



Institute for Development
of Freedom of Information

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Public-Private Dialogue at the Initial Stages of Policy Making





**Institute for Development
of Freedom of Information**

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The goal of this policy brief is to underline the significance of public-private dialogue (PPD) at early stages of policy-making process, namely, before drafts are initiated in the Parliament. The policy brief also provides a small guideline for a quality dialogue.

Introduction

Georgia does not have many *legal mechanisms*¹ for ensuring the engagement of private sector and civil society in the policy-making process. This lack of engagement is especially problematic before a draft law is initiated in the Parliament, even though this is the stage when it is most possible to influence decision-making. In fact, as a rule, engagement of relevant stakeholders at this stage is an exception in Georgia.

The problem is clearly illustrated by a *study*² conducted by the Institute for Development of Freedom of Information (IDFI), according to which, out of 24 draft

laws of considerable economic impact initiated in 2014-2016, only 6 had a high level of private sector engagement at early stages of policy preparation.

The situation is slightly better at *local self-government level*,³ where there are more mechanisms of civic engagement,

such as a general Assembly of a settlement, a petition, a council of civil advisors, etc. At the central level, the situation is better *after draft law is initiated in the Parliament*,⁴ when interested parties can leave comments or attend discussions.

Public-Private Dialogue (PPD) is a dialogue between public and private sectors during preparation of a policy (e.g. legal amendment, regulation etc.).

This term should not be confused with **Public-Private Partnership (PPP)**, which means joint funding of projects or other forms of cooperation with private sector.

Public Sector includes institutions with public authority, such as executive and legislative branches of government.

Private Sector includes non-governmental groups, such as civil society, business, non-governmental organizations, academia, experts etc.

1. Council of Europe, Civil Participation in Decision Making in Eastern Partnership countries, 2016
2. Institute for Development of Freedom of Information (IDFI), First Evaluation Report on the Assessment of Extent and Quality of Public Private Dialogue (2014-2016)
3. Local Self-Government Code of Georgia, Article 85 - Guarantees and forms of participation of citizens in the exercise of local self-government

Reasons behind Low Quality Dialogue

1 The authors of draft laws do not realize the need and importance of PPD

Although civic engagement is stated to be part of national government policy and any civil servant would stress its significance, in practice, it is not an established norm, as democratic values are not sufficiently institutionalized in Georgia.

Furthermore, according to a *study*⁵ by IDFI, there are cases, when Members of the Parliament believe that due to their mandate they have less need to ensure PPD at early stages of policy process.

2 Private-Public Dialogue is not obligatory

Apart from changes to the Constitution there are no other direct legal obligations ensuring that initiators of legal changes have consultations with interest groups directly affected by new amendments.

3 There is no single framework and written procedures for Private-Public Dialogue

There is no strategy or guidebook for decision-makers in order to ensure engagement of private sector in the policy process.

4 The initiators of legal changes do not possess sufficient knowledge and skills for facilitating the consultation process

It is a natural part of policy formulation process to have diverse opinions among stakeholders. Therefore, it is essential that there is a neutral moderator which takes into consideration all conflicting interests and provides each side with an opportunity to present their position.

In order for engagement not to become a formal process, and to be result-oriented, the moderator should be able to correctly identify relevant stakeholders, organize consultations,

gain trust, offer explanation when comments are not taken into consideration, balance opposite interests and opinions, etc.

In most cases in Georgia, this role is played by donor organizations. However, in the long-term, it is essential that the representatives of the government have these skills as well.

Green and White Papers - Internationally accepted framework for PPD

In EU, the UK, the USA and the Commonwealth countries there is a practice of so called green and white papers.

Green paper – a consultation document created by the government, which aims at starting discussion on a policy issue. The green paper does not include binding policy decisions; it may offer a number of alternative solutions to a policy problem. The goal of the green paper is for the society to be able to learn more about a policy problem and discuss possible solutions. The green paper may create a need for legislative changes, which will be prepared later using a so called white paper.

4. Institute for Development of Freedom of Information (IDFI), Mechanisms of Citizen Participation in Parliamentary Activities
5. Institute for Development of Freedom of Information (IDFI), First Evaluation Report on the Assessment of Extent and Quality of Public Private Dialogue (2014-2016)

White paper – is a policy document with specific legislative changes. Unlike the green paper, a white paper may include a draft of planned law or legal amendments. The white paper is a basis for further consultations and discussion with stakeholders. As a result of such consultations, the white paper may change before formal initiation in the Parliament.

Why is PPD important?

There are a number of reasons why engagement of relevant stakeholders at early stages of policy process is important:

More effective policies:

Direct target groups or organizations working with such groups, as well as business and the academia always have more information about existing problems as well as possible ways of solving these problems. Therefore, policy problems will be solved more effectively if the people directly affected by the problems are involved in the policy-preparation process.

More support and trust during implementation:

When target groups are not involved in discussions of policy alternatives and decision-making process, distrust towards the policy increases. This makes policy implementation more complicated.

Engagement in legislative process is more difficult:

Engagement of stakeholders after the draft law is initiated in the Parliament becomes more difficult, since at this stage the authors of changes have less

motivation to make serious amendments to the draft law; also, only the most well-organized and informed organizations with legal expertise are able to participate.

Challenges of existing practice of PPD

The practice of public-private dialogue in Georgia has a number of significant challenges, which undermine trust of the entire process. In addition, these challenges negatively affect the motivation of relevant stakeholders to engage in policy preparation process at early stages.

Incomplete mapping of relevant stakeholders:

While identifying relevant stakeholders, the authors of draft laws do not always try to cover broad sectors of the society, even though hearing diverse opinions at the initial stage is especially important.

Ineffective communication:

The ways of spreading information on planned legal amendments are not always effective; posting information on the website alone is not enough for ensuring engagement of relevant stakeholders. Also, one-time communication is not sufficient; stakeholders should receive updates on the following steps of the policy process on a constant basis and from various channels.

Lack of transparency of documents:

There is no obligation to publicize the working documents created and used during preparation of a draft law (before it is initiated in the Parliament), including working versions of the draft law. Ideally, this should be done electronically.

Lack of responsible persons:

It is necessary that the author entity of a draft law selects a person or persons who will be responsible for communication with stakeholders, access to information and documents, moderation of the dialogue, collecting the received comments and providing substantiated feedback on them.

Stakeholder

Any person or group of people who have impact on decision-making, policy and actions;

Also, any person or group of people who are affected by decisions, policies and actions.

Unsubstantiated refusal:

Neither public entities nor MPs have formal obligation to prepare and publish a report on received comments, indicating which comments were or were not taken into consideration as a result of public consultations, and why.

Closed decision-making process:

Meetings with stakeholders often have a formal character, as final decisions are still made behind closed doors. Therefore, it is necessary to create a smaller, representative decision-making group, involving relevant stakeholders.

Lack of public discussions:

It is rare that the final draft law is circulated for wider public discussions before initiation in the Parliament. In cases when planned legal changes are presented to the public, the authors of the draft law often do not consider additional comments.

Recommendation for Public Institutions: Guidelines for a Successful Public-Private Dialogue

- I. Before starting working on legal changes, a public institution should contact all relevant stakeholders, inform them about the launch of a policy process, send them supporting documents (if any) and invite them for a working meeting. The public entity should use all possible means of communication, including official website, e-mail, press, media, social networks, personal meetings, etc.
- II. Relevant stakeholders can be: groups directly affected by the policy problem, non-governmental organizations, civil society, businesses, academic circles, topic experts, economists, lawyers, donor organizations, etc.
- III. Stakeholders should be given sufficient time between being informed and holding of a discussion or meeting. There should be more time if the stakeholders were provided with studies, analyses or other official documentation.
- IV. In order to receive information from stakeholders, the public entity should use public discussions, e-mail, its website, online consultation forms, personal meetings, etc.
- V. Stakeholders should be involved in the decision-making process. In order to ensure this, there should be a representative working group that will make decisions whether or not to take into consideration the received comments.
- VI. Stakeholders should have access to existing studies, analyses and official documentation connected with the policy issue. Ideally, the public institution should create a special section of ongoing draft laws on its official website, where stakeholders will be able to leave comments, working documents will be published, and dates of meetings will be announced.

