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**OPENNESS OF EXECUTIVE POWER INSTITUTIONS IN THE REGION AND MONTENEGRO**

**Recommendation for improvement based on the Regional Openness Index**

**Authors:** Dragan Koprivica, Milena Gvozdenović and Milica Kovačević



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**Introduction**

In cooperation with partners from a regional network of NGOs “Action SEE“ Center for Democratic Transition (CDT) prepared the policy paper in which we analyze a level of transparency, openness and accountability of executive power institutions in the Western Balkans region.

The policy paper is a result of extensive research, based on scientific methodology, conducted by the Action SEE members in the past few months. The aim of the overall research is to provide a detailed overview of the situation in these areas, and to contribute to implementation of the public administration reform, to have the effect on strengthening the principles of good governance and to help the institutions implement them more effectively in their work.

The policy paper, with accompanying analyzes, is the second such document. Action SEE members made recommendations for improvement of institutional openness even last year, following the research conducted.

Based on the results of the research carried out in 2016, analyzes have been carried out to provide an overview of the situation in the institutions of Montenegro and the region, including the observed shortcomings and good practices in this area. Based on these analyzes, last year, recommendations and “road maps” were made to improve the specific areas covered by the research.

The members of the Action SEE network, after basing their work on the findings and results of last year's monitoring, started to improve and adapt the research methodology and its indicators.

The aim of using new and improved indicators is to add new value to research and to make a more effective contribution to enhancing the openness of the institutions of the region.

We believe that the executive power institutions, led by simply presented steps for improvement of the situation in these areas, will work on its improvement. That is why we want to advocate a higher level of openness of the institutions in the region. This year's research has been enriched with indicators advocating a higher standard of proactive transparency, which is also an international standard, and this represents the core of our project.

The policy of openness must be the policy of all governments in the region, and it must be defined as other important policies and must not be the result of the current decision or the current mood of the government. Each country in the region has its own specific, political conditions in which its openness develops, but one can notice a significant space for a common regional action for improvement of the situation.

Our policy paper is addressed to decision-makers in the executive power institutions of the countries of the region at all levels: the Government, ministries and other state administration bodies. It may also be of benefit to representatives of international organizations, as well as to colleagues from the NGO sector dealing with these issues.

For the purpose of more quality public dialogue on these topics, we will organize a series of public events where we will hear the opinions of all interested parties and try to find joint sustainable solutions for development in this area.

We will also respect the principles of transparency of the research and introduce institutions with all the details of its implementation and its conclusions.

We remain open to all suggestions, well-meaning criticisms and discussions regarding the policy paper.

**Openness of executive power institutions in the region**

The results of the conducted research show that the openness of the executive power institutions at the regional level is not satisfactory. Instead of the expected progress in the sphere of openness, the executive power institutions in the region had a weaker performance compared to the previous year. Openness, on average, is 43% of the indicators met.

We recall that this year's research encompassed and advocated a higher degree of institution openness compared to the last year, adding new indicators that measure this openness. We believe that such a strict approach partly affected the weaker performance of the executive power institutions. However, the results and the analyzed data show that the institutions generally did not work on the overall development of openness, so new indicators do not prevail in the weaker result.

Most of the 2017 conclusions remain unchanged: there are still no clear, consistent and strategic documents based openness policies. Moreover, data shows that openness decreases when moving from higher to lower levels of government and organs that are closer to their citizens by their policies and action.

Executive power institutions in the region, with the exception of the Government of Macedonia, have not worked enough to develop their openness in the past year. The focus of the constituencies of the executive and legislative authorities on the elections and the electoral process that took place in the countries of the region over the past year has significantly influenced the activities and priorities of the countries in the region.

There is still a clear lack of strategic approach to openness in the countries of the region. The collected data show in a large number of cases the lack of documents that deal with openness and transparency of the executive power institutions, whether it is about strategies, procedural rules, or policies that address these issues. Although a small number of executive power institutions have documents that regulate in a way the issue of openness, we are not talking about a uniform practice, both in terms of approach to openness, as well as with regard to the type of document or sub-legal act governing the matter. Inconsistence is present both among the countries of the region themselves and among the institutions of executive power within the same state.

Neither the presence of international initiatives advocating openness in the countries of the region has contributed much to increasing the openness and transparency of the executive power institutions. The lack of internal policies and aspirations to improve these issues are clearly reflected in the presence of countries in these initiatives.

Lack of desire to improve the openness and transparency of the executive power institutions in the region is also confirmed by the fact that the number of institutions that actively participated in the conducted research and submitted answers to the questionnaires that are a key part of the overall research is lower than in the previous year.

