

Directorate General Democracy

*Special Adviser to the Government of Ukraine on  
Decentralisation*



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(English only)

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**OPINION<sup>1</sup>**  
**OF THE SPECIAL ADVISER TO THE GOVERNMENT OF UKRAINE**  
**ON DECENTRALISATION**

**PARTICIPATORY DEMOCRACY TOOLS:**  
**EUROPEAN STANDARDS AND PRACTICES**

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<sup>1</sup> This opinion reflects the views of the Special Adviser, based on the Council of Europe Standards and best European practices. It does not constitute an official position of the Council of Europe on the issue under consideration.

The European Committee on Democracy and Governance (CDDG) currently prepares *Guidelines on civil participation in political decision-making* at the request of the Secretary General of the Council of Europe, who found in his 2015 report on the state of democracy, human rights and the rule of law that “States should create an enabling environment including a favourable legal framework, for the functioning of NGOs as well as sustainable mechanisms for dialogue, consultation and cooperation between civil society and the authorities.”

The Guidelines are expected to be adopted by the end of 2017.

## Introduction

In a letter addressed to the Head of the Council of Europe office in Kyiv, the Chair of the Verkhovna Rada Committee on State development, Regional policy and local self-governance required support and expertise, including by the preparation of an expert opinion, in the discussions on a future instrument on citizens' participation at local level.

Participation is an essential element of any democratic society. When the level of participation decreases, this is often because there is a lack of trust in democratic institutions. In our democratic house, if institutions and laws are building blocks, trust is the indispensable mortar keeping them together. If trust were to disappear, if people no longer believed in their laws, institutions, currency, etc. a country becomes a failed state. Diminishing levels of popular trust are often exploited by populists who pretend to act on behalf of the people. By claiming exclusive moral authority to act on their behalf, populism seeks to delegitimise all other opposition and courses of action.

Local government is the level closest to citizens and such proximity necessarily converts, or should necessarily convert into increased levels of citizen participation in local affairs. For decentralisation to show its positive effects local authorities need to encourage and facilitate citizens' participation, both individually and with the help of various civic organisations.

The current document looks at:

- various international and European standards regulating or orienting European policies and rules concerning citizens' participation in general and participation at local level in particular;
- existing legal framework and participatory tools in Ukraine;
- the various levels and forms of citizen participation;
- the way various national legislations in Europe regulate citizens' participation;
- examples of participatory tools in European countries.

The Council of Europe, through its Centre of Expertise for Local Government Reform has already formulated legal opinions on three different draft pieces of legislation currently registered in the Verkhovna Rada:

- local referendum;
- bodies of self-organisation of population;
- general meetings of members of territorial community.

In the light of this analysis, the Special Adviser to the Government of Ukraine on Decentralisation would like to make the following observations:

- a. Existing European standards concern mainly allowing, facilitating and supporting citizens' participation, not imposing it;
- b. National legislation on citizen participation is, in most European countries, quite scarce; good practice that the Council of Europe has identified is linked in particular to initiatives and experimentations launched by local authorities themselves and only secondarily to laws adopted by national parliaments. It is of course a good idea to give a legal framework to participation at local level and to establish via legislation some minimum standards; this should however not lead to overregulation, which would only have the effect of smothering local initiative;
- c. The Ukrainian legal framework regulating citizens' participation at local level is quite complex; in fact, one could estimate that the two issues which are currently not regulated are local referendums and local participatory budgeting. This obviously does not mean that the existing legal framework is perfect – only that the careful critical examination of the existing legal framework should constitute a starting point to any discussion concerning its improvement.

The Council of Europe in general and the Special Adviser in particular remain ready to further support discussions on the subject of citizen participation and on the necessary legal rules that need to be set up and, upon request, to formulate an opinion on any draft text prepared and submit to the Verkhovna Rada Committee in this respect.

## INTERNATIONAL STANDARDS

The existing international norms and standards on citizen participation are set out in documents adopted by the UN bodies and mechanisms, Council of Europe, OSCE and the European Union. However, the international standards in this field continue to evolve, since new technologies and opportunities come along with new forms of participation.

