



Accountability, Technology and
Institutional Openness Network
in SEE

Roadmap on good governance for state institutions in Montenegro

Based on the Regional Index of
Openness

For Year
2016



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for 2016

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ACTION SEE – Accountability, Technology and Institutional Openness Network in SEE project aims to increase the inclusion of civic society and media organisations in decision making processes and the creation of public opinion and policies, as well as to raise the capacity of civic societies to address sensitive issues.

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1. GENERAL INFORMATION

Openness represents a key condition for democracy - since it allows citizens to receive information and knowledge, necessary for an equal participation in political life, effective decision-making and holding institutions accountable for policies which they conduct. Around the world institutions undertake specific activities with the aim to increasing their transparency and accountability to citizens.

Open government is based on four organizational principles: transparency, accessibility, integrity and awareness. These principles apply to all branches and levels of government, from the central executive to local self-government, parliament and the judicial system.

The Index of Openness is a composite indicator that measures the degree to which governments in the Western Balkan countries are open to citizens and society and is designed in order to define to which degree citizens of the Western Balkans receive opportune and understandable information from their institutions.

In order to measure the degree of institutional openness, ACTION SEE partners following international standards, recommendations as well as examples of good practice, assessed institutions through special quantitative and qualitative indicators, which evaluate institutions on the basis of: accessibility of information on the official websites of institutions, quality of a legal framework for individual issues, other sources of public informing and questionnaires delivered to institutions.

The responsiveness of institutions to the questionnaires was an additional indicator for their openness. A lot of institutions got negative scores on indicators due to their non-responsiveness, which is also important to mention for two reasons: first, that institutional responsiveness is an indicator for openness itself, and second that institution's non responsiveness has affected their index scores negatively, because they were automatically graded as 0. Additionally, some of the indicators could've been graded positively if only the existing laws were implemented.

The measurement was conducted in the period from October to the end of December 2016. Based on monitoring data and findings, a set of recommendations and guidelines directed towards institutions was developed on the basis of research results. Recommended steps for each category of institutions are done on the basis of indicators that were not entirely fulfilled. Additionally, since some of the categories of institutions were sampled, i.e. executive agencies, local self-governments, courts and prosecutions, for these institutions the recommendations and action steps are general for the whole group of institutions.

Readers can find methodology and general project information at the end of this document.



2. STATE INSTITUTIONS

2.1. CORE EXECUTIVE

2.1.1. GENERAL CONCLUSIONS

Openness of the executive power in Montenegro is in the first place in the region and it amounts to 66% of fulfilled indicators. This result is expected and it is in accordance with the previous measurement of openness on the regional level. Through negotiations for accession to the European Union, Open Government Partnership and other activities, the Government started with creating policy of openness. This was advanced by numerous initiatives from NGOs and “Government of Electoral Trust”, which prepared elections in October and contributed to the policy of openness.

However, absence of strategic planning and promoting openness represents a significant deficiency. The promotion of openness, align with other policies of the executive power, must be placed equally. This has caused situation in which promotion of openness barely happens and there are bodies, which do not respect legal obligations, principles and practices of good governance without any consequences. This has created significant differences in openness of the Government, ministries and executive agencies. In Montenegro the question of openness is still a question of personal opinion of the first manager of institution or his/her team and not of a clear state policy.

The results of Regional Index of Openness has shown that openness significantly decreases as we move towards bodies which are on a lower hierarchical level. It is obvious that there is a significant number of institutions that still resist the introduction of the concept of openness and they must systematically work on this problem with the involvement of top managers in the system.

2.1.2. ACTION STEPS

Government of Montenegro

The Government of Montenegro has the best regional score of openness and it amounts to 82% of fulfilled indicators. From the regional aspect, this score is a result which deserves attention and respect and it corresponds with development levels of Montenegro, compared to other countries. But the goal of Montenegro is the achievement of international standards in this area also, and from that aspect this must not mislead us since it does not completely satisfy needs for openness on this level of development of Montenegrin society.

Therefore, significant space for the improvement may be noticed.

