform of inspectorates and food safety, agricultural cooperation and energy, have been concrete initiatives, proposals and/or drafts which are not always evidenced, accepted and materialized in laws/by-laws.
17. **Deadlines for public consultation are not always considered optimal.** Regarding the deadlines for public consultation, there is a perception that the deadline should be longer, *although the main issue is receiving notification at the exact moment when the draft act is submitted for consultation either in the register or on the website of the relevant institution.* The delay in receiving the notification further creates the problem of insufficient consultation time. According to the Secretariat and most of the experts met, the minimum deadline of 20 working days (and 40 days in case of consultation of particularly complex acts according to the decision of the public body) is proportional and an appropriate standard for different actors within which they can submit their comments and recommendations³⁵ if they have the expertise and are certainly informed in a timely manner about the launch of the consultation process. Meanwhile, the answers to the questionnaires show a lack of knowledge of the legal deadlines for consultation (“Are you aware of the deadlines for public consultation?”, 46% answered positively and 54% answered negatively).
18. Some other **key business challenges** to the process of public consultation according to the Secretariat’s questionnaires are summarized as follows:
 - i) There is a general agreement among the business community about the obligation of public bodies to consider their observations and proposals during the consultation process. Also, 59% of respondents agree that their suggestions should be considered only if they are qualitative and appropriate, emphasizing the need for a professional and quality opposition to the draft acts submitted for consultation.
 - ii) Documentation consulted - Regarding the association of draft acts with the Regulatory Impact Assessment (RIA), there is ambiguity and a lack of information on the part of the private sector. 46% of them do not know whether the consulted draft acts were accompanied by the relevant

³⁵ Article 15

1. Interested parties shall be given reasonable time to submit to the public decision-making body their comments and recommendations:

a) within 20 working days from the date of notification for the prior notification process;

b) within 20 working days from the date of notification for the notification process and public consultation.

2. For particularly complex or important acts, according to the decision of the public body, the deadline for sending comments can be extended up to 40 working days from the date of notification.

RIA, emphasizing the non-recognition of this documentation, the existence of which is a legal requirement for certain draft acts.

C. There is limited trust in transparent interaction between the parties while consultation links are not well organized. Lack of standardized promotion of notification and public consultation procedure undermines the efficiency of the process.

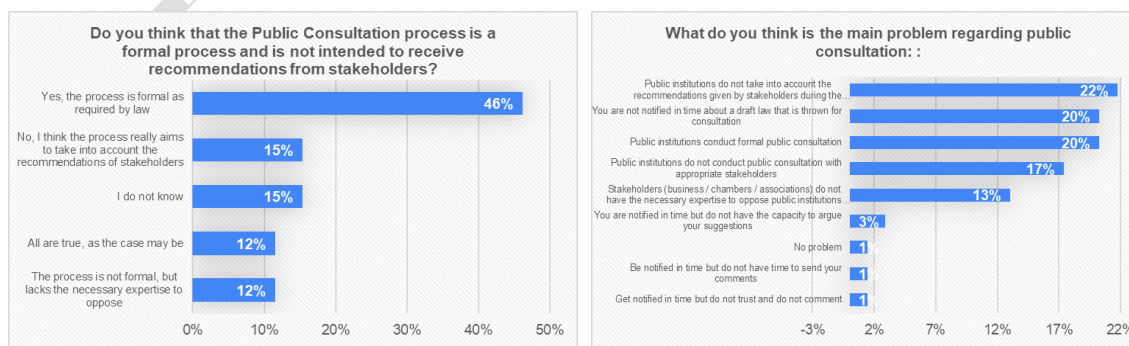
19. Although there are some positive practices of notification and public and consultations there is a sustainable perception from the business community that they are not systematically and transparently published such as:

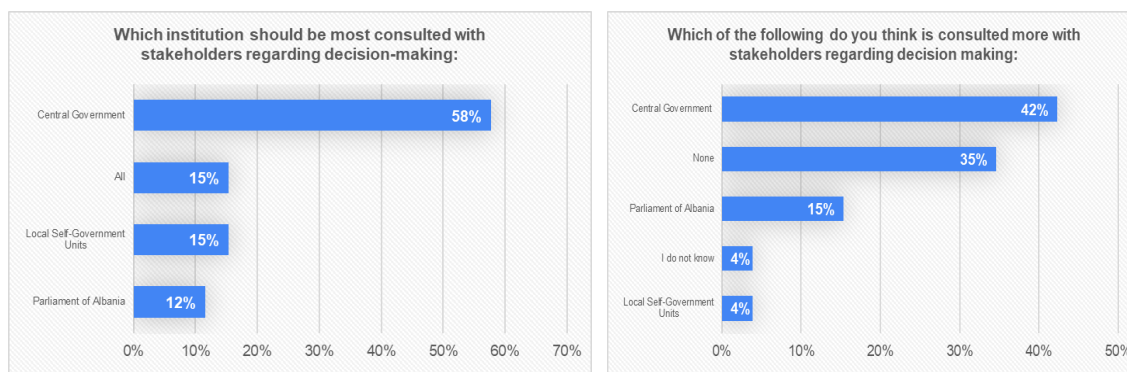
- (a) comments, suggestions, technical recommendations of stakeholders.
- (b) whether or not the comments, suggestions, recommendations have been taken into consideration.
- (c) if they are taken into consideration to what extent.
- (d) the institution's exhaustive argumentation on the reasons why comments, suggestions, recommendations proposed have not been taken into consideration.