### United Nations

The Article 25 of the *ICCPR*<sup>2</sup> stipulates that every citizen shall have the right and opportunity to take part in the conduct of public affairs, the right to vote and the right to have access to public services. The participatory approach in policy and decision-making processes has been strongly supported by the UN HRC, which has adopted three resolutions on equal participation in the conduct of public life. *The Resolution on Equal Political Participation*<sup>3</sup> from 2013 reaffirms the obligation of States to take all appropriate measures to ensure the right to participate in political and public affairs on an equal basis. The UN HRC *Resolution on Equal Participation in Political and Public Affairs*<sup>4</sup> from 2014 reemphasizes the critical importance of equal and effective participation in political and public affairs for democratic governance.<sup>5</sup>

The *Resolution on Equal Participation in Political and Public Affairs*<sup>6</sup> adopted in 2015 acknowledges that with new technologies and opportunities forms of participation continue to evolve and urges states to ensure a meaningful participation of citizens in political and public affairs:

*“h.) Exploring new forms of participation and opportunities brought about by new information and communications technology and social media as a means to improve and widen, online and offline, the exercise of the right to participate in public affairs, and other rights directly supporting and enabling it.”*

The *UN HRC Civic Space Resolutions* from 2013-2014<sup>7</sup> urge countries to acknowledge the essential role of NGOs enabling their participation in the public debate on the related issues. Adopted in 1999 by the UN General Assembly the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* acknowledges the right of “everyone” to participate in the decision-making process. The *UN Convention on the Rights of Persons with Disabilities* aiming to ensure the right to participation of persons with

<sup>2</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>3</sup> UN Human Rights Council, Equal political participation : resolution / adopted by the Human Rights Council , 8 October 2013, A/HRC/RES/24/8 , available at: [http://dag.un.org/bitstream/handle/11176/305484/A\\_HRC\\_RES\\_24\\_8-EN.pdf?sequence=3&isAllowed=yn](http://dag.un.org/bitstream/handle/11176/305484/A_HRC_RES_24_8-EN.pdf?sequence=3&isAllowed=yn).

<sup>4</sup> A/HRC/RES/24/8.

<sup>5</sup> Council of Europe, Draft text by the CDDG, Civil Participation In Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States, GT-SC(2016)2, Strasbourg, 18 April 2016 (p.9).

<sup>6</sup> UN Human Rights Council, Equal participation in political and public affairs : resolution / adopted by the Human Rights Council , 12 October 2015, A/HRC/RES/30/9, available at:

<http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=A/HRC/RES/30/9&Lang=E&Type=DOC>.

<sup>7</sup> UN Human Rights Council, Civil society space : creating and maintaining, in law and in practice, a safe and enabling environment : resolution / adopted by the Human Rights Council, 9 October 2013, A/HRC/RES/24/21, available at: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/22/6&Lang=E>.

UN Human Rights Council, Civil society space: resolution / adopted by the Human Rights Council A/HRC/RES/27/31, available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/27/31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/31).

disabilities, specifically, it refers to participation in meetings and accessibility of consultation documents. *Aarhus convention*<sup>8</sup> sets out Minimum requirements for public participation in environmental decision-making through accessing information and providing comments on environmental documents.

### **Council of Europe**

The primary document that provides guarantees related to citizen participation is the *Convention for the Protection of Human Rights and Fundamental Freedoms*, protecting freedom of expression and freedom of assembly and association<sup>9</sup> (Articles 10-11).

The *European Charter of Local Self-Government*<sup>10</sup> does not include any specific principles or forms of citizen participation at local level. However, paragraph 2 of the Article 3 refers to assemblies of citizens, referendums or any other form of direct citizen participation.

The right to participate in the affairs of a local authority was introduced by the *Additional Protocol to the European Charter of Local Self-Government*.<sup>11</sup> The Protocol (Article 2 para 2a) sets out implementing measures for its application in practice: “*procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them*”. The Explanatory Report to the Additional Protocol under the Article 2 para 2 emphasizes that the **list of these measures is not exhaustive**: “*This paragraph enumerates, non-exhaustively, measures that are to be taken as part of the effort deriving from the general obligation set out in paragraph*”. Besides, Article 1 paras 5.1-5.3 require that the formalities, conditions and restrictions to the exercise of the right to participate should be prescribed in law as well as “*formalities, conditions and restrictions necessary to ensure that ethical integrity and transparency of the exercise of local authorities’ powers and responsibilities are not jeopardised by the exercise of the right to participate*”. The Protocol also determines the authorities to which the Protocol applies.

Appendix II (Part B, paragraph 7, point i) of the *Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life* recommends to members states’ governments to frame a policy promoting public participation in local public life and enlists measures to encourage and reinforce citizen’s participation in local public life:

*“Develop, both in the most populated urban centres and in rural areas, a form of neighbourhood democracy, so as to give citizens more influence over their local environment and municipal activities in the various areas of the municipality. More specifically:*

*Set up, at sub-municipal level, bodies, where appropriate elected or composed of elected representatives, which could be given advisory and information functions and possibly delegated executive powers;”*

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<sup>8</sup> UN Economic Commission for Europe (UNECE), Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“Aarhus Convention”) 1998, available at: <http://ec.europa.eu/environment/aarhus/>.

<sup>9</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, available at: [http://www.echr.council.int/Documents/Convention\\_ENG.pdf](http://www.echr.council.int/Documents/Convention_ENG.pdf).