For example, there is the problem regarding a full transparency of the Government's sessions and it must be upgraded and additionally improved. Even though there are limitations for transmission of the Government's sessions, public has no insight into sessions flow or even into key moments of sessions' discussion. After each session it is possible to access all materials discussed at this session on the website of the Government. But, we do not have practice of publishing minutes from the Government's sessions so that citizens cannot get a complete picture regarding dynamics of sessions and a way of consideration of specific policies and questions, which could have impact on their standard and life quality.

Also, the Government does not publish a final text of the Law on Budget for a current and previous two years. The similar situation is with publishing the Law on Final Account, which is only in a form of proposal, not in a form of a final legal text. In addition, the search of budget document is limited and it hinders any comparison, analysis or data usage for further processing. Citizens do not have an opportunity to understand the budget through narrative and graphic explanations, which should be available through a preparation of the document "Budget for citizens".

When we talk about citizens' participation, it still exists only on a formal level. Essentially, work on this part of the Government's openness did not bring significant results.

In order to overcome this situation and in order to have a consistent implementation of the openness policies and practices Government is advised to:

- Create and enact the strategic document regulating the area of openness. The strategy of development and promotion of openness must be prepared and adopted until autumn 2017 and the first action plan must be implemented in 2018. In addition, all relevant stakeholders (representatives of institutions, civil society...) has to be involved in the creation of this strategic document.
- Publish the minutes from the sessions on its official web site.
- Regularly publish the Law on Budget.
- Regularly publish the Law on Final Account.
- Create and publish „Citizen budget“ for each year.
- Regularly publish the Mid-Year Report on budget spending.
- Submit the Draft law on Budget to Parliament far enough in advance to allow Parliament to review it properly (3 months prior to the start of the fiscal year).
- Regularly publish public procurement plans.
- Start with a full application of the Action plan of Public administration reform Strategy with focus on a part related to the development, coordination and reporting about the performance of public policies.
- Adopt instructions for state bodies on how and in which way to publish data on the websites in an open data format. After that, a strict implementation of the principle of publishing data should be ensured.
- Ensure the full and timely implementation of the Regular Impact Assessment (RIA)
- Enact and implement a strategy or plan in order to develop civil servants' capacities for social media use (of official social media accounts) as a part of their official tasks.

Line Ministries

Ministries of Montenegro on average fulfil 66% of criteria of openness. This modest result is the best in the region and it additionally affirms the low level of openness of regional ministries. Differences in results among ministries in Montenegro are enormous – the best ranked ministry fulfils 81% of criteria and the worst one fulfils a half less – 43%. This result calls for immediate action for the Government in order to ensure a consistent implementation of the openness policies, by creating and enacting the strategic document regulating the area of openness as mention before.

Ministries are not sufficiently dedicated to informing public about their work. Thus, by searching their websites public cannot find out what ministries plan to do and which results they achieved during the year. Official websites of ministries contain information which are not systematized in most cases, specific sections are empty or not updated, with very limited search possibilities. Therefore, websites resemble labyrinths containing information. Principles of publishing data in an open data format are not respected and there is no unique principle about updating current accounts on social networks. In order to improve the situation web sites of the Ministries need to be completely reconstructed to be more user friendly so that and average citizen can easily find and access the need information or document in a timely manner.

Ministries are obliged to proactively publish the information, as prescribed by Law on Free Access to Information (FOI).

Research results has shown that Ministries are prone not to or partially publish: organizational information, financial documents, documents related to public procurements, documents from public consultation... In order to improve their openness Ministries have to publish following set of document on their official websites:

- Work programs for each year.
- Work reports for each year.
- Budgets for each year.
- Final Accounts for each year.
- Mid-Year Report on budget spending.
- Plans for public procurement.
- Calls and decisions on public procurements.
- Contracts and annexes regarding public procurements.
- Documents gathered in public consultations.
- Main acts that control the work of institutions (laws, regulations...).

Furthermore, in order to improve the communication with public, Ministries have to open and regularly update the account on the social networks. Particular attention need to be put on respecting the rules of public consultation on draft legislation with emphasis on using on line tools in order to reach the widest public in consultation processes. Therefore Ministries should conduct public consultations online, though the mechanism established on a subpage eParticipation.