There remains the need to adopt strategic documents and action plans that address the development of openness. It is necessary, within the country, to plan for development, but also to make uniform the openness of the executive power institutions. After the introduction of strategic planning, it is necessary to consider the adoption of the law on the Government and the ministries as this would be the most effective solution to this and other issues of functioning of the state administration.

Our monitoring has shown several “critical points”, i.e. key obstacles to the development of openness in the region.

**Transparency and communication**

While there are examples of good practice in implementing the law on free access to information among the executive power institutions in the region, these examples are often not a roadmap for the institutions of the same country. Institutions still arbitrarily determine the extent to which the said law will be implemented and no steps will be taken to further legally improve this area.

Communication with citizens is still far from satisfactory. The situation is unchanged when it comes to introducing more modern methods of communication with citizens, which still did not prevail over classical communication methods. A regional issue is also the respect for the principle of publishing data in open data**[[1]](#footnote-1)** formats, which would increase the availability and make it easier for citizens to collect information.

**Spending public money**

The practice of publishing financial information and documents is still significantly uneven, and the transparency of spending public money is extremely unsatisfactory. Strengthening financial transparency should be the focus and one of the priorities of the executive power institutions in the region in the forthcoming period, for which special efforts are needed.

Budget information, as well as information on how much money is actually spent is rarely published. The ministries of finance of the countries in the region are most commonly the institutions that historically publish such data, while other executive power institutions use this possibility sporadically and incomprehensibly. The Citizens’ budget and the ability of citizens to engage in budget planning and spending processes remained unknown to regional executive power institutions.

Moreover, the practice of not publishing public procurement plans is still widespread, and calls and decisions on public procurement, as well as contracts and annexes thereto, are generally unavailable.

**Effectiveness, efficiency and expectations of citizens from government**

Significant issue of the functioning of executive power institutions and their openness to citizens is the creation of clear indicators of success of government policies, which will be accessible to citizens and on the basis of which citizens can monitor the implementation of the policies and the success rate of the government.

Governments in the region still need to establish unique methods and procedures for quality control of their policies and lack adequate indicators to measure the impact of their policies. Not enough attention has been devoted to the establishment of a uniform method by which the ministries report to the Government on their annual work.

**Openness of executive power institutions in Montenegro**

According to this year's research, Montenegro's executive power is the most open in the region with a total of 55% of the indicators met. Nevertheless, Montenegro fits in with the negative regional trend, and the executive power institutions seem to stagnate in total when openness is in question, and in some cases, backward steps are also noted.

Openness policy ceases to be a priority for Montenegro and that can be seen also in relation to the country's approach to the Open Government Partnership initiative. Montenegro has the status of inactive member of this initiative because it has not prepared an Action Plan with goals and activities to increase openness in three consecutive cycles. In June 2018, Montenegro's disengagement from Partnership was considered, which is now blocked by the promise of the Government that it will seriously address this initiative.

The relationship to the very concept of openness is also reflected in the ignorance of the executive power to define the policy of openness through official documents and strategies. In the previous research, the CDT also pointed out that due to the lack of umbrella openness policy there are significant differences in the openness of the government, ministries and other state administration bodies, and that in Montenegro the issue of openness is still a matter of personal position of the first institution manager or his team and not a clear policy of the state. Even the new research has shown that there are bodies that, without any consequences, fail to comply with legal obligations in this field, as well as the principles and practices of good governance.

**The Government of Montenegro**

The Government of Montenegro has a degree of openness of 69% of the indicators met. This is a weaker outcome than in the previous measurement, and there were three reasons for this. Firstly, as explained in the introduction, we introduced new and more demanding indicators in this year's index, based on good practices and recommendations we sent to the institutions after the previous measurement. The results show that the Government of Montenegro does not progress and does not develop practices and policies of openness. Secondly, this year we did not get answers to the questionnaire we sent to the General Secretariat of the Government, which resulted in some indicators being negatively evaluated. Finally, with regard to the indicators, there are clear negative trends and a decrease in openness. These conclusions correspond to the regional negative trend, from which only the Government of Macedonia has stood out, as it has achieved 76% of the indicators met, which makes it the most open government in the region.

The CDT proposed to the Government of Montenegro the adoption of a strategic document that would institutionalize the policy of openness, in particular because of the fact that openness decreases significantly as we move to the lower hierarchical levels of administration. At that time, we were told on several occasions that openness would be specifically addressed by the Communication Strategy of the Government of Montenegro 2017-2020, whose adoption was envisaged for the fourth quarter of 2017. This strategy, without explanation, has not been adopted in 2017, nor is its adoption planned in the 2018 Work Program of the Government of Montenegro. The non-governmental sector has so far not been included in the activities of preparation of this document.

The Government of Montenegro largely meets the indicators in the area of ​​administrative transparency, as it publishes most of the necessary information on public officials and civil servants, including detailed information on salaries public officials in the Government. Transparency of the Government of Montenegro sessions is still an area in which further improvements are possible and needed. What is particularly worrying is the Government's practice of publishing incomplete session agenda, from which the points relating to documents marked as confidential have been removed. State bodies may, in accordance with the law and in an appropriate procedure, protect the acts proposed by the Government with an appropriate level of secrecy. However, there is no justification for the names of these acts to be confidential and removed from the agenda. The Government publishes censored session agenda, from which a large number of points discussed cannot be seen. Thus, the public is denied not only information about the contents of the protected acts, but the fact that they were even being discussed. This further means that the citizens and the public concerned cannot know what the Government has been discussing and what it has adopted, cannot question the unjustified classification of documents, nor can they monitor deadlines for termination of data confidentiality to get to know the content of the document when possible.

In addition to this, the CDT has already sent recommendations to the Government to begin publishing minutes of the sessions, so that citizens can have a more complete picture of the dynamics of the sessions and the manner they consider the policies. Despite the fact that it has approved access to the records and publishes them based on the request for free access to information the Government has not established this practice. If the minutes of the sessions are not already protected and can be obtained on the basis of the Law on Free Access to Information, there is no reason to proactively not publish them after a government session. The Government of Montenegro has not even improved budget transparency. Proposals for the Law on Budget and the Law on Final Statement of Accounts of the State Budget are duly published, but the searchability of the budget is limited, making it difficult to compare, analyze or use data for further processing. The Government has not adopted our recommendation to publish the budget in a format that is more suitable for reading and processing. In general, no progress has been made in publishing data in open data format. Furthermore, there is no effort to bring the budget closer to citizens and to be explained to them, through narrative and graphical explanations in the form of “Budget for the Citizens”.

There are no public procurement plans for 2015, 2016 and 2017 on the Government’s website, while there are plans for 2013 and 2014, which shows that the practice of publishing this important document has been interrupted in one period. We note that the public procurement plan for this year has been published, and we hope that its consistent publication will be continued in the coming years. The Government announces calls for public procurement, information on tender results, as well as public procurement contracts also on its website.

Based on earlier researches, the CDT has often criticized the way the Government reports on its activities and results. Although the Government publishes quarterly reports on the fulfillment of the work program obligations relatively regularly (often omitting to publish quarterly reports), these reports are most often a statistical indicator of the fulfillment of obligations from the normative activities of the Government and do not include an analysis of the Government's effectiveness in policy-making. We see the opportunity for improvement in this area in adoption of the Medium-term Work Program of the Government 2018-2020 (MTWP), which focuses on measuring the results that the Government is achieving. The MTWP also envisages the obligation to prepare quarterly and annual reports on the fulfillment of the obligations established by this program, so we expect that implementation of this strategic document will improve the manner of reporting of the Government on the results achieved. Reporting on implementation of the MTWP will be the focus of future CDT projects within our monitoring of public administration reform.

In the analyzed period, the Government of Montenegro has improved its communication with citizens through social media. In addition to the existing Twitter profiles, the Government also launched a Facebook page that is regularly updated with new and current content. Moreover, a better coordination of communication activities of the ministries and the Government on social media was noted.

A step backwards has been made with regard to citizens’ participation in decision-making. At the proposal of the Government in February 2018, the Parliament of Montenegro adopted amendments to the Law on State Administration, which created the legal basis for public debates not to be conducted on some important issues. Thus, the Law stipulates that public hearings are not mandatory when issues of defense and security and annual budgets are regulated by law or strategy; in emergency, urgent or unforeseeable circumstances; when a law does not substantially address a question differently. Even this law, which restricts citizens’ participation in the creation of public policies, was determined without prior public debate.

**Ministries**

On average, the ministries in Montenegro meet 60% of the openness criteria. This result is the best in the region. However, there are not many reasons to be satisfied, as this result says more about the poor state in the region than about the good in Montenegro.

The Ministry of Sustainable Development and Tourism ranked the best with 76% of the openness indicators met. The Ministry of Transport and Maritime Affairs ranked the lowest and meets only 34% of the openness indicators.