20. **There is a general perception/understanding among the business association community on the fact that consultation in most cases remains formal, mainly as a process required by law and does not have a primary intention to obtain comments and suggestions from other interested parties.** The process of public consultation through the registry is mainly viewed as an opportunity for the administration to avoid direct confrontation with stakeholders. Limited transparent procedures influence business *perceptions* to consider "direct consultations in many cases as selective and lobbied by different groups of interest in the absence of necessary transparency of a comprehensive process". This, as well as the lack of responses and arguments regarding business suggestions, has faded the confidence of the latter in the public consultation in general, including all the forms of its appearance.

To the question "Do you think the public consultation process is a formal process and does not intend to receive recommendations from stakeholders?", 46% responded positively. Meanwhile, 15 % are still positive about the process and around 12% of responders admitted that consultation is not formal but lacks appropriate expertise to oppose the consulted draft act. *Main issues identified during the consultation and survey process have been: (i) public institutions make a formal consultation, (ii) non-timely notification regarding the consultation process, (iii) public institutions do not consider the suggestions given during the process of consultation.* 58% of respondents think that central government institutions are those that need to be more consulted with the private sector, meanwhile on the question, "Who do you think consults more with interest groups regarding decision-making", 35% responded that none of the three levels of governance does implement the consultation process.

Figure 4. Perception of private sector on public consultation process





Source: IC Secretariat's Questionnaire "On Public Consultation" (2022)

VI. RECOMMENDATIONS

There is a relevant business associations awareness and commitment to the public consultation, strongly supported by a local EU political agenda and by some institutional steps in regard. Thus, this is a good momentum to improve in practice the functioning of the public-private consultation mechanisms. The following are some suggestions/recommendations which aim to address the findings through a consolidated approach. This approach is based on three main pillars: (a) *implementation of the obligations of the parties (institutions and private sector representatives) as currently provided in the public consultation legislation*; (b) *some legal changes which are not an end in themselves, but instruments for the sustainable development of medium-term consultation according to a simple regulatory framework and premises in order to increase the confidence of the parties involved*; (c) *optimizing the functions of the electronic register as one of the instruments of open government in terms of their use as currently offered and possible improvements in order to increase access, transparency and awareness; but the use of the platforms both by government and other stakeholders remains a challenge and the core issue is how to build and sustain trust among them. We would like to highlight that the business community needs to believe that the public sector will respect their promise and stay committed to the process while business associations should further upgrade their corporate capacities.*

Recommendation 1

Extension of the area of law no. 146/2014 'On Notification and Public Consultation'³⁶, adding the draft normative by-laws³⁷- CoM Decisions and Instructions of Ministers which regulate one or several legal relations with an impact on entrepreneurship and in particular those in the field of taxes, fiscal, customs, procurement and public-private concessions/partnerships that do not fall under the category of restrictions as defined in Article 4.

As a rule, the deadlines for consulting draft normative by-laws are recommended to be respectively 20 working days and 40 working days as provided in Article 15 of the law. In order not to limit the efficiency of the administrative bodies to regulate their acts issues that require speedy actions and proportionally with the purpose intended for consultation of the draft normative by-laws, the deadline for consultation in these specific cases can be foreseen at least 10 working days. In these cases, the public body together with the draft normative

³⁶ Amending articles 1,4 and 15.

³⁷ This recommendation is in coherence with the findings of the IC analysis, comments from business associations and chambers of commerce, with the recommendations of the European Commission as well as the need to have better quality by-laws which have often been problematic for the business climate (e.g. the changes during 2021 in the Instruction no.24 'On Tax Procedures' regarding the procedure of blocking the accounts of debtors and natural persons in the capacity of administrator, created an immediate and unnecessary confusion for businesses, which will not have taken place in the conditions of a good consultation and according to the procedures currently provided for draft laws). The Progress Report 2021 for Albania states that: 'while the 2014 Law on public consultation, laying down the procedural norms for transparency and public participation in decision-making, is generally in line with European standards, consultations often remain artificial exercises. In addition, the scope of the law needs to be extended to government decisions. The guidelines and monitoring framework for public consultation adopted in January aim to improve governance arrangements for a better implementation of the Law (see also Public Administration reform). The term normative by-laws refer to the definition given in Article 3 point 2 of Law 44/2015 "Code of Administrative Procedures of the Republic of Albania" and the explanation in the Commentary of the Code of Administrative Procedures by SIGMA-2018.

by-law should publish in the register the reasons for its consultation within the shortened period of at least 10 working days.

Recommendation 2

Regulatory Impact Assessment Reports (RIA)³⁸ as essential consultation documents suggesting alternatives to regulatory solutions, are recommended to be subject to public consultation from the early stages of drafting the draft act (even before drafting the draft act itself) and part of the package of documents that are published in the electronic register together with the draft act, the notification for consultation and other data related to the consultation.

Immediate implementation of this obligation for institutions which is also provided in the *Instruction for Public Consultation Process*³⁹ is suggested to be accompanied in the medium term with a clear provision in *Article 6 Obligation for public notification and consultation* of law no. 146/2014 “On Notification and Public Consultation”, raising to the level of law the obligations of institutions regarding RIA currently defined in the bylaws.