<sup>10</sup> Council of Europe, European Charter of Local Self-Government, ETS No.122, 15.X.1985, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007a088>

<sup>11</sup> Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, CETS 207 – Local Self-Government (Protocol), 16.XI.2009, available at: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482a>.

Minimum standards as regards the right to access relevant information held by public authorities, especially for those acting in the public interest, are introduced in the *Convention on Access to Official Documents*<sup>12</sup>. Article 10 of the Convention stipulates that: “*At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.*”

Electronic democracy as a means for participation was recognised by the *Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy)* that contains concrete guidelines for introducing and developing e-democracy.

*Recommendation CM/Rec (2009)2 of the Committee of Ministers to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level*<sup>13</sup> includes a self-assessment tool for citizen participation at the local level.

The participation of NGOs in democratic decision making process is addressed in two Council of Europe documents. The CM/Recommendation (2007)14 on the legal status of NGOs<sup>14</sup> elaborates on the obligations of the states:

*“76. Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.*

*77. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.*

The *Code of Good Practice for Civil Participation in the Decision Making Process* (2009) defines general principles, guidelines, tools and mechanisms for active participation of NGOs in the decision-making process, based on actual experiences from NGOs across Europe. The importance of the NGO participation in decision-making processes at all levels was also acknowledged by the OSCE-ODIHR – Venice Commission Guidelines on Freedom of Association from 2015.<sup>15</sup>

The Council of Europe has also developed standards for the participation of certain categories of persons in public life: women; young people; foreigners; persons with disabilities; minorities.

Compulsory or recommended quota systems for minimum number of same-sex candidates for local councils, local executive bodies and various committees and boards formed by local bodies were suggested by several Council of Europe documents, for example, the

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<sup>12</sup> Council of Europe, Convention on Access to Official Documents 2009 (CETS No. 205). Available at: <http://www.Council of Europe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084826>.

<sup>13</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)2 of the Committee of Ministers to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level, available at: [https://wcd.Council of Europe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)2&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.Council of Europe.int/ViewDoc.jsp?Ref=CM/Rec(2009)2&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

<sup>14</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, available at: <https://wcd.Council of Europe.int/ViewDoc.jsp?id=1194609>

<sup>15</sup> OSCE-ODIHR – Venice Commission, Guidelines on Freedom of Association, 2015. Available at <http://www.osce.org/odihr/132371?download=true>.

*Declaration on equality between women and men as a fundamental criterion of democracy*<sup>16</sup> and the above mentioned *Recommendation CM/Rec (2001)19 on the participation of citizens in local public life*. The European Convention on the Participation of Foreigners in Public Life at Local Level<sup>17</sup> obliges the parties to guarantee to foreign residents, on the same terms as to its nationals, the rights to freedom of expression, assembly and association. In addition, the parties may commit to apply Chapters B and C of the Part I. of the Convention, hence to set up consultative bodies to represent foreign residents at a local level and guarantee foreign residents the right to vote in local elections. All parties have to ensure that all information is available to foreign residents concerning their rights and obligations related to the local public life.

*Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life* encourages governments to continue their efforts in this field by adopting appropriate legislation, developing support services so that persons with disabilities can participate in political life as citizens holding equal political rights and obligations.

Participation of young people is encouraged by a number of the recommendations of the Committee of Ministers<sup>18</sup> to member states calling them to adopt policies and legislative framework which would enable young people to participate in local and regional affairs.

Recommendation CM/Rec (2004)13 of the Committee of Minister to member states on the participation of young people in local and regional life recalls that the principles for youth participation apply also at a local level. The Revised European Charter on the Participation of Young People in Local and Regional Life is appended to this Recommendation.

The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages provide framework and instruments for *“effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”* and protection of the right to use a regional or minority language in private and public life.

## **LEGAL FRAMEWORK FOR PARTICIPATORY TOOLS IN UKRAINE**

The legal framework for local democracy instruments in Ukraine is based on the Constitution of Ukraine, Law of Ukraine on “Local Self-Government in Ukraine”, special laws which regulate specific participation tools, such as the Laws of Ukraine “On the access to Public Information”, “On information”, “On Applications of Citizens”; the Law of Ukraine on “Local Self-Government in Ukraine”, that provides a framework of tools and an opportunity to further elaborate them in the statutes of territorial communities, such as general meetings and

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<sup>16</sup> Council of Europe: Declaration on equality between women and men as a fundamental criterion of democracy MEG-4(1997)018.

<sup>17</sup> Council of Europe, The European Convention on the Participation of Foreigners in Public Life at Local Level, available at: <http://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168007bd26>.