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| Ministry of Sustainable Development and Tourism | 76.08% | Ministry of Science | 54.20% |
| Ministry of Education  | 72.09% | Ministry of Agriculture and Rural Development | 54.20% |
| Ministry of Finance | 71.98% |
| Ministry of Interior | 71.03% | Ministry of Culture | 53.87% |
| Ministry of Labor and Social Welfare | 67.62% | Ministry of Health | 53.15% |
| Ministry of Justice | 65.75% | Ministry for Human and Minority Rights | 52.28% |
| Ministry of Defense | 59.76% | Ministry of Economy | 51.71% |
| Ministry of Foreign Affairs | 58.93% | Ministry of Transport and Maritime Affairs | 33.63% |

Such large differences in results are an evidence of unequal access to openness policies, and the need for strategic planning and development of openness at the level of all ministries.

Our research has also included newly established ministries[[2]](#footnote-2), which have largely met the standards of openness in a short time. For the purposes of measuring the openness of these ministries, the indicators were adapted to the conditions / opportunities of the newly established ministries[[3]](#footnote-3), while the next round of measurements will enable a more comprehensive assessment of their openness, by the same criteria as for others.

Below we present key recommendations and guidelines for improvement:

**Improve the quality of websites of the ministries by reconstructing the existing websites and revising the rules on development and management of websites.**

The website of the Government of Montenegro and the subordinate websites of other bodies were established in early 2010 and their urgent reconstruction in accordance with new technologies is needed.

It is not a rare case of mismatch between content and rubrics on the websites of the ministries, but also in the not updated or completely empty sections, inactive links and documents, with limited search options. Having in mind the increasing number of data from the area of ministries' work from year to year, it is becoming more and more difficult to get the information requested with the existing website organization.

A new website design for the ministries should provide better access to citizens through adequate systematization and optimization of content. In addition to their design, it is necessary to define or revise the rules of organization and administration of information and data, the minimum content on the websites of the ministries, in accordance with the rules of proactive access and publication of data in open data format. In addition, consideration should be given to the introduction of efficient two-way communication services on websites of the ministries, intended for individual citizens' questions and requests. This improved mode of functioning of websites of the ministries would lead to greater levels of openness and interaction with citizens, which ultimately leads to greater end-user satisfaction.

**Timely publishing of organizational information and financial data on the work of the ministries**

The ministries should be more dedicated to informing citizens about activities within their scope of action, with an emphasis on what they plan to do and what they have achieved with their work.

By not publishing basic information about their work, including plans and work programs, reports and information on the use of budget funds, the ministries also deny citizens information and violate the legal obligation of proactive access to information.[[4]](#footnote-4)

Our research has shown that 40% of the ministries have not published all the programs and plans for the previous three years, and 27% of the ministries have not published all the work reports from previous years on its website.

The ministries are not dedicated to financial transparency - 53% of the ministries have not published any budget over the last three years. That is, 67% of the ministries do not have their budget on their websites for the past three years. Additionally, 80% published no final account from the previous period.

The situation is not satisfactory even when it comes to the transparency of the public procurement process. Although there is a public procurement portal, the ministries must present to the citizens on their websites information on activities undertaken in that area or indicate where this information can be found. The ministries selectively publish information on public procurement, and there are only few ministries on whose websites full information on calls, decisions and public procurement contracts is available.

On the websites of 87% of the ministries not all public procurement plans for the previous three years were found. Thus, 41% of the ministries do not have the practice of publishing calls for public procurement procedures, and half of them have no practice of publishing the decisions. Moreover, 35% of the ministries do not publish public procurement contracts.

The ministries should pay attention to achieving greater transparency regarding public procurement, especially considering that new solutions of the Law on Public Procurement have led to a decrease in transparency of this area.

**Provide citizens with unhindered access to information of public importance**

One of the basic prerequisites for free access to information is publication of the Guide to Free Access to Information and contact person responsible for handling the requests for free access to information.

However, 24% of the ministries did not publish an updated Guide on Free Access to Information, and 18% of them did not public contact of the person responsible for handling the requests for free access to information. Moreover, 59% of the ministries do not publish the information that was granted access on request.

Almost all ministries have informed us that they have participated in some of the free information access training courses over the past two years. Ministries should continue to improve their capacities in this regard, especially considering all the listed shortcomings in implementation of the Law on Free Access to Information.

**Improve communication and interaction with citizens**

The principle of modern and open public administration also implies the work of conducting adequate communication with the public. Only informed and notified citizens can participate in policy making.

That is why ministries should pay attention to achieving greater interaction with citizens and use for this purpose social networks both for promotion and for interaction. Almost a third of the ministries have no account on the social network Facebook, while half of them have no accounts on Twitter. In addition, half of the ministries do not have any kind of direct channels for communication with their citizens on their websites, through which citizens can quickly and easily contact the representatives of the ministry.

**Administration bodies**

On average, the administration bodies meet 36% of the openness indicators.

A large number of administration bodies are not committed to meeting the highest standards of openness, and not even to meeting the legal minimum of proactive disclosure of information. Such practice is unacceptable and needs to be changed urgently.

In our sample, the highest ranked were the Tax Administration (72.5%), the Secretariat for Legislation (55%) and the Statistical Office of Montenegro (51%). The lowest ranked were the Directorate for Execution of Criminal Sanctions (15%) and the Directorate for Development of Small and Medium Enterprises (16%).

Having in mind the alarmingly bad result in this area, we believe that the administration bodies must urgently start with the following activities:

**Regularly update the websites and publish information on the work of the authorities, in accordance with the Law on Free Access to Information**

One third of the administration bodies have no practice of regularly updating their websites (once in 15 days), denying the public the information about their work and manner of functioning.

Although this is an obligation, programs and work plans are not available on the websites of 66% of the administration bodies, and one third has not published any report on the work in the last three years.

One third of the administrative bodies do not publish information on civil servants and employees with their official titles and contacts, and two thirds do not publish information on salaries of public officials.

The situation is even worse with regard to financial transparency. Almost 90% of the administration bodies have no practice of publishing financial information.

In addition, the administration bodies are not committed to disclosing key information for exercising free access to information. Two thirds of the administration bodies have no updated Guidelines for Free Access to Information, and 44% have no contact details of the officer responsible for handling the requests.

Administration bodies also do not use social networks as a means of promoting and communicating with the citizens - 83% do not have Facebook accounts, while they do not use Twitter.

**Research methodology**

Openness is a key requirement for democracy as it enables citizens to obtain the information and knowledge necessary for equal participation in political life, effective decision-making and holding of institutions responsible for the policies they are implementing.

Institutions around the world undertake specific actions towards increasing their own transparency and accountability to citizens. The Regional Index of Openness of executive power institutions is developed in order to establish to what extent citizens of the Western Balkans receive timely and understandable information from their institutions.

The Regional Openness Index measures the degree to which the institutions of the Western Balkans are open to citizens and society, based on the following four principles: (1) transparency, (2) accessibility, (3) integrity and (4) effectiveness.

The principle of transparency implies that organizational information, budget and public procurement procedures are publicly available and published. Accessibility refers to providing and respecting the procedures for a free access to information, and improving the availability of information through the mechanism of public discussions and strengthening of interaction with citizens. Integrity includes mechanisms for the prevention of corruption, conducting codes of ethics and regulation of lobbying. The last principle, effectiveness, concerns the monitoring and evaluation of policies being implemented.

Following the international standards, recommendations[[5]](#footnote-5)and examples of good practice, these principles are further elaborated through specific quantitative and qualitative indicators, which are estimated on the basis of availability of information on official websites, the quality of legal framework for individual issues, other sources of public informing and questionnaires delivered to institutions.

In accordance with the Index Development Plan, after the measurements and analyzes and recommendations given to the institutions, each year we introduce new indicators i.e. standards of transparency. In this way we effectively measure how institutions meet our recommendations and how much they deal with the openness policy. This year's index is, thus, richer for several new indicators.

The measurement was conducted in the period from January until the end of March 2018. Through about 80 indicators per institution we measured and analyzed the openness of 275 executive power institutions and collected more than 15,000 institution data. The standard error of the total openness index is +/- 3%. Based on the research results, this set of recommendations and guidelines, addressed to institutions, was developed.

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1. Open data is data structured in computer understandable format, which gives the possibility of free use and re-use. [↑](#footnote-ref-1)
2. This refers to the Ministry of Public Administration and the Ministry of Sports. The Ministry of European Affairs has ceased to exist in the meantime. [↑](#footnote-ref-2)
3. For example, it was not possible, as in other ministries, to measure the process of developing certain openness policies such as financial openness (budget publishing, final statement of accounts, public procurement plans, etc. in the last three years). Therefore, for the purpose of measuring the level of openness of these ministries, a smaller range of openness indicators has been used compared to other ministries. [↑](#footnote-ref-3)
4. Article 12 of the Law on Free Access to Information, Official Gazette of Montenegro 44/2012 and 30/2017 [↑](#footnote-ref-4)
5. The standards and recommendations of a number of international institutions have been analyzed, such as: Access Info Europe, EU, OECD, OGP, SIGMA, World Bank etc. [↑](#footnote-ref-5)