Recommendation 3

Structuring of an efficient and clear mechanism for administrative measures in case of non-implementation of the provisions of Law 146/2014 “On Notification and Public Consultation” as a proportional instrument to increase the awareness of the public body and administration for the implementation of obligations in the field of consultation public⁴⁰.

Administrative measures are recommended to enable not only the administrative responsibility of the coordinator for public notification and consultation, but also of the superior and/or head of the public body as defined by law, in cases where lack of consultation and/or violation of public consultation procedures (e.g., non-publication of the consultation report) did not occur due to the actions or omissions of the coordinator. For this, it is recommended the amendment of Article 21 of Law 146/2014 “On Notification and Public Consultation” thus creating a mechanism to control the duties and administrative functions directly involved in the consultation of the draft law.

Recommendation 4

Timely fulfilment of the institutional obligation by the Ministries for the Publication of the Annual Public Consultation Plans and the Public Consultation Reports in the electronic register and on the official websites of the institutions.

For this it is suggested:

- (a) *immediately*, strict implementation of the deadlines for their publication as set out in the *Instruction for Public Consultation Process*.
- (b) *in the medium term*, it is suggested to assess the possibility of providing a deadline for their publication in *Article 6 Obligation for notification and public consultation* of the law.

Recommendation 5

Although progress is being made, associations/chambers of commerce need to increase their capacity and work for a higher standard of interaction in the country's public policy consultation processes.

To this end, they need to increase their managerial capacity/resources and expertise in terms of: (a) inclusiveness in representation; (b) advocating for the interests of members (by sectors, size of companies or their geographical location); (c) increasing the capacity of the private sector to be active in the institutional decision-making process through a proactive approach to transparently proposing legal initiatives that regulate entrepreneurship issues. At the strategic level, their resources and challenges for a higher institutional standard may require a more in-depth analysis, with options that also consider the “business representation model” by

³⁸ RIA format as approved with CoM Decision 197 date 11.04.2018.

³⁹ Order no.3 date 29.01.2021 of General Secretary of Council of Ministers “On the Approval of Instruction for the Public Consultation Process”

⁴⁰ The structuring of mechanisms of administrative measures can follow the models provided in similar laws such as: Law 107/2021 “On Co-Government”, Law 119/2014 “On the Right to Information”

strengthening the role of chambers of commerce by delegating and entrusting them the provision of services to enterprises. In this context, reactivating the working group for the revision of the draft law on business chambers through extensive consultation with all stakeholders may be an option for strengthening the role of chambers and business associations.

Recommendation 6

Institutionalization of the process of identification of consultation actors according to the provisions of the Instruction on Public Consultation Process and the Orientation Matrix.

For this purpose, the ministries/local self-government units should prepare and publish in a transparent and open manner for registration (for example the model of the Albanian Parliament) the identified list of potential actors for consultation (including but not limited to individuals, experts, think- tanks, NGOs, chambers of commerce and business associations, development partners, public-private consultation platforms, research institutes) as well as the categorization of businesses by sectors of the economy and their current activity, to include them in a timely and voluntary manner from the first stages of project consultation according to their areas of interest.

Recommendation 7

Improving the functions of the electronic register for public notification and consultation to create easy access for all stakeholders by enabling:

- (1) Interactivity (possibility of registration of subjects for the fields when they want to receive automatic notifications by e-mail) and automatic notifications by email on the status of the public consultation procedure (open/closed/request for opinion within reopened/postponed institutions, etc.);
- (2) Generate quantitative monitoring reports of public notification and consultation procedures for the public, chambers of commerce/business associations and interest groups as mechanisms to increase transparency and positive pressure on institutions for more focus on public consultation procedures.

Recommendation 8

Promoting the electronic register as the legal standard of notification and public consultation as well as raising the awareness of users (institutions and businesses) on making transparent suggestions, comments, and responses on public consultation in coherence with objectives of the digitization of public services reform.

- (1) Following and implementing *good practices* of public consultation by not being satisfied with the process of notification and public consultation of drafts only according to the basic legal standard, but by diversifying the methods of public consultation (open meetings, surveys, etc.) according to provisions of the law to enable a wider range of stakeholders.
- (2) Organizing joint trainings (representatives of institutions and the private sector) focusing on the rights and duties of the parties within the consultation process with the aim of increasing trust, where the parties are willing to communicate and respect the obligations arising from the requirements of the law of public notification and consultation and special laws.

