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GOVERNMENT MIRROR: PUBLIC PARTICIPATION IN THE LAW PREPARATION PROCESSES

*Annual Report from
Monitoring ENER 2022*

GOVERNMENT MIRROR: PUBLIC PARTICIPATION IN THE LAW PREPARATION PROCESSES

ANNUAL REPORT FROM MONITORING ENER 2022

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INTRODUCTION

Active and transparent involvement of citizens in the creation of the legislation is a precondition for a democratic society whose postulates are transparency and accountability. The public participation in the processes of law preparation and policy creation enables their influence in the development of policies and laws that affect them. Through stakeholder participation, the Government has access to new ideas, information, and resources important in the policy-making process. Consultations contribute to building mutual trust and developing democratic principles.

In the country, there are several acts that provide the basis for the involvement of the public in the law-making processes. These are the Constitution of the Republic of North Macedonia, the Law on Referendum and other Forms of Immediate Declaration, the Law on the Government's Work, the Law on the Organisation and Work of the State Administration Bodies, etc. Further on, a series of by-laws regulate this issue, such as: Rules of Procedure of the Government of the Republic of North Macedonia, Code of Good Practices for the Participation of the Civil Society Sector in the Policy-Making Process, Strategy of the Government for Cooperation with and Development of the Civil Society Sector, Methodology on Regulatory Impact Assessment, Guidelines for the Work of the Ministries in the Process of Implementing the Regulatory Impact Assessment, Rulebook for the Organisation of Public Consultations when Starting a Legislative Process, etc.

Electronic consultations on draft laws are made possible through the Single National Electronic Register of Regulations (ENER). The Ministry of Information Society and Administration (MIOA) is responsible for developing and maintaining ENER, and each ministry is responsible for publishing draft laws that are under its jurisdiction. On the ENER website, any interested party can express their opinion and give comments and suggestions on the published draft laws. According to the Rules of Procedure of the Government of the Republic of North Macedonia, the ministries are obliged to publish the proposed draft laws on ENER already in the process of their preparation, to make them available for public consultation for a minimum of 20 days. Although there are various legal possibilities for consultation, ENER remains almost the only tool for public access to draft laws. This imposes the need for its continuous monitoring.

Since 2013, Macedonian Centre for International Cooperation regularly follows the practice of publishing draft laws on ENER. This report presents the results of following the minimum standards for public participation in the preparation of laws, i.e., publication and obeying the minimum time for consultations for the published draft laws on ENER in 2022. The report should serve the organisations, civil servants, and the public in general to inform themselves about the openness of the state administration bodies in the policy-making process. The intention is to contribute to improved representation and participation of civil society in the preparation of public policies, by informing about the implementation of the existing mechanism (ENER) which provides for the involvement of the public.

Considering that it is a long-term process of building knowledge and trust; it is necessary to continuously work on improving the opportunities for public involvement to create quality draft laws and their improved implementation. In addition, it is necessary to gain public trust, which will further legitimize the decision-making and operation of the legislative and executive authorities.

1. Methodology and Approach

The analysis followed the practice of publishing draft laws on ENER, the compliance with the minimum time limit for consultations on the published draft laws, as well as the publication of the necessary documents and the practice of commenting and providing feedback.

1.1 Sample and Data Processing

The sample includes draft laws published on ENER during 2022, as well as draft laws passed at a Government session and submitted to the Assembly of the Republic of North Macedonia in 2022. The monitoring sample covered only draft laws, while by-laws were not subject to monitoring, because the legal framework does not foresee an obligation for their publishing on ENER. The sample also includes the laws that were proposed by members of the Assembly of the Republic of North Macedonia.

In the monitoring period (January 1 to December 31, 2022) 49 notifications on the beginning of the law drafting process, 40 Regulatory Impact Assessment (RIA) reports and 39 draft laws were published on ENER. During the period, a total of 105 draft laws were adopted at Government sessions and submitted to the Assembly, while it was monitored how many of the draft laws, for which there is an obligation, were published previously on ENER, as well as how many were passed with abbreviated procedure, and how many with regular procedure. During 2022, a total of 86 laws were proposed by members of the Assembly of the Republic of North Macedonia.