Executive Agencies

Executive agencies fulfill only 49% of openness indicators. Websites of these bodies are often not updated and in 40% of cases it is very difficult to find documents. Slightly more than 5% have an active account on social networks. This result points to the need to systematize websites, regularly update information and actively use social networks as a communication channel with citizens.

Executive agencies are violating the Law on FOI in the part related to proactive publishing of information: 57% of them don't publish annual work plans on their websites, 37% publish information on personnel including names and positions of civil servants, 30% deprive the public of information about who are their public officials, the amount of their salaries and their contacts; only 58% publish strategies on their websites. Almost 90% of executive agencies don't publish budgets on their websites. If we add to this even worse result of publishing final accounts and mid-year reports on budget spending, the picture of budgetary non-transparency is complete. Nearly 58% of executive agencies do not publish calls and decisions regarding public procurements on their official websites. 74% of them don't publish contracts and annexes to agreements on public procurements. 90% of bodies do not publish plans for public procurements.

In order to improve this situation, Executive agencies must regularly update their official websites, i.e. proactively publish the following list of information and documents:

- Work programs for each year.
- Work reports for each year.
- Budgets for each year.
- Final Accounts for each year.
- Mid-Year Report on budget spending.
- Public procurement plans.
- Calls and Decisions on public procurements.
- Contracts and Annexes regarding public procurements.

Openness of other executive bodies is low in all states from the region and ranges from 17% to 49%. In Mac• Main acts that control the work of institutions (laws, regulations...).

- Information on personnel including names and positions of civil servants
- Information on the names, salaries and contact of public officials
- Strategies

2.2. PARLIAMENT

2.2.1. GENERAL CONCLUSIONS

For the last three years the Parliament of Montenegro has been the most transparent in the region. According to the newest research results, the Parliament of Montenegro meets 85% of indicators of openness. This respectable result indicates dedication and hard work of the current and previous convocations of the Parliament. The step forward has been made in almost all segments of the Parliament's functioning. However, even though the Parliament achieves the best results in the region, there are several significant questions this institution must deal with in order to achieve international standards of openness and accountability.



2.2.2. ACTION STEPS

Following action steps provides key recommendations for a continuation of development and implementation of international standards of openness and accountability:

- To strategically plan the development of openness and accountability of the Parliament of Montenegro through identification of key problems and proposals for their solution:
 - a. Make more detailed analysis of specific provisions of the Rules of Procedure from the aspect of its effectiveness and quality of implementation in procedural, as well as essential aspect. For example, it is necessary to additionally specify procedure of scheduling extraordinary sessions due to the fact that they caused many public polemics and ambiguities. In addition, it is necessary to revise and improve provisions of the Rules of Procedure regarding the control of executive power. The Parliament must ensure mechanisms in order to operate according to conclusions and recommendations adopted on control hearings.
 - b. Reconsider the role of the Collegium of the President of the Parliament from the aspect of transparency and scope of its work.
 - c. Review MPs Code of Ethics, since it is not implemented properly and in addition, it does not prescribe adequate sanctions for possible violations.
 - d. Establish a working group which will analyze the problem and make a plan of changes for documents and practices, which do not function properly. The “crown” of this process would be adoption of the Law on the Parliament. The Law would place this, the most significant democratic institution, to a belonging place and its rights and obligations would be a legal category. Adoption of the Law on Parliament would require a participation and the widest possible consensus of all parliamentary political subjects.
- Towards a completely transparent system of decision making in the Parliament it is necessary to increase transparency of working bodies’ work. The simplest solution is introducing direct internet transmissions of parliamentary bodies’ sessions but also more transparent and fast displaying of voting records for all agenda issues.

Additionally, it is necessary to regularly publish information regarding attendance of MPs on plenary sessions and thus citizens would have a direct insight into the accountability of work of persons they have voted for in elections.