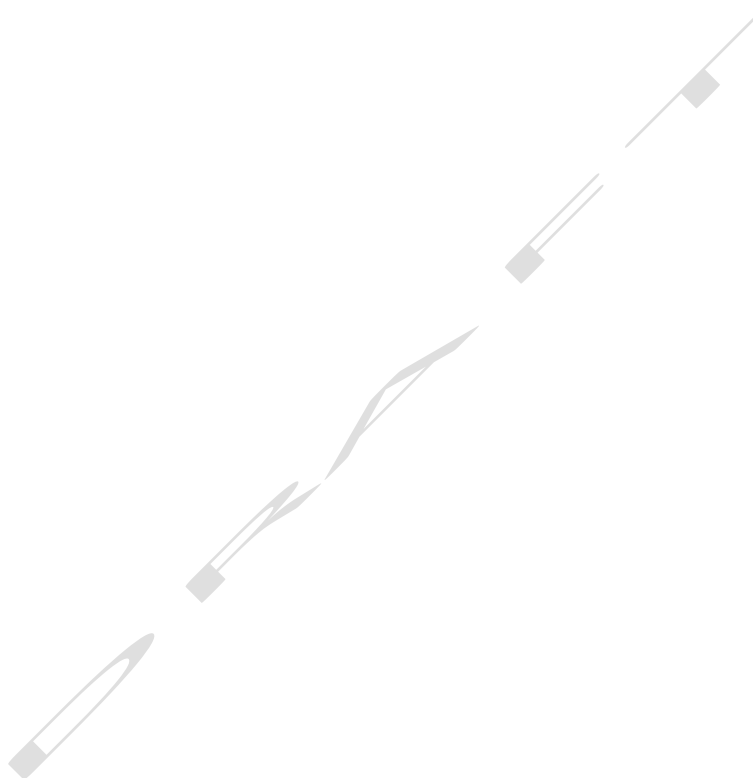
Recommendation 9

Optimization of the functionalities of the electronic register by the local self-government bodies as public bodies within law 146/2014 by publishing in the electronic register the draft objects subject to consultation in the local communities as well as the reports of individual consultations.

Publication in the electronic register does not limit the implementation of mechanisms, procedures and deadlines applicable under specific laws, but creates greater opportunities for inclusion and transparency in local decision-making and creates opportunities for the unification of public consultation practices.

Recommendation 10

Increasing the role and institutional capacities related to the function of coordinator of public consultation within the institutions by suggesting that the fulfilment of these functions should be the responsibility of structures at a higher level than *a specialist*. Job descriptions should clearly define the rights and duties of notification and public consultation coordinators within the institution regarding access to information on projects planned for consultation and of those consulted, as well as the manner of reporting, transparent publication of pre- and post-consultation activities, as well as the manner of interaction with the consulted actors.



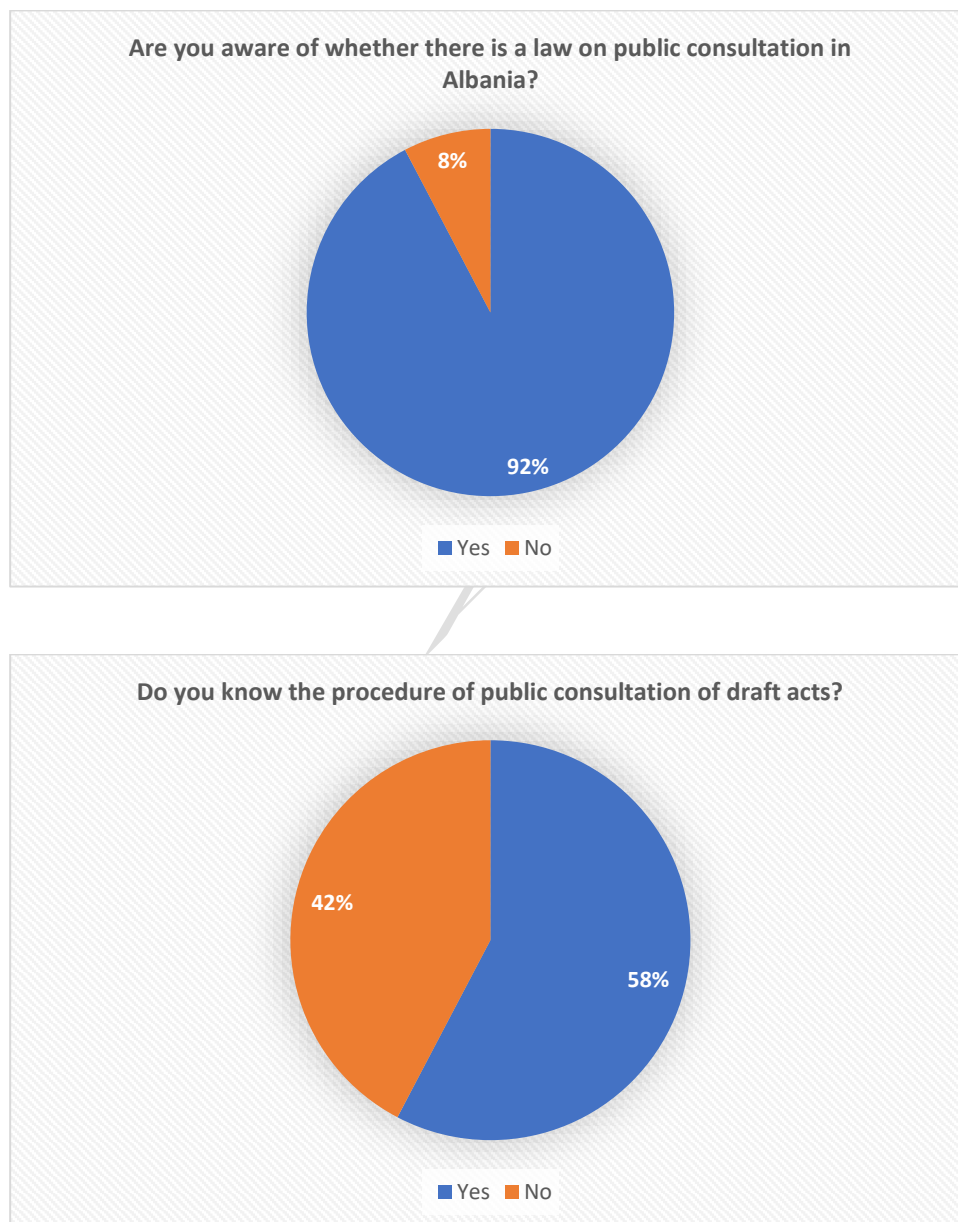
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- (25) Law no. 107/2021 "On Co-Government"
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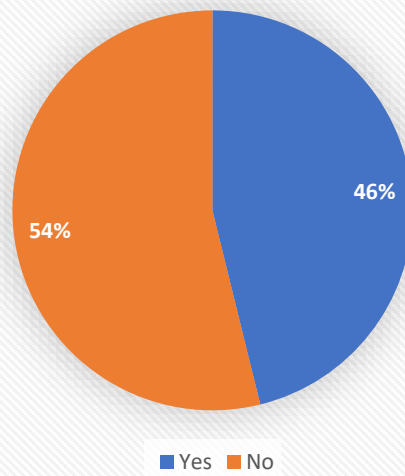
ANNEX I