The analysis also covered how much the statuses actually correspond to the stage of the draft law, because the statuses of the draft laws on ENER aim to offer users information about the phase in which the preparation process of a certain draft law is. Thus, the status "Open" should indicate that the draft law is open for consultation by the public, while the status "Closed" should inform that the draft law has already been adopted at Government session.

In order to find out the date of passing a certain draft law by the Government, we monitored the website of the Parliament (www.sobranie.mk) as well as of the Government (www.vlada.mk/vladani-sednici), where the proceedings of the sessions of the Government are published. The processed results are presented in tables expressed in absolute numbers and percentages, followed by an appropriate comment and derived conclusions and recommendations.

2. Regulatory Impact Assessment Process and Publishing Draft Regulations on ENER

In accordance with the Rules of Procedure of the Government of the Republic of North Macedonia ("Official Newspaper of RSM" no. 38/01 and 113/2017) and the Methodology for Regulatory Impact Assessment ("Official Newspaper of RSM" no. 107/13 and 173/ 17), the ministries have the obligation to carry out regulatory impact assessment (RIA) for the law proposals, except for the laws that are adopted under an urgent procedure, the ratification of international agreements, terminological harmonization with other laws, proposal for the the budget of the Republic of North Macedonia, the laws on the execution of the Budget of Republic of North Macedonia, the laws on borrowings of the Republic of North Macedonia and the laws on guarantees of the Republic of North Macedonia. Ministries must publish proposals for the adoption of laws, drafts, and proposals of laws on ENER and they must be available for comments by the public for 20 days from the publication date. Any interested party can submit opinions, observations, and suggestions on ENER, regarding the published laws proposals. The responsible ministry should prepare a report on the conducted consultations and publish it on its website and on ENER.

The Assembly has no legal obligation to publish for consultation the regulations that are proposed by members of the Assembly. For that reason, they are not an integral part of ENER. These proposed regulations are published only on the Assembly website. These proposed regulations are subject exclusively to the procedure for enacting laws in accordance with the Rules of Procedure of the Assembly. The Rules of Procedure of the Assembly do not provide for a consultative process for this type of proposed regulations, but only an opinion from the Government. In addition, even if the Government does not submit an opinion, the proposed regulation will be discussed by the Assembly.

2.1. Practice of Publishing on ENER Draft-laws Submitted to the Assembly

Although the ministries are obliged to publish the draft laws on ENER which are passed by regular and abbreviated procedure, there is still a practice that a large number of the draft laws are not published on ENER and are not available for consultation with the public. According to the data published on the website of the Parliament, in the period from January 1 to December 31, 2022, a total of **191** draft laws were submitted to the Parliament, of which 86 were proposed by MPs in the Parliament and are not subject to the obligation for prior publication on ENER and RIA implementation. The remaining 105 submitted draft laws were proposed by the Government and the line ministries, and **65** of them are subject to the obligation for RIA implementation, i.e., their prior publication on ENER. Forty draft laws do not have the obligation to be published on ENER because 28 were draft laws for ratification of international agreements, five refer to the adoption or amendment of the Budget of the Republic of North Macedonia, three are laws on state guarantee and four on state borrowing. **It was noted that 37% (24) of the draft laws obliged to be put on ENER for consultation (65), were not published on ENER.** There is a deterioration of the situation compared to the previous years, i.e., in 2021 41% (48 draft laws) were submitted to ENER for public consultation, and in 2019 this percentage was 49.56%.

Table 1 provides an overview of how many of the draft laws submitted to the Parliament were previously published on ENER. **The Ministry of Environment and Physical Planning, the Ministry of Defense and the Ministry of Education and Science are the ministries that do not have deviations regarding the publication of draft laws on ENER,** that is, all the draft laws submitted by these three ministries to the Parliament in 2022 have previously been published on ENER and the 20-day consultation period has been respected. The other ministries published on ENER a smaller number of laws submitted to the Parliament in 2022. The Ministry of Labor and Social Policy submitted 11 draft laws to the Parliament, ten of them under abbreviated procedure, and only one of these draft laws was previously submitted to ENER for consultation with the public.

