

Parliamentary Openness in BiH and the Region

PROPOSALS FOR THE
IMPROVEMENT
OF A CURRENT STATE



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INTRODUCTION

In cooperation with partners from the regional network "ActionSEE", Why not? has prepared a proposal of practical policies in which levels of transparency, openness and accountability of the legislative power in the West Balkans region were analysed.

The proposal is a result of a comprehensive research, based on methodology, undertaken by the members of the network ActionSEE in previous months in all West Balkans countries. The aim of the research is to provide an in-depth overview of the situation in the said areas, to contribute to the quality of reforms in the state administration work, to influence the enhancement of good governance and to help the institutions to efficiently implement them in their work. We are of the opinion that these are the objectives that we share with the very institutions comprised in this research.

The proposal for practical policies, with concomitant analyses, is the second document of this type. Last year, too, following the research conducted, members of the network made recommendations for improving the openness of institutions.

On the basis of the results of the research conducted in 2016 and 2017, policies were developed providing an overview of the situation in the regional parliaments, including the identified shortcomings and good practices in this area. On the basis of these analyses, last year's recommendations were made as well as "roadmaps" for the improvement of specific areas covered by the research.

This document is the third in a row in which we review the state of openness of institutions and recommendations for improvement. After the first research that was done in 2016, we have started to improve and adapt the research methodology and its indicators, based on our knowledge on the findings and results of monitoring. This year's research has been carried out on the basis of indicators that enabled a precise picture of how many regional parliaments have been working to improve their openness over the past year.

The policy of openness must be the policy of all parliaments in the region, it must be defined as all other important policies and should not be the result of a current decision or current mood of the authorities. Each country in the region has its own specific, political conditions in which it develops its openness, but there can be noticeable room for joint regional action to improve the situation.



Parliamentary openness in the Western Balkans region

The results of the conducted research show that the parliamentary openness at the regional level increased in 2018 in comparison to 2017 and 2016. The regional average in the final round of measurement scored 65%, which is 4% higher than in the previous year (61%). This finding is encouraging due to the fact that in 2017 new indicators were added, which tightened the measurement criteria and led to drop in the score in the year when the methodology was revised and became stricter. We believe that such research approach added up to the fact that after failing to meet the advanced indicators in 2017, parliaments consequently started to cope and develop their openness according to research findings and recommendations.

However, this years' research also shows significant regional differences in the level of parliamentary openness. The gap among national parliaments varies from 79%, scored by the Montenegrin parliament, to 46% scored by the Bosnia and Herzegovina. In addition, the progress in the level of openness remains uneven, while the decline was recorded in the cases of several parliaments.

Significant progress of 23% is recorded in Kosovo whose national parliament in 2018 scored 72% in comparison to 49% in 2017. Slight progress in 2018 is recored in Serbia and North Macedonia, ranging from 3% to 4%, leading to the latest results of 58% and 62% of openness respectively. The slight decline in 2018 is recorded in the cases of parliaments of Montenegro (79%) and Albania (71%), in comparison to 2017 when Montenegro scored 80%, while Albania scored 75%.

However, general conclusion is that the parliamentary openness remains unsatisfactory.

The highest legislative bodies of the region still lack a strategic approach to openness policy as it was discernible and indicated in the analysis of the parliament openness in 2016, and as well remained unchanged in the results of the monitoring conducted in 2017 and in 2018. Requests for openness can only be indirectly derived from the Constitution, Rules of Procedure and other laws or acts, such is the Law for Free Access to Information of Public Importance or requirements from the EU accession process. As such, they are subject to different interpretations and readiness of the parliamentary majority to comply with the good governance and democratic principles.

Information on the work of the parliament belong to citizens, and it is necessary to constantly improve the existing level of culture of parliamentary openness. Openness policy should develop as the pace of the new technologies picks up. New technologies should be used fully, as it would, inter alia, support and facilitate the publishing of data in a machine-readable form. In support of this, findings show that parliaments in the region are not committed to publishing data in an open format, thereby refuting and minimising the usable value of the published information.

The lack of desire to work on improving the openness and transparency of the parliaments is genuine and confirmed also in 2018, when 4 out of 6 parliaments did not provide answer to the questionnaire – Serbia, Montenegro, North Macedonia and Bosnia and Herzegovina. The reluctance to answer the questionnaire is in itself an indicator of insufficient openness and of lack of interest in promoting openness.

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

Transparency, accessibility and communication with citizens

Research findings show that the openness in the domain of transparency increased at the level of the whole region. The only parliament whose score declined in this area is the Parliament of Albania lowering its result for 9% in comparison to 2017. However, it is worrying to see that when it comes to accesability to citizens parliaments are stagnating throughout years, scoring regional average of around 61% both in 2017 and in 2018.