FINDINGS OF THE QUESTIONNAIRE OF THE IC SECRETARIAT “ON PUBLIC CONSULTATION”

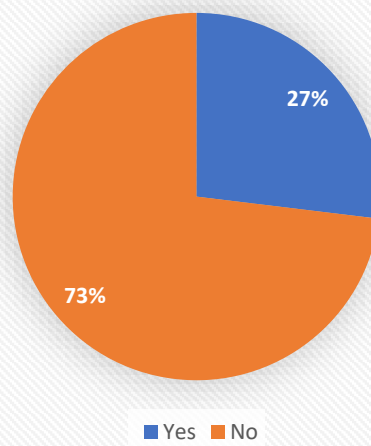
Business perception on the expectations of the public consultation process - degree of awareness, process, deadlines, experiences with institutions, private sector contribution and impact on decision-making through consultation.



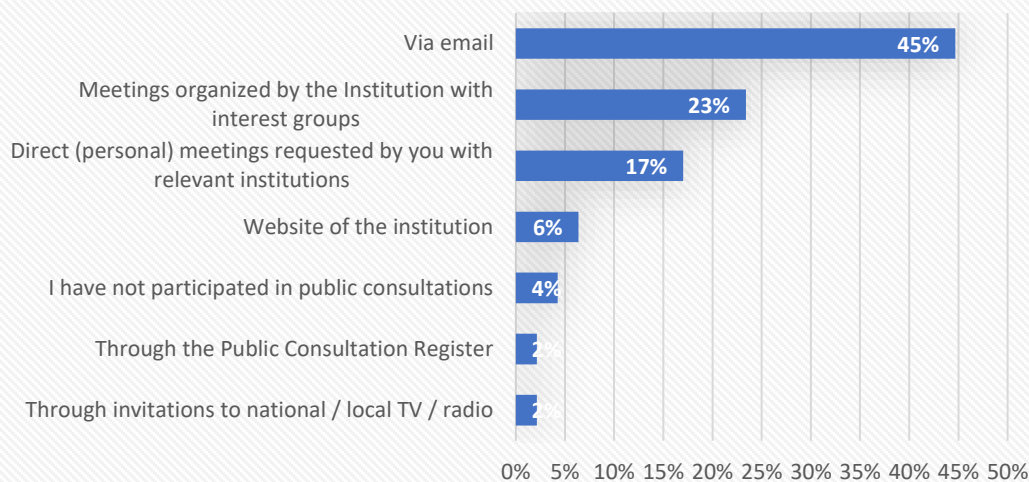
Are you aware of the deadlines for public consultation?



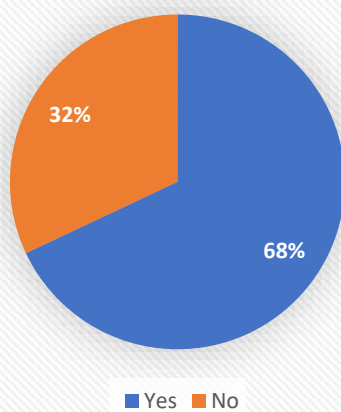
Do you have information on the Electronic Registry for Public Notification and Consultation?