<sup>18</sup> Recommendation CM/Rec (97)3 of the Committee of Ministers to member states on youth participation and the future of civil society. Recommendation CM/Rec (2004)13 of the Committee of Minister to member states on the participation of young people in local and regional life. The Revised European Charter on the Participation of Young People in Local and Regional Life is appended to this Recommendation.

Recommendation CM/Rec (2006)1 of the Committee of Ministers to member states on the role of national youth councils in youth policy development.

Recommendation Rec(2006)14 of the Committee of Ministers to member states on citizenship and participation of young people in public life.

Recommendation CM/Rec (2010)8 of the Committee of Ministers to member states on youth information.

Recommendation CM/Rec (2012)2 of the Committee of Ministers to member states on the participation of children and young people under the age of 18.

Recommendation CM/Rec(2015)3 on the access of young people from disadvantaged neighbourhoods to social rights.

bodies of self-organisation of territorial community members, local initiatives and public hearings; bylaws; statutes of territorial communities, regulations and decisions of a local council, rules and procedures of local councils and executive committees.

The right of citizens to participate in public affairs is based on Articles 38, 69, 70 and 140 of the Constitution of Ukraine. Article 38 provides the right to participate through national and local referendums. Article 69 mentions “other forms of direct democracy” apart from referendum and elections. Article 140 provides an opportunity *“upon the initiative of residents, the creation of house, street, block and other bodies of popular self-organisation, and to assign them part of their own competence, finances and property.”*

Local referendums are to be regulated by a special law in Ukraine. However, after the adoption of the Law of Ukraine “On all-Ukrainian referendum”, the Law of Ukraine “On all-Ukrainian and local referendums was repealed. Currently, a draft law on local referendum is registered in the Verkhovna Rada but hasn’t been discussed yet. The Council of Europe has provided its opinion on the draft law. (Legislative regulations and practices concerning local referendums in the European countries will not be discussed in this opinion).

The following legislative initiatives (draft laws) have been also proposed and registered in the Verkhovna Rada since 2015: the draft laws on public hearings, local initiatives, public control, bodies of self-organisation of population and general meetings of members of territorial community. The Council of Europe has already provided its opinions on the draft laws of Ukraine on general meetings of territorial community members at place of residents<sup>19</sup> and on bodies of self-organisation of population<sup>20</sup>. It can be concluded that, if adopted, certain or most of citizen participation instruments will be regulated in detail by the special laws, especially as regards the implementation procedures and rules.

The adoption of such special laws should not limit the ability of territorial communities to adapt to local conditions prescribing the relevant rules regulations in their statutes and should not lead to overregulation. It should establish a basic framework and minimum standards for citizen participation tools allowing local authorities to launch initiatives and experimentations.

The following instruments of citizen participation already exist in Ukraine and are regulated by the legislation<sup>21</sup>:

- **Local referendum** (A possibility to hold a local referendum is prescribed in the Constitution of Ukraine and the Law of Ukraine on “Local Self-Government in Ukraine”, however, this tool is not available due to the absence of a special law on local referendum).
- **Public information request** (The Laws of Ukraine “On Access to Public Information”, “On Information”, the Decree of the President of Ukraine and the Ordinance of the Cabinet of Ministers of Ukraine).

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<sup>19</sup> Council of Europe, Directorate General of Democracy, Democratic Institutions and Governance Department, Appraisal of the Draft Law Of Ukraine “On General Meetings (Conferences) at Place of Residence of Territorial Community Members”, CELGR/LEX (2016)7, Strasbourg, 16 September 2016.

<sup>20</sup> Council of Europe, Directorate General of Democracy, Democratic Institutions and Governance Department, Appraisal of the Draft Law of Ukraine “On Self-Organisation Bodies of Population”, CELGR/LEX (2016)7, Strasbourg, 16 September 2016.

<sup>21</sup> Participatory instruments and legal acts mentioned are not exhaustive.

- **Applications (requests) of Citizens** (The Law of Ukraine “On Applications of Citizens” and the Ordinance of the Cabinet of Ministers of Ukraine).
- **Reception of citizens** (The Law of Ukraine “On Applications of Citizens”, the Decree of the President of Ukraine).
- **E-petitions** (The Law of Ukraine “On Applications of Citizens”, the Decree of the President of Ukraine).
- **Local initiative** (Law of Ukraine “On Local Self-Government in Ukraine”, procedures for local initiative to be set out in the statutes of territorial communities regulate, and / or the regulations adopted by a local council).
- **Public expertise** (The Ordinance of the Cabinet of Ministers of Ukraine).
- **General meetings** of population at place of residence (The Law of Ukraine on “Local Self-Government in Ukraine”, the Resolution of the Verkhovna Rada of Ukraine, statutes of territorial communities, regulations adopted by local councils).
- **Bodies of self-organisation** of territorial community members (The Law of Ukraine on “Local Self-Government in Ukraine”, the Law of Ukraine “On Bodies of Self-Organisation of Population”).
- **Public hearings** (The Law of Ukraine on “Local Self-Government in Ukraine”, procedures and organisation of public hearings are to be regulated by the statutes of territorial communities regulate, and / or regulations adopted by a local council).
- **Participatory budget** (at the stage of introduction / piloting in several dozen cities across the country, introduced by the regulations adopted by local councils); no clear legislative framework seems to exist in this respect.