- The Parliament of Montenegro should establish direct channels of communication with citizens through social networks as soon as possible.
- Except the right of proposing laws through MPs, a direct submission of initiatives and petitions must be enabled to citizens. MPs should be obliged to thoroughly consider citizens' initiatives and put them into a parliamentary procedure. Also, it is necessary to consider a possibility of submitting them electronically so that citizens would exercise their political right in a more direct and accessible way. Parallel with introduction of these possibilities, it is necessary to adopt communication plan for their promotion in order to inform as many citizens as possible.
- Legislative activity of the Parliament must be improved in a way that it will work on evaluating possible influences of legal solutions during its preparation (RIA analysis). Laws proposed by the Parliament must pass a procedure, which will show their impact on citizens' lives. In this process all actors must be involved through consultations while results of analysis must be transparently conveyed to citizens. Results of analysis must be evaluated by experts in order to increase quality.
- It is necessary to enhance publishing of the budget, final account and mid-year report on budget spending on the website. Also, budgetary documentation should be published in an open data format.
- The Parliament should present to citizens budgetary plans in a simple and understandable way through adoption of "Citizen budget".

2.3. LOCAL SELF-GOVERNMENTS

2.3.1. GENERAL CONCLUSIONS

Openness of local self-governments in Montenegro is at a low level. Municipalities meet only 58% of indicators of openness. In comparison with results of openness of parliaments and executive power, these results are the worst and at the same time worrying. The situation should be the opposite, taking into account that these are institutions that are in direct contact with citizens. Additionally, we have set indicators in the way that they cover only fundamental i.e. basic postulates of openness and thus this result require a swift reaction and dedicated work in the following period.

The openness significantly varies from municipality to municipality. Therefore, the best ranked municipality meets 72% of indicators while the worst one meets just 39%.

2.3.2. ACTION STEPS

The closure is recorded in more areas: from the implementation of Law on FOI and showing in which way institutions spend citizens' money to the use of outdated ways of communication. Local self-governments must show readiness to the introduction of the concept of openness and to act as a service of citizens.

Municipalities must first actively update their websites and provide the functionality of the search tools. As well, they must consistently implement the Law on FOI and proactively publish information.

Based on the research results, we focus on the following list of documents that must be available on the official website of local self-governments:

- Work programs for each year.
- Work reports for each year.
- Mid-year report on budget spending.
- Public procurement plans.
- Information on personnel including names and positions of civil servants.
- Contact information of the person in charge of acting on the FOI requests.
- List of registers of documentation in the possession of municipalities.

Also, the greater participation of citizens and their awareness of the work of local self-governments can be improved by:

- Providing direct audio and video transmission of sessions through online streaming, broadcasting on TV and radio stations.
- Publishing minutes from the sessions.
- Publishing the "Citizen Budget", through which citizens would gain insight into spending money in a simple and comprehensible way.

In order to achieve a satisfactory level of communication with citizens, we recommend the municipalities to:

- Establish fixed hours for consultation with a president of municipality, which would significantly enhance the cooperation between the citizens and the municipality.
- Establish Information bureau, which would provide correct and comprehensive information about exercising rights within local self-governments.
- Publish monthly newsletter so citizens should be informed about current affairs in their municipalities.
- Open direct channels for communication with citizens, by creating accounts on social networks.

2.4. JUDICIARY

2.4.1. GENERAL CONCLUSIONS

Openness of judicial bodies was measured by using basic performance indicators. The results has shown that Montenegrin courts and prosecutors meet about 75% of the openness indicators. The situation in Montenegro is significantly better than in the region. The reform of the judiciary in Montenegro has been in place for seventeen years. The current Judicial Reform Strategy 2014-2018 contains a number of measures that affect the improvement of the transparency, openness and accountability of the judicial system. The will to increase openness is expressed through various documents and statements by managers in the judiciary. The key task in the coming period is to consistently implement all the proclaimed principles through practice. Numerous activities of the international community, NGO initiatives and reporting on problems in this field by the Montenegrin media contributed to increasing the openness in this area.

2.4.2. ACTION STEPS

Courts and prosecutor's offices must have an independent position in a system of power in their work and they must respect basic principles: impartiality, accountability, efficiency and transparency. We have identified several critical points in the work of judicial bodies and they must pay a special attention to these points, towards the achievement of international standards:

Courts

- It is necessary to improve the spatial capacities and accessibility of courts for persons with reduced mobility.
- Misdemeanour courts should improve the openness and availability of twork data through the active management of their official websites.
- Further improve the judicial information system and ensure its full implementation, especially in misdemeanour courts. Determine the minimum number of judges that should have one court to ensure the random allocation of cases.