Table 1. Draft laws proposed by the Government and ministries, submitted to the Parliament in 2022.

Ministry	Draft laws submitted to the Assembly	Draft laws published on ENER	
		Number of draft-laws	Percentage of the total number of draft laws
MD	1	1	100%
MFA	0	0	/
MAFW	2	1	50%
MTC	4	0	0%
MF	16	6	37,5%
MEPP	2	2	100%
MJ	10	3	30%
MES	4	4	100%
MC	0	0	/
MH	1	0	0%
MIA	2	1	50%
MISA	1	0	0%
ME	11	5	45,5%
MLSP	11	1	9%
MLSG	0	0	/
TOTAL	65	24	36,9%

Table 2 provides an overview of the number of laws adopted after an abbreviated procedure and how many of them were published on ENER. According to the Rules of Procedure, the ministries have the obligation to RIA implementation for the laws adopted with an abbreviated procedure. In 2022, 40 (61.5%) of the draft laws submitted by the ministries to the Parliament were adopted with an abbreviated procedure. Out of them, 6 (15%) were published on ENER. From the table it can be noted that three ministries did not submit to the Parliament a draft law with abbreviated procedure (MEPP, MOE, MH). On the other hand, MF, MLSP, ME and MJ have the largest numbers of draft laws with an abbreviated procedure submitted to the Parliament. Several ministries submitted draft law(s) with an abbreviated procedure to the Parliament and did not submit them to ENER (MLSP, MAFW, MTC, MJ, MIA, MISA).

Compared to 2021 and 2019, there is a deterioration of the situation, i.e., 34% (2021) and 29% (2019) of the draft laws were submitted with abbreviated procedure by the ministries to the Parliament. Regarding ENER publication of draft laws that are proposed with an abbreviated procedure, the situation has improved minimally compared to 2021 (12.5%) but worsened compared to 2019 (29%).

Table 2. Draft laws with abbreviated procedure proposed by the Government and ministries to the Parliament in 2022

Ministry	Draft laws submitted to the Assembly	Draft laws with abbreviated procedure		Draft laws with abbreviated procedure published on ENER	
		Number of laws	Percentage of the total number of laws	Number of laws	Percentage of draft laws with abbreviated procedure
MD	1	1	100%	1	100%
MFA	0	0	/	0	/
MAFW	2	1	50%	0	0
MTC	4	4	100%	0	0
MF	16	10	62.5%	2	20%
MEPP	2	0	0%	0	/
MJ	10	6	60%	0	0
MES	4	0	0%	0	/
MC	0	0	/	0	/
MH	1	0	0%	0	/
MIA	2	1	50%	0	0
MISA	1	1	100%	0	0
ME	11	6	54.5%	2	33.3%
MLSP	11	10	90.9%	1	10%
MLSG	0	0	/	0	/
Total	65	40	61.5%	6	15%

In addition, we looked at the figures not only by ministry but also by month. According to the data, only in July, for all draft laws submitted by the ministries, the obligation to be published on ENER for consultation was respected. In December, the ministries submitted 10 draft laws to the Assembly, and only 2 of them were previously submitted to ENER. However, no trend can be observed and there are no major deviations in different months in terms of fulfilling the obligation to submit the draft laws to ENER.

This analysis also included the method of passing laws that are proposed by MPs and/or authorized drafters of laws. According to the data, a total of 86 laws were proposed by MPs and this is a significant increase compared to 2021 when 39 draft laws were submitted by MPs to the Parliament. Out of this number, 74 were proposed with abbreviated procedure. A consultative process has not been carried out for these proposed laws because the Rules of Procedure of the Assembly itself do not stipulate the same as an obligation.

2.2. Respect and Deviations from the Minimum Consultation Period

According to the Rules of Procedure of the Government and the Methodology for Regulatory Impact Assessment, ENER consultations can take place in two stages:

- » Consultation phase from the day of publication of the notification for the beginning of the process and preparation of the draft law (minimum 5 days);
- » Consultation phase from the day of the publication of the RIA draft report and the draft law (minimum 20 days)¹.