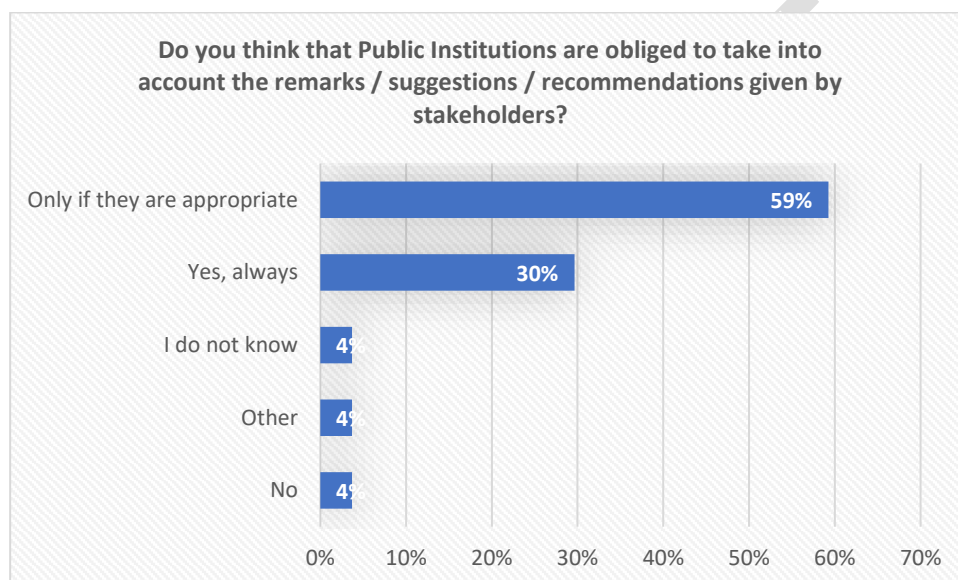
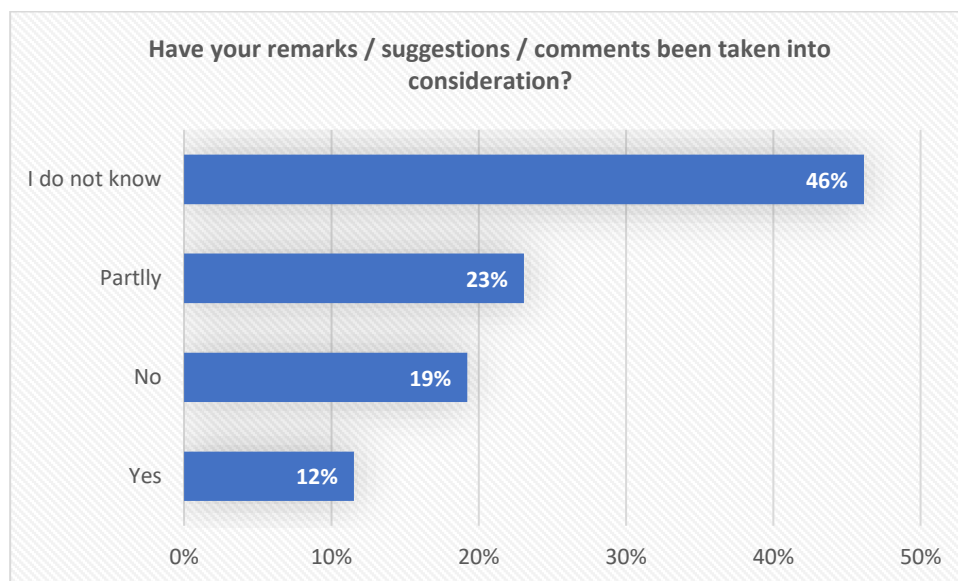


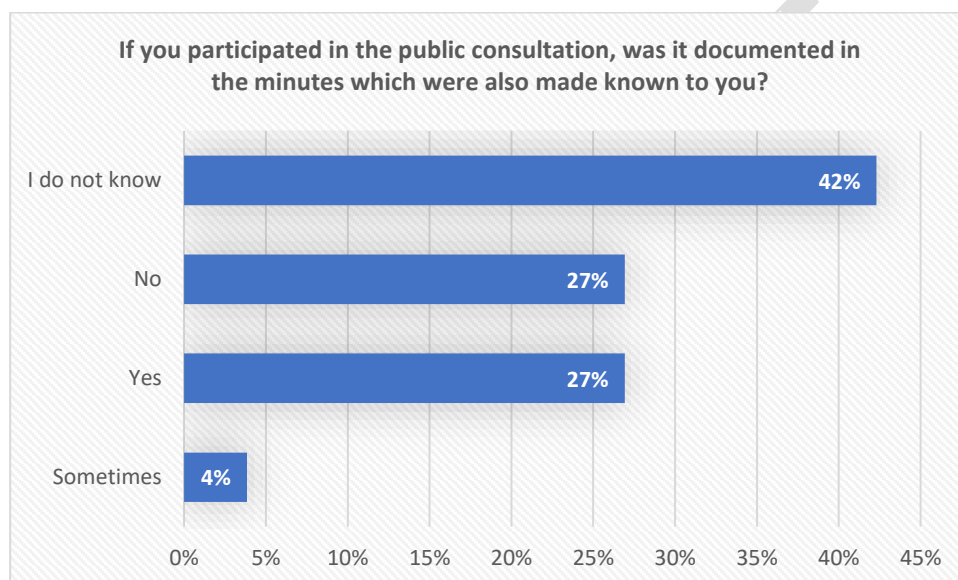
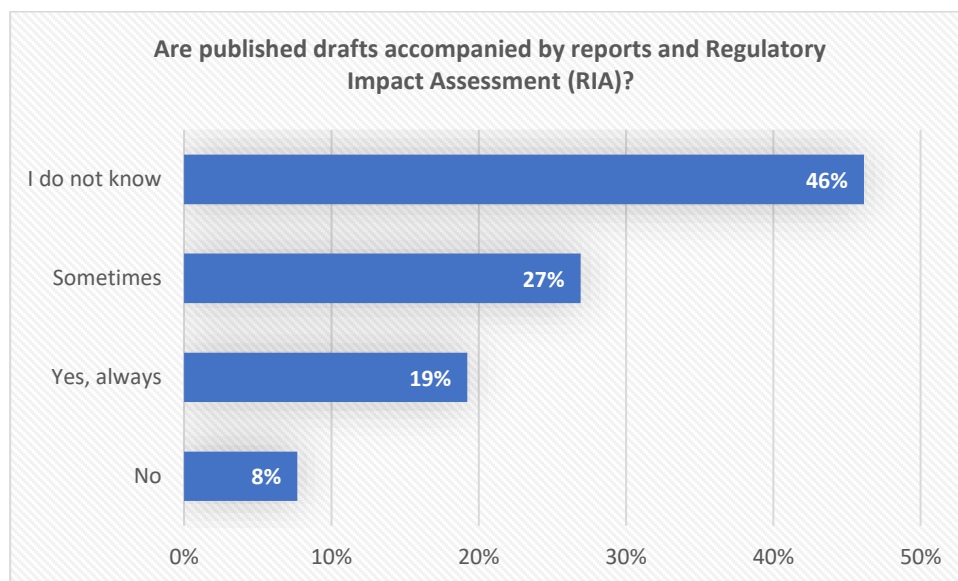
If you were part of the Public Consultation, please specify how you became aware of the process:

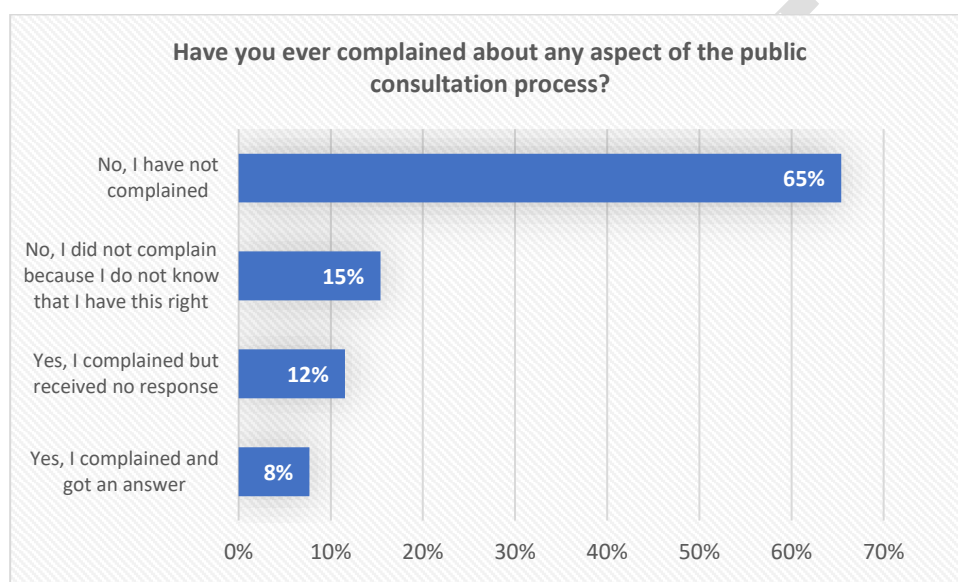
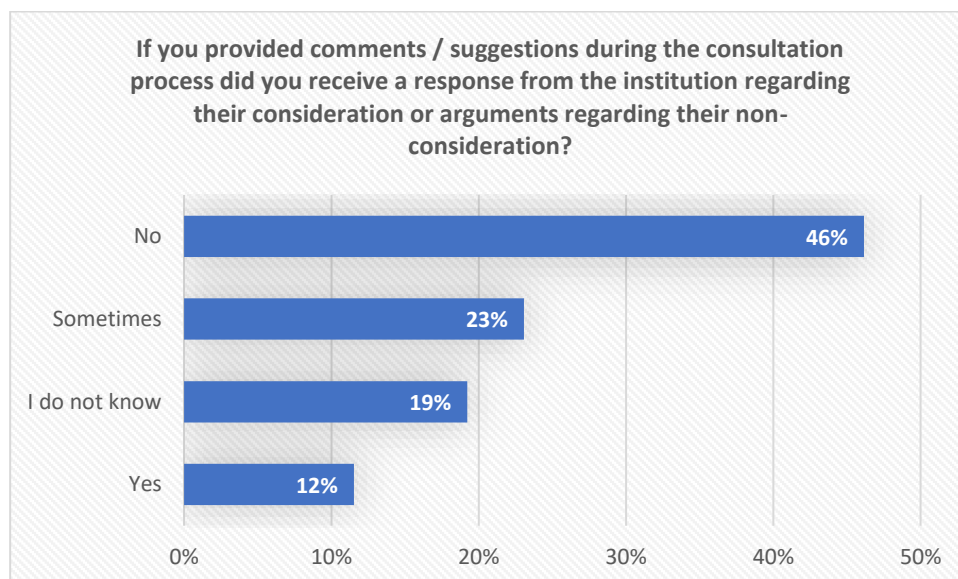