- Inform citizens about the procedure for reporting judges who violate the Code of Ethics. In addition, it is important to work on the promotion of the Code of Ethics.
- Improve work reports. It is necessary to work on their comprehensibility to the general public, as well as on the availability of narrative explanations and basic information on the work.
- Improve the communication policy of the courts with the media and the public, through training of spokespersons and the development of the Communication Strategy.

Prosecution Offices

- Improve the official website tuzilastvocg.me, in order to be adapted the number of institutions and the amount of information, with functional search and transparent content.
- Timely publish press releases and news on prosecutions' official websites.
- Make available work reports over the years, not just for the previous year.
- The work reports should also contain information on the realized activities of the prosecution, which influenced the state of the areas within their scope. Also, the reports need to identify the causes of problems and solutions that will be applied in the coming period.
- For the purpose of objective and timely information to the public, the manner of communication between the prosecution offices and the public, as well as the manner of media reporting, should be a focus in the following period.
- The prosecution offices should make every effort to prevent and sanction the occurrence of "leakage of information" from institutions and thus provide independent work.

Judicial and Prosecutorial councils

The Judicial and Prosecutorial Council should strategic plan annual activities within a special work plan and program. Currently, there are no work plans that contain goals and activities at the annual level on the councils' websites. Financial transparency should also be improved in both cases.

The Judicial Council should publish public procurement plans with calls, decisions and contracts on its website, while the Prosecutorial Council will significantly improve the state of financial transparency by publishing the budget and the final account.

3. METHODOLOGY

In this section we will explain our methodology for the index, for the defining of recommendations, and for choosing concrete steps. Methodology should be detailed, and methodological limitations especially emphasised. To be provided by CDT and Zasto Ne.

The “Regional Index of Openness” is a composite indicator that measures the degree to which governments in the Western Balkan countries are open to citizens and society. Openness is a key condition for democracy because it enables citizens to obtain the information and knowledge they need to participate as equals in public debates, to take enlightened decisions and to hold governments accountable. Openness also supports good government because it allows governing elites to consider and draw on ideas and expertise dispersed in society.

The Regional index of openness measures the extent of institutions’ openness to citizens and society based on the following four principles: 1. transparency, 2. accessibility 3. integrity and 4. awareness.

The principle of transparency means that a government provides clear and relevant public information about what it is doing. This information relates to the organization and work of government institutions and in particular to budgeting and public procurement procedures.

Accessibility is related to ensuring and respecting procedures for free access to information and strengthening interaction with citizens as well.

Integrity includes mechanisms for prevention of corruption, implementing codes of conduct and regulation of lobbying.

The last principle, awareness, is related to monitoring and evaluation of policies which are conducted. Awareness denotes the availability and provision of information and knowledge within government.

The four principles are further disaggregated into individual questions that are assessed on the basis of information availability on official websites, legal framework's quality for specific questions, other sources of public informing and questionnaires delivered to institutions. The Openness Index assesses how these four principles are realized in the following institutions or sets of institutions: core executive; line ministries; executive agencies; parliament; local self-government; courts; public prosecution. Since these institutions perform different functions in the process of governing or policy-making, individual questions are adapted to match the profiles of the respective institutions.

Methodological constraints

Research methodology provides a formal insight into the achieved level of institutional openness in the region. However, in certain cases, its conclusions on how the institutional openness functions on the ground are limited. The very existence of legal framework for institutional openness is not a guarantee that good governance principles are implemented in practice. This research provides a space for further in-depth policy analyses of particular segments of openness and good governance principles implementation, which would be valuable for obtaining a comprehensive and clear picture of the openness of public institutions in the region.

Moreover, differences in governance structure and territorial organization between Western Balkans countries limit, to a certain extent, comparative assessment of the achieved levels of institutional openness. In that sense, results of executive, legislative and judicial openness sometimes do not reflect actual relations between different institutions at both, national and regional levels.

4. PROJECT

Good governance is key to rule of law. And while issues of corruption, transparency, rule of law and good governance are always in the spotlight, there remains a lack of understanding and systemic problems that hardly receive sufficient coverage. The “Accountability, Technology and Institutional Openness Network in South East Europe - ACTION SEE” project aims to raise awareness of such challenges by facilitating cooperation among civic organizations and consolidated strategic efforts for representation.