Parliaments need to work on improving their contact with citizens in order to fully conduct their role as the highest representative institution in regional political systems. This is particularly important in Bosnia and Herzegovina that in 2017 and 2018 scored a little above of one third of indicators – 39% and 37% respectively.

Although the existence of the Law on Free Access to Information of Public Importance in the region greatly contributes to larger transparency of parliaments, it is necessary to further strengthen its implementation. It should be of utmost importance that parliaments make an effort to improve their own proactivity in publishing information on their work.



Although among the parliaments in the region there are champions and examples of good practice when it comes to publishing data on the work of parliament and of the MPs, we conclude that the legislative framework and the declarative commitment to respecting the principles of openness and international standards is often kept only on paper. The 2018 research also shows that information on the activities of MPs in parliamentary committees, documents emanating from the work of the committee or submitted amendments have not yet been published by most of the parliaments in the region.

Interaction with citizens, including possibilities to contact the parliament through e-mails, other online communication channels or to submit an e-petition, dropped in 2018 reaching an alarmingly low level with average regional score of 31%, in comparison to 35% in 2017. The parliament of Montenegro, which holds the title of the champion of openness, scores only 31% in citizen interaction. Parliaments which interacted least with citizens in 2018 are parliaments of Serbia (24%) and Bosnia and Herzegovina (14%). Parliaments in the region continue to be inert and do not strive to invest in new channels of communication that can help bridge the gap between citizens and their representative institution. Another regional problem is the respect for the principle that the data should be published in open data formats, which would increase accessibility and make it easier for citizens to collect information.

Results in citizen interaction are particularly interesting due to the fact that in each country there is basis for conducting public consultations, particularly in Albania (100%), Kosovo (77%) and Montenegro (77%). In this regard, parliaments have mostly developed instruments which allow the parliament to organise public hearings, invite civil society or experts to participate and submit proposals, and enables citizens and civil society to, for example, attend the sessions of the parliamentary committees. What certainly raises concern is the fact that transparency and communication with citizens remain low when it comes to preparing, discussing, adopting and presenting (in open data format) the most important annual legislative act in every country – the state budget. The average result for every country in 2018, increased for 10% percent in comparison to 2017, and amounts 51%. However, half of the countries continued performing unsatisfactory in this area: Bosnia and Herzegovina (23%), Serbia (30%) and North Macedonia (38%).

It is essential that parliaments in the region make an effort to fully appreciate the significance, role and opinion of civil society in democracy and to improve the mechanisms of cooperation with it. It has been noted that despite the existing mechanisms and declarative determination of the holders of legislative power, parliamentary cooperation with civil society in the region has been generally violated. The Republic of Serbia Parliament ceased the cooperation with the Open Parliament following the protest that this initiative lodged to the way that the Budget Law for 2018 had been debated and adopted.

Parliamentary oversight – good basis and poor implementation

Parliaments in the Western Balkans region continue to have good bases for conducting parliamentary oversight, which includes procedures which allow the parliament to question the government and hold it to account, but also the parliamentary committees to include experts in the consultation regarding some legislative pieces or policy areas. This year, the Parliament of Kosovo (95%) overtook the best ranking position that was held by the Parliament of Montenegro, which again scored 93%. When it comes to state with the other national parliaments, results have not suffered changes in comparison to the previous round of measurement with parliaments of Albania (88%) and North Macedonia (83%). The Parliament of Serbia is the only one which suffered a decline of 5%, scoring 67% in 2018, in comparison to 72% in 2017.

However, it is necessary to significantly strengthen the parliamentary oversight at the level of the entire region, with an emphasis on ensuring its full implementation in practice. Parliaments in the region continued to formally apply this function in 2018, which led to the fact that the results of the parliamentary oversight actually lack. The need to strengthen the control and oversight function of the parliament in terms of its effective implementation was emphasised again by the European Commission in the individual reports for each country, published in May 2019.

This situation brings us back to the last year's conclusion. Deterioration of the Parliament as key institution in securing the rule of law and functional system of checks and balances, reflecting in seldom and perfunctory performance of the oversight over the executive, pose serious challenges to region's democratic and EU integration process. All parliaments in the region must undertake efforts to fully and substantially implement the existing mechanisms, thereby contributing to increasing the level of political accountability.