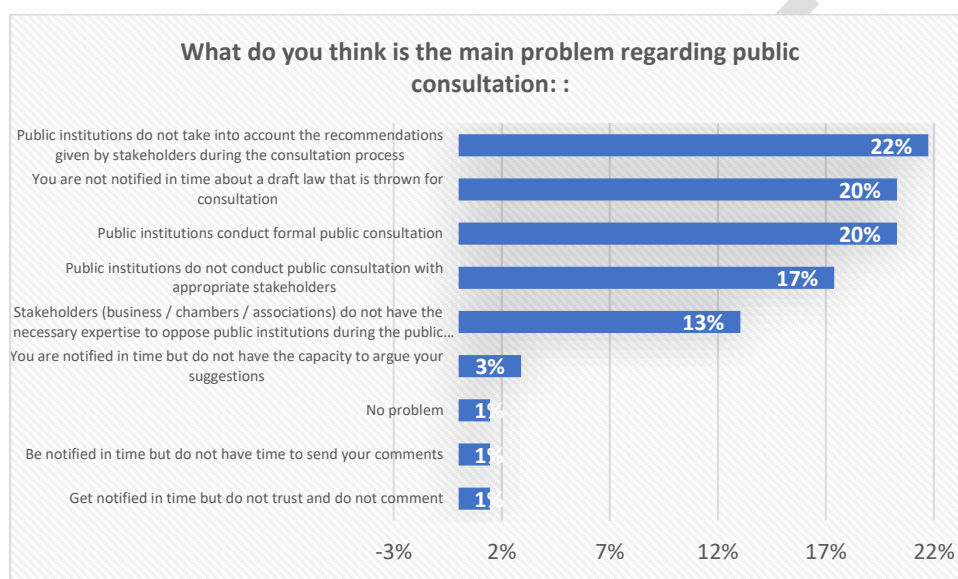
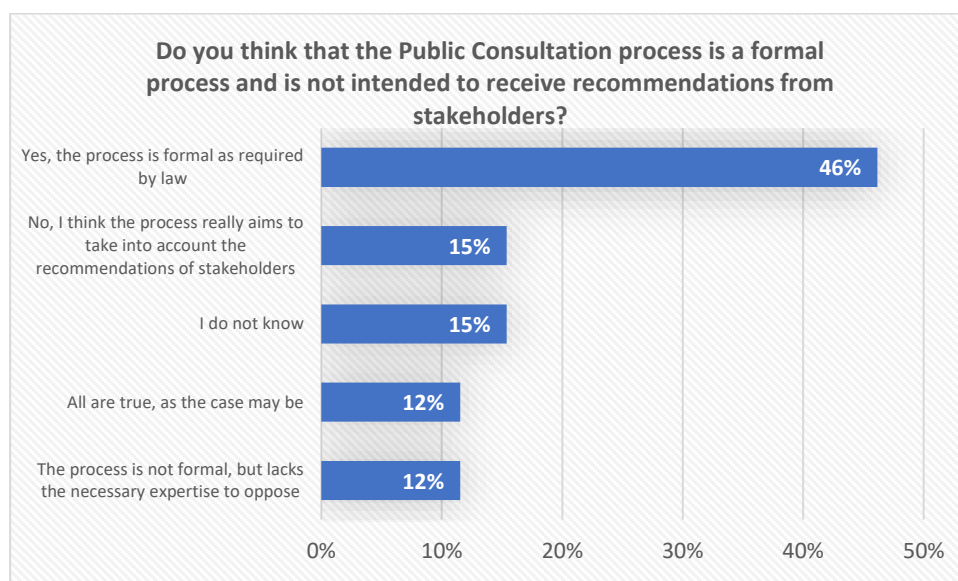
If you were part of the Public Consultation, did you provide comments / suggestions / recommendations on the submitted draft act?



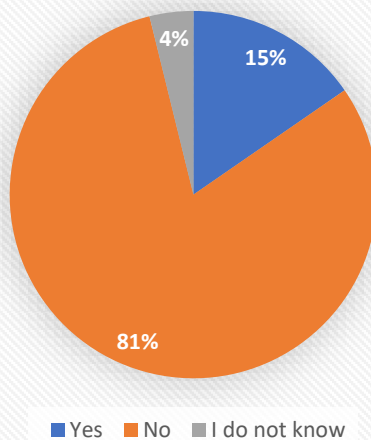




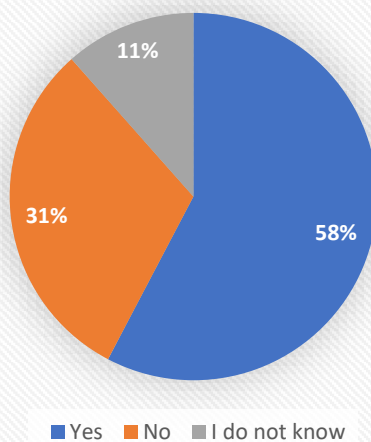




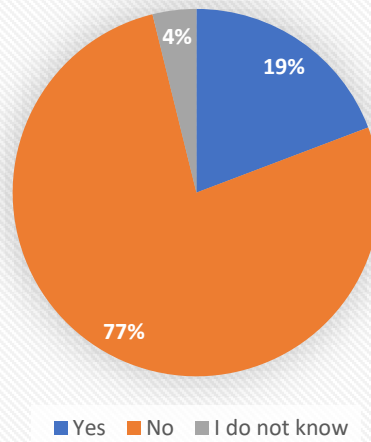
Have you participated in any consultation / hearing procedure in the Albanian Parliament?



Have you participated in any consultation / hearing procedure organized by Central Institutions?



Have you participated in any consultation / hearing procedures organized by Local Institutions?



Which institution should be most consulted with stakeholders regarding decision-making:

