institut alternativa

Institute Alternative
(name and surname of a natural person/institution, organization or association submitting comments, proposals and suggestions/contacts)

Ministry of Public Administration
(ministry)

COMMENTS, PROPOSALS AND SUGGESTIONS

On draft of National Action Plan for implementation of initiative Open Government Partnership in Montenegro (2018-2020)

Proposal no. 1: Create and keep up to date the catalog of services provided by the authorities on both state and local levels, as well as by organizations with public authorities.

Explanation: The lack of a harmonized catalog of administrative services makes it difficult for citizens to become better acquainted of the types of services available to them. Additionally, it makes the assessment of service modernization more difficult, especially regarding the availability of electronic services. There is a lack of baseline value in relation to which we could calculate the percentage of available electronic services, given that the exact number of available administrative services is unknown. By incorporating this activity, the administration would demonstrate the openness of public administration towards the needs of citizens, and it would simplify obtaining the basic information on work of state and local authorities and organizations with public authorities.

Proposal no. 2: The Ministry of Public Administration, in cooperation with civil society organizations, should perform annual monitoring of compliance with guidelines for creating electronic documents in accordance with the e-accessibility standards.

Explanation: In 2017, the Ministry of Public Administration, in cooperation with the Association of the Blind of Montenegro, adopted Guidelines for creating electronic documents in accordance with the e-accessibility standards, innovating the previously adopted guidelines (2016) in this area. However, there is still no systematic monitoring of compliance with the guidelines. Therefore, in order to enable compliance with the standards of electronic accessibility in practice, it is necessary for the Ministry of Public Administration to initiate and regularly monitor compliance with the guidelines for creating electronic documents in accordance with the e-accessibility standards.

Proposal no. 3: State administration bodies, local administration bodies, organizations with public authorities and companies whose founder or major shareholder is state or municipality, should proactively publish on their website the salary scale for each individual title/job category.

Explanation: Not all of the authorities, stipulated by the Law on Free Access to Information, fulfill the obligation of proactively publishing basic information on their employees. This law prescribes an

obligation of the authorities to publish only data on the salaries of public officials, while citizens are deprived of simplified and summary information on the salary scale in public sector. SIGMA, joint initiative of the OECD and European Commission, in their regular monitoring reports often indicates that it is impossible to perform a credible analysis of wages in the public sector, as well as a comparison with wages in other sectors, because there is no systematic obligation of authorities to give informations on salaries of employees, nor to provide a simplified presentation of the general salary scale or by categories of job positionand titles.

Proposal no. 4: Human Resources Management Authority and competent secretariats of local authorities should proactively publish decisions to fill vacant posts, testing reports and recruitment decision.

Explanation: Montenegro, together with Serbia, is the worst ranked state in terms of transparency of decisions on the selection of the civil servants and state employees. These are the results of regional monitoring of the public administration reform implemented within the framework of the Western Balkan Enabling Project for Civil Society Monitoring of Public Administration Report – WeBER project. On the other hand, in Albania, Kosovo, Macedonia, Bosnia and Herzegovina, the availability of information is on a higher level, such as availability of information on ranking lists and information on the elected candidate. Also, in Macedonia, personal data of candidates are protected by publishing data on prospective servants in an encrypted form.

Before the vacancy announcement in Montenegro, head of state authority is obliged to make a decision on initiating the procedure to fill a vacancy. This internal decision is not publicly available, making it difficult to monitor the employment procedures in public administration. This enables state and local authorities and Human Resource Management Authority to have superiority in potential court disputes, when the candidates to protect their rights. Candidates can not have a timely insight into the internal decision of the state authority, unless it is proactively published. Therefore, by publishing all information regarding the procedures for filling vacancies, with the ability of protecting personal data, the administration would demonstrate a more decisive intention to fight low level of trust in the integrity of testing procedures and recruitment in public administration. According to the research commissioned by Institute alternative in 2018, only one quarter of citizens believe that education, skills and experience of candidates are key criteria in the recruitment procedures. Citizens believe that employment in public administration is most commonly done through friends and family connections (62%) and through political connections (56%).

An excuse for rejecting this proposal can not be the protection of personal data, having in mind the comparative practice and the possibility that all of the candidates could track the outcomes of their job application in an encrypted form.

Proposal no. 5: Ministry of Finance in cooperation with the Union of Municipalities should develop a form of local budgets for citizens in 2019, so that gradually, by the end of 2020, all of the local administrations are able to publish the budget in a format adapted for citizens.

Explanation: Comprehension of planned budget revenues and expenditures is an essential precondition for the participation of citizens in deciding on the budget of local administrations. Therefore, drafts on budget decisions should be available in a form that is understandable to citizens before the public discussion. Adopted budget decisions should be presented in a separate budget format for citizens.

Local public finances, as well as transparency of local budgets, are identified as very problematic, considering that it is impossible to find basic budget information at websites of all local administrations. Greater citizen engagement in the budget cycle and greater transparency are necessary for greater control of public spending at the local level, which is pointed out by the Government, civil society and international actors as necessary. Proposal for publishing the budget for citizens on the local level should provide a significant incentive for civic participation. In addition, this is complementary to the obligation to create citizens budget on the central level of public administration, which was confirmed by the Conclusions adopted at the sixth meeting of the Special Working Group for Public Administration Reform, consisting of the representatives of the European Commission and the Government of Montenegro.

Proposal no. 6: The Law on Free Access to Information should be amended with an aim of abolishing tax and business secrecy as limitation to free access of information

Explanation: Instead of another Analysis of the current Law on Free Access to Information (in addition to one planned by the Public Administration Reform Strategy, and another one by the Twinning project), we suggest for tax and business secrecy to be abolished, taking into account the findings of a civil society and EU standards in the field.

The transparency of public spending was significantly affected by the recent amendments to the Law of Free Access to Information in May 2017, which allowed that information of public interest can be declared as tax or business secrecy, in accordance with a special Law. These amendments to the Law of Free Access to Information were adopted without a public discussion, so there is absence of justification for introducing tax and business secrecy as a possible basis for limiting access to information. In addition, the Law did not specify the period during which some information could be considered a tax or business secret, For other limitations of access to information, the period of expiry is envisaged. Neither the Ministry of Finance nor the Ministry of Public Administration, as the key competent institutions, have reported to what extent the tax and business secrecy affected the implementation of the reforms in public finance management and public administration.

Institute Alternative has already faced the negative effects of these amendments. We have been denied the access to copy of the Report on the implementation of the Tax Administration's Tax Debt Management Plan and strengthening of the tax collection measures, as well as to the information on fulfillment of contractual obligations of 16 municipalities on tax debt reprogramming. By declaring this information a tax secret, state administration bodies, which should serve the citizens, behave like private companies. Citizens remain deprived of information that is very important for assessing effectiveness of these bodies.

In other words, there is an over-riding public interest in publishing the information on tax debt of municipalities and the number of employees at the local level, given that they are funded by public money. The relevant international regulations, such as the European Parliament's Decree 1049/2001, clearly emphasize that access to documents on business and business interests of legal and natural persons should not be limited when there is an over-riding public interest. Therefore, we believe that there is no basis for the limitations in the Law of Free Access to Information. As long as there are such limitations, we will have an administration that is closed for the key issues of public expenditure.