## SCOPE AND LEVELS OF CITIZEN PARTICIPATION

INGO Code of Good Practice for Civil Participation in the Decision-Making Process<sup>22</sup> elaborates four levels of civil participation and a matrix of participation. Although, the Code is mainly focused on engagement of NGOs, the proposed phases and matrix could also be applicable to general public and individuals. The paradigm of the levels of citizen participation also includes territorial and governmental dimensions: national, sub-national and local level.

Depending on **phases of decision-making** and intensity of participation, there are **four levels of participation** – from least to most participative:

- **Information.** Relatively low level of participation which usually consists of a one-way provision of information from the public authorities and no interaction or involvement with NGOs is required or expected.
- **Consultation.** Public authorities may ask NGOs for their opinion on a specific policy topic or development. The initiative and themes originate with the public authorities, not with the NGOs.
- **Dialogue.** The initiative for dialogue can be taken by either party and can be either broad or collaborative.
- **Partnership.** The highest level of participation where NGOs and the public authorities co-operate closely together while ensuring that the NGOs continue to be independent and have the right to campaign and act irrespective of a partnership situation.

<sup>22</sup> Council of Europe, Conference of INGOs of the Council of Europe, Code of Good Practice for Civil Participation in the Decision Making Process, CONF/PLE(2009)CODE1, adopted on 1 October 2009  
Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eed5c>

Partnership can include activities such as provision of services, participatory forums and the establishment of co-decision-making bodies.

<b>MATRIX OF CIVIL PARTICIPATION</b>						
<b>Levels of participation</b>						
<b>PARTNERSHIP</b>	<ul style="list-style-type: none"> <li>Working group or committee</li> </ul>	<ul style="list-style-type: none"> <li>Co-drafting</li> </ul>	<ul style="list-style-type: none"> <li>Joint decision-making</li> <li>Co-decision making</li> </ul>	<ul style="list-style-type: none"> <li>Strategic partnerships</li> </ul>	<ul style="list-style-type: none"> <li>Working groups or committee</li> </ul>	<ul style="list-style-type: none"> <li>Working groups or committee</li> </ul>
<b>DIALOGUE</b>	<ul style="list-style-type: none"> <li>Hearings and public forums</li> <li>Citizens' forums and future councils</li> <li>Key government contact</li> </ul>	<ul style="list-style-type: none"> <li>Hearings and Q&amp;A panels</li> <li>Expert seminars</li> <li>Multi-stakeholder committees and advisory bodies</li> </ul>	<ul style="list-style-type: none"> <li>Open plenary or committee sessions</li> </ul>	<ul style="list-style-type: none"> <li>Capacity-building seminars</li> <li>Training seminars</li> </ul>	<ul style="list-style-type: none"> <li>Working groups or committee</li> </ul>	<ul style="list-style-type: none"> <li>Seminars and deliberative forums</li> </ul>
<b>CONSULTATION</b>	<ul style="list-style-type: none"> <li>Petitioning</li> <li>Consultation online or other techniques</li> </ul>	<ul style="list-style-type: none"> <li>Hearings and Q&amp;A panels</li> <li>Expert seminars</li> <li>Multi-stakeholder committees and advisory bodies</li> </ul>	<ul style="list-style-type: none"> <li>Open plenary or committee sessions</li> </ul>	<ul style="list-style-type: none"> <li>Events</li> <li>Conferences</li> <li>Forums</li> <li>Seminars</li> </ul>	<ul style="list-style-type: none"> <li>Feedback mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>Conferences or meetings</li> <li>Online consultation</li> </ul>
<b>INFORMATION</b>	<ul style="list-style-type: none"> <li>Easy and open information access</li> <li>Research</li> <li>Campaigning and lobbying</li> <li>Website for key documents</li> </ul>	<ul style="list-style-type: none"> <li>Open and free access to policy documents</li> <li>Website for key documents</li> <li>Campaigns and lobbying</li> <li>Web casts</li> <li>Research input</li> </ul>	<ul style="list-style-type: none"> <li>Campaigning and lobbying</li> </ul>	<ul style="list-style-type: none"> <li>Open access to information</li> <li>Website for information access</li> <li>E-mail alerts</li> <li>FAQ</li> <li>Public tendering</li> <li>Procedures</li> </ul>	<ul style="list-style-type: none"> <li>Open access to information</li> <li>Evidence gathering</li> <li>Evaluations</li> <li>Research studies</li> </ul>	<ul style="list-style-type: none"> <li>Open access to information</li> </ul>
<b>Steps in the political decision making process</b>	<b>AGENDA SETTING</b>	<b>DRAFTING</b>	<b>DECISION</b>	<b>IMPLEMENTATION</b>	<b>MONITORING</b>	<b>REFORMULATION</b>