VII. In order to ensure a two-way dialogue, relevant decision-makers from the author public institution (at least Deputy Minister) should participate in public discussions and meetings.

VIII. A record should be kept of the comments received from the private sector. On the one hand, the public institution should assign an employee in charge of keeping this record; on the other hand, relevant stakeholders should be asked to provide their comments in writing.

IX. Comments received by the public institution should be considered by the working group according to clear and public criteria.

X. In cases when comments received by the public institution are not taken into consideration, it should issue a written, well-argued substantiation for each comment.

Quality of Public-Private Dialogue (2014-2016)

Amendments to the Tax Code of Georgia - Corporate Income Tax Estonian Model



Draft Law of Georgia on Innovations



Draft Waste Management Code



Draft Law on Consumer Rights Protection



Amendments to the Law on Oil and Gas - harmonizing the law with the European Union (EU) regulations/directives



Amendments to the Tax Code of Georgia - Stock Exchange



Amendments to the Law of Georgia on Vine and Wine - harmonizing the law with the EU regulations/directives



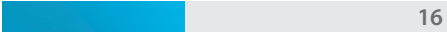
Amendments to the Law on Entrepreneurs - Minority Shareholders Protection



Draft Law on Systemic Land Registration and Cadastral Data Improvement

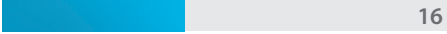


Amendments to the Law on Public Registry - on the registration of agricultural lands to non-Georgian citizens



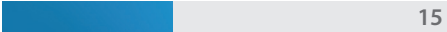
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Draft Law of Georgia on the Development of High Mountainous Regions



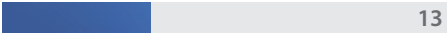
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Amendments to the Law on Insolvency - Debtors can request rehabilitation or declare insolvency



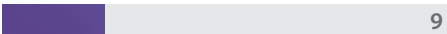
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Amendment to the Law on the Status of Aliens and Stateless Persons - simplified procedures until March 1st, 2015



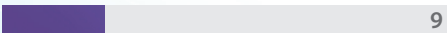
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Amendments to the Law on the Status of Aliens and Stateless Persons - simplified procedures for aliens owning real estate in Georgia



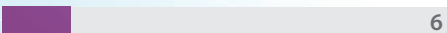
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Draft Law on Amendments to Tax Code of Georgia - Excise Tax on Mobile Communication



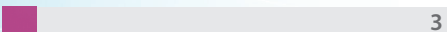
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Amendments to the Tax Code - Income Tax & Parcels



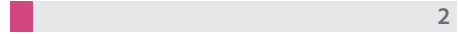
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Amendments to the Law on National Bank - Legalizing transactions in foreign currency in Georgia



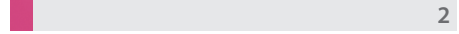
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Amendments to the Law on Public Registry - on the registration of agricultural lands



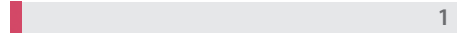
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Amendment to the Law on the Status of Aliens and Stateless Persons - extending the period of simplified procedures



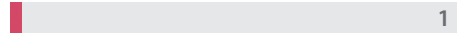
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Amendments to the Law on Public Registry - state ownership of free agricultural lands



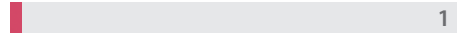
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Amendments to the Law on Public Registry - on the registration of agricultural lands



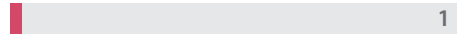
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Amendments to the Law on Entrepreneurs - limiting responsibilities of LLC partners/shareholders



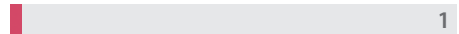
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Amendments to the Tax Code of Georgia - Charity



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Amendments to the Tax Code - Hybrid Vehicles



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Source: Institute for Development of Freedom of Information (IDFI), First Evaluation Report on the Assessment of Extent and Quality of Public Private Dialogue (2014-2016), available at: <https://goo.gl/dW03Cb>



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