6.1. Recommendations for solving other problems related to the Law on Free Access to Information:

1) Secrecy of the data – since the authorities have unlimited discretionary right in marking the data as a secret and that no effective procedures have been established – by changing this law, the Agency should be entitled to decide on the merits, and to abolish the confidential marks if it considers it unjustified and that it does not meet the terms of the law. It is also necessary that the authorities from whose documents the secrecy mark is taken off, have the right on further appeal in court procedure.
   Since the Agency is specialized in this field and that it has significant human and other resources, the Administrative Court should be relieved of decisions on these cases at first instance and improve access to information that is illegally classified as secret.
2) It should be prescribed that the Agency decides on the merits and makes final decisions on appeals in first instance because the erasure of that obligation has led to the point where procedures against authorities last unreasonably long and because of that access to the requested information is completely disabled.
   By the current procedure, Agency (with a great delay in decision making) gives back an illegal decision to the authority, to re-decide, and the authority makes the same decision again. Since the Agency doesn't act on appeals in timely manner, resolving the second appeal can be prolonged up to a one year period, even though the Agency could decide on appeals in first instance and declare that it is information of public interest which should be publicly available. The IA team a number of complaints from previous years that the Agency never dealt with, since it is selective in handling the complaints, and mainly resolves complaints on silence of administration, but almost never complaints on incorrect and incomplete established situation and misapplication of substantive law.
3) Prescribe and specify the procedure ofthe test of harmfulness, in the way that it will be established the preparation of a concrete file which will contain analysis and explanation that the public's interest to know has prevailed, or that there is a risk of publishing a document. That act would be then submitted to the Agency and/or the Court when the justification of confidentiality is questioned (this explanation should be similar to the explanation for decision of marking as a secret – prescribed by the Information Secrecy Act).
4) We propose for the provisions of the Law on Administrative Procedures that are applied in the procedure to be incorporated in the Law on Free Access of Information, so that the application is equalized and does not mislead the authorities and public administration employees, which happens in current situation.

5) Expend the list of document for proactive disclosure (inter alia, stipulate the obligation to publish: direct agreements (public procurements), information on subventions, grants or donations awarded, including a list of beneficiaries and the amount, reports on their implementation; list of laws, strategies and other documents that will be topic of a public discussion in that year;

5.1) As it turned out to be a problem, the Law should also prescribe mandatory and periodic update of the proactively published information.

6) Amendments to the Law should prescribe the obligation of the Agency to proactively publish the minutes of the inspection control of state authorities, regarding proactive disclosure of information, and to create and publish a special annual report on the situation in this field. The agency should also make a separate report on the situation in this area. The Agency should also make a separate report on the implementation of misdemeanor policy for responsible persons and institutions that violate the Law of Free Access to Information.

7) There was a problem in cases where the sum of different state actors gives the de facto ownership of a state or municipality over a public enterprise, the enterprises claim that they are not bonded by the Law.

8) Redefine the end of the procedure – not by delivering a decision, but delivering data. The IA had a few cases in which the paying of high costs of procedures are requested, it gives up on one part of information and asks for only a part of it, and then the authority claims that the access to such information has already been approved, and can not be requested again within six months, although access was not actually achieved.

9) To regulate more precise reporting of authorities about the implementation of laws towards the Agency, prescribing misdemeanor responsibility and for not submitting reports and statistical data, as well as submitting incorrect data.

10) The deadlines in the law are to be proposed in calendar days, especially the deadline for resolving requests and deciding on an appeal that should be ''as soon as possible and at the latest within the 15 calendar days''. Almost all authority bodies either wait for the last day to act on request or violates the deadline which, along the not acting on requests in timely manner and not deciding in initiated administrative procedures, almost completely disables access to information.

11) Although the Law stipulates that the submitter of request may choose the way in which the information is to be provided, most authorities refuse to provide the requested data in electronic form, thereby imposing unnecessary costs for the submitter of request. Therefore, the Government should establish a public policy of ''transfer'' from the traditional ''paperwork'' to electronic information, and encourage authorities to practice it.

12) In addition to the above mentioned, the obligation of all of the authorities to establish an intern database of all documents in order to enable the employee in charge of free information to easily find the requested information, should also be prescribed by law.

Proposal no. 7: Develop a publicly accessible register of obligors of the Law on Free Access to Information

Explanation: There is no database in Montenegro that contains unified information about the obligors of the implementation of the Law on Free Access to Information. In the past period, due to the different interpretation of Article 9 of the Law defining obligors, the citizens could not obtain certain information

(usually from public enterprises). This resulted in the long court disputes, which additionally affected the lack of transparency and poor implementation of the law.

In order to improve transparency and efficiency, when creating the register of obligors of the Law on Free Access to information, we should go a step further and make a classification of obligors (state administration bodies and ministries; agencies; funds; companies whose founder or majority shareholder is state; local administrations; companies whose founder or majority shareholder is local administration), but also to provide unified contact informations of these bodies.

Therefore, the proposed register of obligors of the Law on Free Access to Information should be public, reliable and regularly updated, with the following set of information:

- Name of the obligors, address and headquarters;
- Information on legal status and area of activity;
- Link to the website;
- Contact address and telephone number of the authorized official for handling the requests for free access to information.

It is advisable to create a database in a way that it is possible to filter the data, so that the citizens can see which public enterprises are obliged to implement the Law, with just one click.

Similar database was created by the Information Commissioner in Croatia. The database is available at the following link.

In this way, a high level of transparency and precision in the implementation of the Law would be achieved, and the problems and dilemmas about which institutions are obliged to implement the law would be minimized. At the same time, citizens would be provided with all relevant contact information for free access to information, all at the same website.

Proposal no. 8: The Government of Montenegro, within a special budget reserve banner, should allow timely publication of all decisions on the discretionary allocation of budget funds.

Explanation: Funds from the budget reserves, according to the legal framework, are used for financing unplanned expenditures or expenditures planned in an insufficient amount. The decisions on the spending of these funds are made by the Government (in the previous year 88% of the funds were allocated according to the decisions of Government) or by the Commission for the allocation of part of the reserve funds, which was founded by Government (according to whose decisions, 12% of these funds were allocated in the previous year).

Although this is a major total amount, which annually reaches up to 20 million euros (on average), the information about the allocation of the budget reserve funds is out of the reach of the citizens. This has a negative impact on transparency of public finances, as well as on the overall system of integrity.

Only during the past year the Government paid, among other things, almost 2.5 million euro to the citizens for improving their financial situation, at their request, according to the data available in the Proposal Law on Final Statement of Accounts of the State Budget for 2017. In addition, more than a million euro has

been paid to the citizens for medical treatments and education. In order to ensure equal treatment of all citizens and to improve the integrity when deciding on the allocation of the budget reserve funds, the publication of these decisions is of great importance. Otherwise, doubts about potential political and other misuses of these funds remain justified.

Proposal no. 9: Publish individual annual reports of contracting authorities on implemented public procurements in machine readable format, on the website of the Public Procurement Agency of Montenegro, within the banner named: ''Individual Reports of the Obligors of the Law on Public Procurement''.

Explanation: Consumption for public procurements exceeded half a billion in 2017. Information on how taxpayers money is spent through public procurement procedures is provided in the individual annual reports of the contracting authorities, which they submit to the Public Procurement Agency. Since 2016, the Public Procurement Agency publishes these reports on its website, but in a scanned PDF format, which disables the search, grouping and processing of data from the report. Considering the amount of the reports (over 600 contracting authorities annually) and the amount of money which public administration bodies spend on public procurements, it is necessary to publish these data in machine readable format, which would provide faster and more efficient processing of the data, mapping the misuses of public money and visualization of the expenditures for public procurements, so that the citizens would be more familiar with this issue.

Proposal no. 10: Publishing annual consolidated reports on public procurements prepared by the Public Procurements Agency in an open, machine readable and searchable format.

Explanation: Taking into account that this is the only report that treats the public procurements horizontally, on a level of all contracting authorities, and as well its extent and contents, and a large number of tabular statistical reports on public procurement procedures, it is necessary that report is easily searchable and that interested person can extract certain categories of data that could further be used for data processing, visualization of data for citizens, research etc.

Proposal no. 11: Prescribe the obligation that the data from the Registry of Public-Private Partnership (PPP) Projects, Registry of Public-Private Partnership Contracts and Registry of Concessions, which are all foreseen by the current Draft Law on PPP and Draft Law on Amendments to the Law on Concessions, are publicly available in machine readable format.

Explanation: Considering the high value of public-private partnership contracts and concessions, and also the impact of these projects on the state budget, it is necessary that the data on these business arrangements of the state are available to the citizens and interested public. The Draft Law of PPP foresees establishing two new registries which will contain data on public-private partnerships. Except the fact that it is necessary that information from these registries is publicly available, which is stipulated by the PPP Law and which is stated in the Public Debate Report on the Draft of the PPP Law, it is necessary that these data is machine readable in order to be easily searchable, ready to group and to process.

Proposal no. 12: The Directorate for Protection of Classified Information should prepare a report on the implementation of the Data Secrecy Act in the last 3 years that will include analysis of all of the provisions, and in particular the following information:

- Create a list of data whose secrecy mark has expired, within the legally stipulated time-limit (with a brief description);
- A list of national authorities that have formed a commission for periodic review of data confidentiality within the number of data whose confidentiality has been considered;
- The number of data that has reduced the degree of secrecy by each commission;
- A list of data from which the secrecy mark has been removed;
- Data on the implementation of penal provisions, especially the list of legal persons penalized on the base of each item of article 82 (individually)

Explanation: It is necessary to improve the implementation of the Data Secrecy Act by making more visible the application of the provisions concerning the obligation to review the classification of secrecy, and by reminding the authorities of the obligation to establish the commission for removing the marks of secrecy for which the need has ceased. This would significantly improve access to information and make the administration more open and transparent.

Proposal no. 13: Establish a working group that will consist of representatives of the Police, the Ministry of Internal Affairs, the State Prosecutor's Office, Supreme Court which will be managed by the Ministry of Justice, whose purpose will be preparing the analysis of the current situation and differences in the statistical reports of these bodies, and to propose the measures for gradual harmonization of statistics, with a deadline for the implementation of the conclusions and recommendations.

Explanation: It is necessary to improve statistics for the criminal justice system. The Police statistically reports on criminal offenses, the State Prosecutors Office reports of persons against whom criminal proceedings are initiated, while courts reports on cases (which may include several persons and several criminal offences). Although it is clear that due to such reporting, a qualitative assessment of the work of these bodies can not be made, there is no interest in investing efforts to improve and standardize reporting.

Although the Government coordinates the reporting of all bodies that manage different statistical data, the same Government has not taken any action regarding these problems. Example of successful overcoming of these differences is the Tripartite Commission, which operated in 2007-2012 and which harmonized the statistics of the three bodies for the criminal offences of corruption and organized crime. Therefore, the Ministry of Justice, as the competent ministry for justice, should make an effort to improve and harmonize the statistics of these bodies.

Proposal no. 14: Improve the transparency of government public policy making by proactively publishing the key documents on which are based the Acts of the Government and adopted/submitted to the

Parliament. More precisely, it is necessary to publish the opinions of the experts of the European Commission on all drafts of the Montenegrin laws and submit them to the Parliament with the draft laws; and further publish all reports of TAIEX experts, reports prepared within Twinning Projects and Peer Review Missions.

Explanation: Based on the comments and opinions of the European Commission, TAIEX and other experts, as well as the Peer Review reports, numerous decisions are made regarding the creation of public policies in Montenegro and their non-transparency prevents interested public from the equal participation in these processes. Therefore, these decisions should be publicly available for all citizens, and especially for the members of the Parliament, who are considering government draft laws and other acts.

Proposal no. 15: Improving the transparency of the work of the Government by periodically providing live stream broadcast sessions on the Government website; publishing the minutes and transcripts from sessions, or at least parts of the minutes related to expert discussions and decision making on systemic solutions.

Explanation: Unlike the Parliament, whose decision making is to a large extent transparent and the citizens can hear the reasons why the members of the Parliament have chosen to support or not to support certain questions, the decision making of the Government is discretionary and decisions are publicly announced after they are already made. That is why the discussion and decision making process should be more transparent through the live stream broadcast, and by the publications of transcripts and minutes from the sessions.