## INTEGRATING CITIZEN PARTICIPATION IN NATIONAL LEGAL FRAMEWORKS

Citizen participation can be regulated under different thematic laws in Europe. Rules and regulations concerning participation in policy and law making processes are included in different types of documents. Some countries have included procedures and rules in legally binding documents (laws, and regulations). Others have adopted documents without binding character (codes, standards, guidelines, policy documents). For example, the Austrian Council of Ministers adopted the “**Standards of Public Participation**” (2008). The document aims to maximize the effectiveness of public participation through application of standards by all levels of government. The standards are divided into three sections: i) standards for the preparation of the participation process; ii) standards for the implementation of the participation process; iii) standards for the monitoring and evaluation after the participation process. They are formulated as a list of questions to be answered for each decision-making process. If all questions receive a positive answer, the public participation is considered as of a high-quality. The standards are now recommended to be used in all fields of public administration.<sup>23</sup>

The legal nature of the document is crucial, as it has an effect on how much the provisions can be enforced in practice and what compliance measures are available. Legally binding documents could include the following<sup>24</sup>:

- legal obligation to publish draft legislation, expert documents and information;
- principles of participation;
- who to consult, with an emphasis that anybody who will be affected by the specific decision, an interested party should be part of the process, and special attention should be given to reach out and include vulnerable groups;
- inclusion of the civil society representatives into various consultative bodies and working groups;
- what documents should be consulted (laws, regulations, policies);
- publication of announcement about the beginning of a decision-making process and consultation on early and subsequent drafts;
- minimum timeframes (deadlines) for public consultations (recognizing that as a good practice drafts should not be given less than 10 day for consultation);
- recommendations regarding the use of different methods of consultation;
- exemptions from general rules, when rules on the participation may need to be adjusted to specific local conditions or situations (e.g., emergency situations);
- how feedback on the process and issues consulted is provided;
- existence of a gatekeeper, a government body responsible for monitoring the implementation of public consultation;
- compliance with consultation rules in practice.

The experience of different countries shows that a set of measures may indeed be needed; such measures could help to ensure compliance and meaningful participation, to ensure effective implementation of the legal guarantees. It could include:

- Plan for human and financial resources necessary for effective participatory

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<sup>23</sup> Council of Europe, Draft text by the CDDG, Civil Participation In Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States, GT-SC(2016)2, Strasbourg, 18 April 2016 (p.25)

<sup>24</sup> Council of Europe, Draft text by the CDDG, Civil Participation In Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States, GT-SC(2016)2, Strasbourg, 18 April 2016 (p.31-33)

processes. This means assigning specific persons that will coordinate the process, allocate enough funding, including where possible funds to ensure broader outreach to interested public. An assessment of the Romanian Law concluded that: “*the failure to assign the required resources has represented a practical difficulty as far as the implementation of the Law on the Transparency on Decision-Making was concerned*”. Several countries propose the assignment of specific public authority officials in each public authority body to coordinate and monitor the consultation process (e.g., Austria, Bosnia and Herzegovina, Croatia, the UK);

- Introduce additional implementing regulations/bylaws to strengthen guarantees for implementation. For example, in Bosnia and Herzegovina the Ministry of Justice adopted a Rulebook, which contains detailed provisions relating to the implementation of the Rules on Consultation in Legislative Drafting within the Ministry of Justice;
- Develop guidelines, user-friendly brochures or online tools and workshops to further explain the document, increase understanding and also ensure harmonized implementation by different bodies. For example in Austria worksheets on different topics were developed including check-lists to facilitate the participatory process. The Croatian Government Office for Cooperation with NGOs produced guidelines for civil servants tasked to apply the Code for Consultations;
- Develop plans for consultation to clarify the objectives of the process, decide on the best method, assess needed financial resources needed and plan for those before the drafting starts;
- Develop list of individuals and organisations active in the sector or potentially interested to take part in the process (e.g., such lists exist in Bosnia and Herzegovina). Such lists help to identify whom to involve; however, they should not prevent other parties to be involved in the process;
- Create lists of on-going consultation processes and lists of organisations represented in different working groups (e.g. Croatian Government Office for Cooperation with NGOs produced such lists).