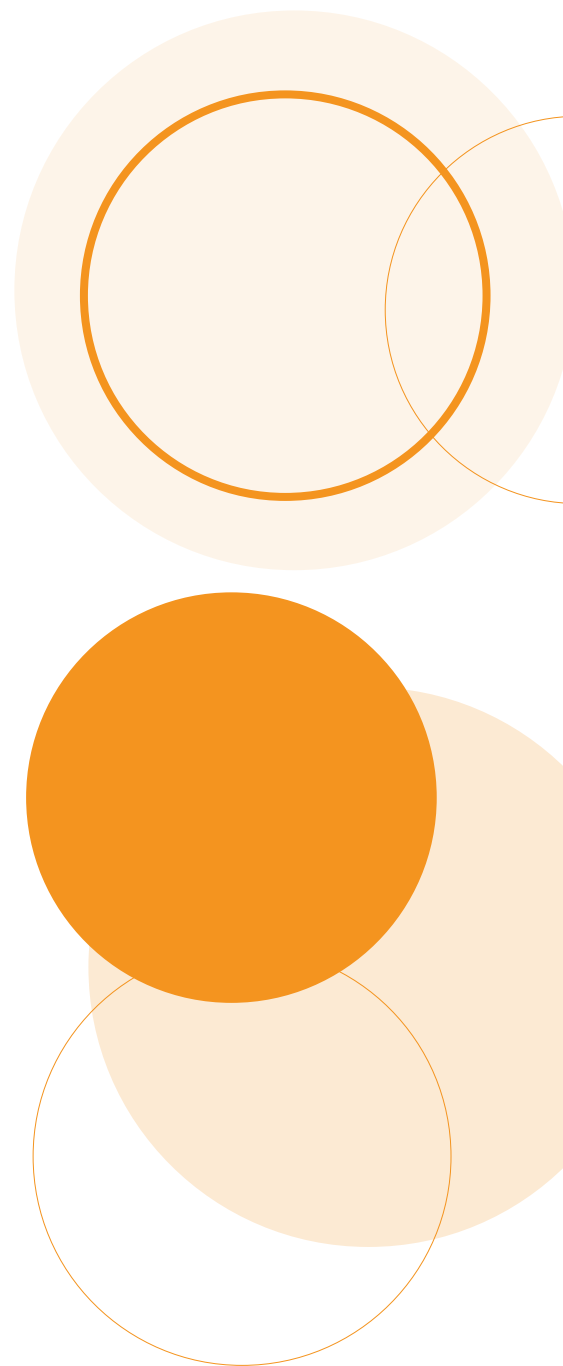
ACTION SEE provides a platform for dialogue and a concrete tool to measure the degree to which state institutions uphold principles and standards of open governance (Openness index).

The project aims to increase the inclusion of civic society and media organizations in decision making processes and the creation of public opinion and policies, as well as to raise the capacity of civic societies to address sensitive issues.

Specific project goals:

- Promote a dynamic civic society which effectively mobilises citizens for active participation in issues related to the rule of law and good governance and affects policies and decision making processes at a national and regional level.
- Strengthen mechanisms for dialogue between civic organisations and government institutions and influence good governance and public administration reforms.
- Stimulate civic and media organisation networking at local and EU level, allowing the exchange of know-how, skills and connections, as well as increase the influence of their representation efforts.

ActionSEE is a network of civil society organizations that jointly work on promoting and ensuring government accountability and transparency in the region of South-East Europe, raising the potential for civic activism and civic participation, promoting and protecting human rights and freedoms on the internet and building capacities and interest within civil society organizations and individuals in the region in using technology in democracy promotion work.



5. READ MORE

Openness of Executive
Power institutions in the region
and Montenegro

<https://goo.gl/76Va2f>

Parliament openness
in the region and Montenegro

<https://goo.gl/1oynFD>

Analysis of openness of
Local self-government in
the region and Montenegro

<https://goo.gl/W9W5mj>

Openness of judicial bodies in the
region and Montenegro

<https://goo.gl/qyWxiS>