Weak evaluation and control of the work of parliaments and of deputies' behaviour – effects, integrity and ethics

For the third year in a row, the research showed that the work of parliaments in the region was not based on the establishment of a uniform methodology and appropriate indicators for measuring the results and the quality of their work and the work of the MPs. Strategic planning of parliaments at the regional level is even lower than in the previous years. This aspect of parliamentary openness relates to the legal basis and the capacities of the parliament to conduct regulatoru impact asesments of laws and other legal documents that are being adopted in the parliament and implemented by the government. In comparison to 2017, when four parliaments fulfilled some indicators in this area, in 2018 only three remained with results – Albania (33%), Bosnia and Herzegovina (39.6%) and Montenegro (33%).

Parliaments of Serbia and Kosovo scored zero points for the second consecutive year, while the North Macedonian Parliament joined their company in 2018. This situation, which keeps repeating from year to year, continues to have an impact on the quality of parliamentary performance, as parliaments fail to conduct impact assessment and sound planning.

Situation with lobbying slightly improved in 2018, as Serbia joined North Macedonia and Montenegro as a country which adopted regulation in this area. However, Serbia remains the only country in the region which does not have the Code of Ethics for MPs, as the North Macedonia adopted this document in 2018. However, the general conclusion is that the implementation of the Code of Ethics remains weak at the level of the entire region.

It is essential that parliaments that have not yet adopted the Code of Ethics set this as a priority for their agenda. Moreover, it is necessary that all the parliaments of the countries of the region establish clear mechanisms for monitoring the implementation of the Code of Ethics of the MPs and sanction each violation of the standards.

Practice from the region shows that violation of the Codes of Ethics does not generally result in the sanctioning of misconduct, and often represents the subject of political agreements. A consistent implementation of the rules and principles set in the Codes of Ethics is crucial for raising the level of political accountability and public confidence in the work of parliaments.

PARLIAMENTS IN BOSNIA AND HERZEGOVINA

Parliamentary Assembly of Bosnia and Herzegovina

In average, the Parliamentary Assembly of BiH (PABiH) meets 49% of the openness indicators, of which the House of Representatives meets 50%, and the House of Peoples 47% - a practically identical outcome as last year. None of the Houses of Parliamentary Assembly of BiH responded to the delivered questionnaires this year either, causing the indicators assessed via the questionnaires to receive the lowest scores possible. Such a demeanor of the highest legislative power in the state indicates a lack of positive practices in the approach to public relations.

House of Peoples (HoP) of PABiH scored slightly better than the House of Representatives (HoR) of PABiH in one of the four categories – efficiency. House of Representatives of PABiH achieved a better result in the category of integrity. Both parliamentary houses had an almost identical score in the categories of accessibility and transparency, with only minor differences.

The category of accessibility saw both HoP and HoR achieve results identical to the last year's, with HoP meeting 32% and HoR 36% of the indicators. The name of the person responsible for the proceedings involving requests for access to information was again omitted, despite this being a legal requirement. Consequently, this indicator's score was negatively affected. Neither of the two houses of PABiH owns a Facebook or a Twitter account, and it is not possible to send remarks via the websites.

HoP of PABiH meets 64% of the efficiency indicators, making this the best score for either house of PABiH in this year's research, while HoR of PABiH meets 54% of the indicators, exactly like last year.

HoP of PABiH meets 55% of the transparency indicators – a 3% increase compared to last year. HoR of PABiH again scored almost identically as last year and the year before – 57%.

A problem with the continuous publishing of new information on the internet and a lack of consistent archiving of existing data that would provide a comprehensive and publicly-accessible electronic archive of institutional information, negatively affected the result in meeting the set indicators.



Parliament of the Federation of Bosnia and Herzegovina

Parliament of the FBiH has the lowest average score out of the three monitored parliaments with only 40% of indicators met. HoP of Parliament of the FBiH meets 43%, and HoR of the FBiH just 36% of all set indicators. Both houses of Parliament of the FBiH meet less than 50% of the indicators in every single category. Only one of the two legislative institutions answered the questionnaire this year, and that is HoP of Parliament of the FBiH.

Both houses of Parliament of the FBiH meet approximately 36% of the accessibility indicators, and both interact poorly with the citizens. An online channel via which the citizens could send their remarks was non-existent by the time this year's research ended. Neither of the houses of Parliament of the FBiH own a Facebook or a Twitter account. Neither website has a mechanism for online petitions, and there is a lack of basic information such as how the citizens can access the Parliament building. As per the Law on freedom of access to information, the institutions are obligated to disclose the information register in their possession, however neither of the houses of Parliament of the FBiH is publishing these or the name of the person responsible for the proceedings involving requests for access to information.