## **EXAMPLES OF PARTICIPATORY TOOLS IN EUROPEAN COUNTRIES<sup>25</sup>**

A diverse spectrum of local democracy instruments exists in the European countries, consisting of different modalities of direct and participatory democracy. There are no universal forms of participation, although some similarities and trends exist which are tailored in countries at different levels of government.

### **Public Initiatives**

Apart from referendums (nation-wide and local referendums), citizens’ initiatives are a popular instrument of direct democracy in Europe. However, different regulations apply in different countries (and even in one and the same country) regarding the level of implementation of this instrument, and even as to the requirements, minimum popular

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<sup>25</sup> The section of the opinion OVERVIEW OF PARTICIPATORY TOOLS IN EUROPEAN COUNTRIES summarizes a country-specific overview provided by the study of the European Institute of Public Administration and may include partial reproduction. European Institute of Public Administration, Direct and Participatory Democracy at Grassroots Level: Levers for forging EU citizenship and identity?, 2011 (p.19-81), available at: <http://cor.europa.eu/en/documentation/studies/Documents/direct-participatory-democracy.pdf>

support and issues concerned. For example, in **Czech Republic** and **France** citizens' initiatives are only available at regional level. At national level a threshold for initiation of citizens' initiatives ranges from 40 000 to 500 000 citizens (e.g. 40 000 in the Netherlands, 50 000 in Lithuania and Hungary, 100 000 in Poland, 500 000 in Spain).

**Citizens' initiatives** were introduced at **municipal level** in Flanders, **Belgium**, in 2006. The threshold for such initiative is 1-2% depending on the municipality population (2% for municipalities with less than 15 000 residents, 300 people if the population is between 15 000 and 30 000, and 1% for more than 30 000). The initiatives are limited to municipal policy and services issues. Furthermore, the minimum age to participate is fixed at 16 years. The evaluation conducted 6 months after the introduction of such instrument showed that 10% of municipalities were already using the instrument. In **the Netherlands** citizens' initiative is present at regional and local level; however, each municipality has to decide whether or not they allow this instrument. Municipal councils are responsible for the regulatory framework for citizens' participation at local level in **Hungary**. The threshold ranges between 5-10%. In **Poland**, a threshold for registration is set at 5% for voivodeship and 10% for district/municipality level.

In **Germany** (particularly in such Lander as Bavaria, Hessen, Berlin and Hamburg with least restrictive requirements in terms of thresholds and permissible issues) citizens' initiatives at **communal level** are frequently used and are a regular element of local political process. They are also used at **Lander and federal level**. An interesting feature of such instrument in Germany is a three-step (or two-step procedure at local level) procedure. Citizens' initiatives are used in **Austria** at federal and Lander level. Low thresholds (100 000 on federal and 6000 - 57 106 on Lander level) allow greater participation of minorities.

### **Participatory Budgeting**

**Belgium, Germany, Spain and Portugal** are among the leading countries in Europe in implementing participatory budgeting. **Belgium** was the first country to introduce participatory budgeting system in 2003 in Jemappes-Flénu which is part of the city of Mons on Wallonia. Several municipalities in Flanders have also already adopted participatory budgeting mechanisms allowing for part of the municipal budget to be delegated to area committees or citizens' initiatives. In the **Netherlands** participatory budgeting is used in several municipalities, while dozens of municipalities are also experimenting with this approach.

The **German** experiment with participatory budgeting in 1998 resulted in 140 municipalities having implemented or discussed it by 2010. However, the modalities are limited in terms of citizen decision making, since direct decisions by citizens on local budgets are not legally permitted, being purely consultative mechanisms aiming at information, transparency, accountability and changes in local procedures.

In **Portugal** participatory budgeting is the main modality of participatory democracy successfully working in several municipalities. **Spanish** cities e.g. Seville and Albacete are recognized as being amongst the most successful examples, and some are notable for their inclusion of minority groups. A state network of municipalities with participatory budgeting has been created with a technical secretariat in Málaga. In the **UK** participatory budgeting mechanism was launched in 2010 with nine Councils selected as pilot schemes under the programme "Your Local Budget". This instrument has mainly taken form of the management

of community funds at local and city level, and public/private arrangements. In **Slovenia** citizen's assemblies play a role in participatory budgeting.

Sopot was the first city in **Poland** to introduce participatory budgeting in 2011. The popularity of this tool is growing, although there is no unified model and each city creates its own model of participatory budgeting according to the needs. In Wroclaw (one of the best examples in Poland) the amount of funds allocated within the framework of Wroclaw Civil Budget 2016 (funds for the purpose of participatory budgeting) amounts to PLN 25 million. Citizens are invited to submit their own ideas of projects to be implemented in the city. The projects are examined by local authorities and selected by a ballot by the citizens and are implemented in accordance with the previously developed roadmap/schedule.<sup>26</sup>

### **General Meetings of Population / Citizens' Assemblies**

In **Bulgaria** the Law for Direct Participation of the Citizens in the State Power and in the Local Self-Government provides an opportunity for citizen's assemblies at municipality level ("general meeting of populace"). This participatory modality is allowed in municipalities with up to 10 000 residents. In cities with a population greater than 1000, the assemblies should be broken down according to electoral districts. The decisions are binding if 25% of the population eligible to vote participates (in municipalities with voting population under 150 people the threshold is 30%). The organs of the municipality can call for citizens' assemblies. Citizens can propose convening an assembly by presenting initiatives to the local administrative organs (such initiatives to be supported by at least 25% of the population eligible to vote).

In **Slovenia** municipal statutes lay down provisions on convening citizens' assembly and on methods of decision-making and circumstances in which its decisions should be binding. The assemblies are called upon the initiative of a local mayor or on the demand of the population (5% threshold). Citizens' assemblies can give advice and opinions and play a role in participatory budgets.

Various forms of participatory decision-making for management of local issues have been used in **Greece**, such as district councils, residents' assemblies, neighbourhood committees and local discussion forums. Citizens' assemblies are mandatory at least once a year at the local, or sub-local level, depending on the size of the community and have a broad mandate encompassing all issues with the competence of the communes. Assemblies in communities of 10 000 inhabitants or greater comprise not only citizens, selected by lot from the electoral register, but also representatives of local business and public interest organisation selected by the local authorities.

### **E-Participation**

**Estonia** has been developing strong eParticipatory measures ("eParticipation") aiming at increasing participation and improving deliberation at national and local level. While public forums and meetings with citizens are rare in the policy-making process, the use of e-communication is very high. **Slovakia** is also using e-democracy tools, such as e-forums, e-consultations, e-petitions and information portals. The **Netherlands** have various online

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<sup>26</sup> Council of Europe, Draft text by the CDDG, Civil Participation In Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States, GT-SC(2016)2, Strasbourg, 18 April 2016 (p.28).

discussions sites at national and local level for citizens to participate in the decision-making process.

**Denmark** has been developing solutions for e-democracy for 15 years already; they are composed of many initiatives at both national and local levels. For example, at the state level the *Open data* initiative is designed to provide access to public data and enable its re-use. Many state institutions use *social media* to inform and engage in a debate with the public. Digital citizen panels are an alternative consultation channel that supplements other eDem initiatives of the municipalities. Citizens simply register themselves on the municipality's website and provide feedback to the requested issues. The panels are used as a poll and also generate input for planning and strategy processes in the municipalities<sup>27</sup>.

E-Games ("eGovernment Assessment, Measuring and Evaluation System") was introduced in **Hungary** in 2004 aiming to promote greater interaction between citizens and the public administration allowing people to evaluate the public administration's performance.

In **Malta** ePublic authority initiative has been in place, aiming at improving efficiency, transparency and public involvement in the implementation of projects, the enactment of laws and formulation of new policies. The initiative includes a provision of public authority's e-services, including eForms (creation of online forms), Mybills (Public authority's online billing solution) and eProcurement (allows to track public tenders). The online consultations are divided into four stages: i) open consultations; ii) closed consultation; iii) publication of feedback; iv) consultation outcome. Free basic ICT courses were organised to familiarize citizens with the use of the tool<sup>28</sup>.

### **Advisory Mechanisms, Special Groups' Councils**

Citizen advisory organisations exist in nearly all municipalities in **Sweden**. Non-binding, open-access, advisory mechanisms, "planning cells", are used at Lander and local level in **Germany** e.g. in Bavaria for the purpose of establishing citizens' priorities and preferences in public policy. Public dialogue sessions (non-binding and deliberative) are used at Lander and local levels, while "charrettes" (public meetings or workshops devolved to solving a specific problem) and citizens' panels take place only at local level; e.g. in the city of Bremen citizens' panels were organised on the use and contribution to the development of sustainable energy resources.

**Various groups** are operating in Finland, including **youth councils, councils for disabled people and the elderly**. In Denmark Senior Citizens' Council supports senior citizens' participations in the decision-making process at a local level serving as an intermediary between city councils and local senior citizens. Senior Citizens are elected for four years by direct election among, and by, all 60+ year-old citizens and equally split between men and women. Local councils are obliged by Law to consult the Senior Citizens' Council about the decision-making on any issue relevant to the elderly population.

Examples of youth councils can be found in numerous cities in **Belgium**, where advisory bodies involve citizens and stakeholders to discuss various topics and produce recommendations for the municipal authorities.

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<sup>28</sup> Council of Europe, Draft text by the CDDG, Civil Participation In Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States, GT-SC(2016)2, Strasbourg, 18 April 2016 (p.24).