The houses of Parliament of the FBiH have acquired the best results in the category of efficiency (HoP meets 58%, and the HoR 44% of the indicators), however the positive result mainly has to do with legal decisions in this category. However, indicators regarding the accessibility of information on the website, like the ones about the publishing of materials for public hearings or public consultation reports, were not fulfilled.

HoR of Parliament of the FBiH did slightly better in fulfilling the principles of integrity, meeting 44% of the indicators, compared to the 32% met by HoP of Parliament of the FBiH. The Code of Ethics was not published on either houses of Parliament of the FBiH's websites. The area of transparency shows a better result than last year, with around 40% of indicators met.

HoP of Parliament of the FBiH met 48%, with HoR meeting 31% of the indicators. The budget transparency of both houses is extremely low – neither HoR nor HoP published annual and semi-annual report on the budget execution, the Parliament's budget, or the so-called citizens' budget in the past three years. The public procurement transparency is somewhat better compared to the budget transparency.

HoP meets 48%, and HoR 31% of the indicators. Neither HoP nor HoR published any public procurement tenders, or contracts and annexes to awarded contracts. There is no legal obligation for publishing these contracts and annexes in BiH, however the international standards in the category of institutional transparency recommend publication of these documents so as to achieve full financial transparency.

National Assembly of Republika Srpska

National Assembly of Republika Srpska meets 53% of the openness indicators. Same as last year, the institution sent the questionnaire answers on institutional openness, and was one of the two legislative bodies who did so during this research. However, there was a slight 3% decrease compared to last year's results.

National Assembly of Republika Srpska meets 46% of the accessibility indicators, whereas 53% of indicators were met last year. NA of Republika Srpska does not own a Facebook or Twitter account; however the website does have a communication channel via which the citizens can send their remarks. In the category of efficiency, identically to the last year's results, NA of Republika Srpska meets 70% of the indicators. The best single score was achieved in the strategic planning sub-category – 99%. The increase, both this and last year, is a direct consequence of the responding to the questionnaire, since most indicators for this category are found here.

Within the integrity category, 49% of indicators are met – a 1% decrease compared to last year. Within the category of transparency, NA of Republika Srpska meets 58% of indicators – a 3% decrease compared to last year. NA of Republika Srpska's website does contain the budget documents for the last three years. Last year, the website contained two budget execution documents. This year there are none.

Same as last year, NA of Republika Srpska did not publish semi-annual budget execution reports or the citizens' budget report, which puts the overall budget transparency at 35% of indicators met. NA of the Republika Srpska publishes public procurement plans, but not the public procurement contracts and annexes. Although there is no legal obligation in BiH to publish the contracts and annexes, the international transparency standards state these should be published nonetheless. Still, NA of the Republika Srpska meets 70% of indicators in this regard. Most documents and information regarding the work done by the assembly (session materials, records, agendas, news etc.) can be found for both the current and previous mandates.



RESEARCH METHODOLOGY

Openness is a key requirement of democracy because it enables citizens to obtain the information and knowledge needed for equal participation in political life, efficient decision-making and holding institutions accountable for policies they implement.

Institutions around the world are undertaking concrete actions in order to increase their transparency and accountability towards citizens. With a view to determine the extent to which the citizens of the Western Balkans receive timely and understandable information from their institutions, the Regional Openness Index of parliaments has been developed.

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

The principle of transparency implies that organisational information, budget and public procurement procedures be publicly available and published. Accessibility refers to the provision of and abiding by procedures for free access to information and to the enhancement of the information accessibility through the mechanism of public hearings and strengthening of interaction with citizens. Integrity includes mechanisms for the prevention of corruption, the implementation of the Codes of Ethics and the regulation of lobbying. The last principle, awareness, concerns the monitoring and evaluation of policies implemented by institutions.

Following international standards, recommendations and examples of good practice, these principles are further elaborated through specific quantitative and qualitative indicators that are assessed on the basis of availability of information on official internet sites of institutions, the quality of the legal framework for individual issues, other sources of public information and questionnaires forwarded to institutions.

Through more than 110 indicators, we measured and analysed the openness of parliaments in the region and collected more than 1,000 data. After the completed monitoring, a control phase followed which showed a standard error of +/- 3%. The measurement was carried out from December 2018 to end of April 2019. Based on the results of the research, we developed a set of recommendations and guidelines for institutions.



ACTION SEE is a network of civil society organizations that work together to promote and ensure the transparency and accountability of institutions in Southeast Europe, increase the potential for civic activism and participation, promotion and protection of human rights on the internet, and building capacity for the use of new technologies.