With the upgrading of ENER, the minimum deadlines for these two phases are automated. By automating the observance of the minimum period of five days from the publication of the notice to the publication of the draft law, one of the key weaknesses of the previous system is avoided. With this, the user is provided with the opportunity to formally participate in the process of preparation of draft laws in the RIA phase.

Additionally, the introduced automated counting of the consultation period facilitates visibility as users know how many days the law is still open for commenting. When putting draft law on ENER, the automated counting has a minimum predefined value of 20 days.

According to the data from the Parliament website, out of a total of 24 draft laws adopted at a Government session, previously published on ENER, and submitted to the Assembly for consideration in 2022, in all cases the minimum period of 20 days for ENER consultation was respected, counting from the day of the publication of the draft law to the day of its passing at a Government session.

2.3. Overview of Published Draft Laws on ENER

The changes in the ENER design and layout in 2004 and 2019 resulted in a series of improvements including easier tracking of all acts related to the history of a law. However, a potential deficiency of ENER that was not overcome is the inability to automatically signal when a draft law is published on ENER for consultation. Consequently, with the publication of a notification for the start of the process for the preparation of a draft law, a new folder is opened that is kept with the date of the Notice for the start of the process for the preparation of the draft law. In this folder, the rest of the documents related to the specific amendment are placed (RIA draft report, draft law...). However, this structure makes it difficult to follow the publication of the draft laws on ENER for consultation, i.e., it is necessary to open the folder with the date of the Notification to check whether a RIA report or a draft law has been placed, and thus there is no automatic signalling when a draft law is put for consultation.

When publishing a draft law on ENER, it can have two statuses: "Open" and "Closed". The status "Open" means that the law is open for consultation by the public, while the status "Closed" means that the draft law has already been determined at a session of the Government and it is no longer open for consultation.

¹ Methodology on Regulatory Impact Assessment („Official Gazette of RM“ No. 107/2013)

Table 3. Published draft laws for ENER consultations during 2022.

Ministry	No. of published draft laws on ENER
Ministry of Agriculture, Forestry and Water Economy	12
Ministry of Education and Science	1
Ministry of Finance	3
Ministry of Transport and Communications	7
Ministry of Justice	4
Ministry of Culture	0
Ministry of Defence	2
Ministry of Economy	4
Ministry of Environment and Physical Planning	3
Ministry of Labour and Social Policy	1
Ministry of Health	1
Ministry of Internal Affairs	0
Ministry of Local Self-Government	0
Ministry of Information Society and Administration	0
Ministry of Foreign Affairs	1
Total	39

In 2022 a total of 39 draft laws were published on ENER, with the largest number of draft laws published on ENER by the Ministry of Agriculture, Forestry and Water Economy (12) and the Ministry of Transport and Communications (7). All other ministries have less than five draft laws published on ENER in 2022.

According to the statuses in which they were published, all draft laws were published with the status "Open" and were available for public consultation. After the 20-day period for public consultation, this status should be changed from open to closed. As of 13.02.2023, out of a total of 39 draft laws submitted to ENER in 2022, the status from open to closed was changed only for seven draft laws (18%) and all seven draft laws were proposed by the Ministry of Agriculture, Forestry and Water Economy. Furthermore, 23 of the 24 proposed laws by the ministries to the Parliament in 2022 which were previously published on ENER, still stand with the "Open" status on ENER.

According to the Regulatory Impact Assessment Methodology, stakeholders should have the opportunity to be involved in the consultation process for the implementation of the RIA, which is ensured by publishing the notification for the start of the process of drafting the draft laws at least five days before the publication of the text of the bill. In 2022, 49 notifications on the beginning of the law drafting process were published on ENER.

2.4. Practice of Publishing Required Related Documents

The analysis also monitored the publication of documents related to the RIA implementation for each draft law published on ENER. In accordance with the Methodology, the ministries during the planning and drafting of the laws publish the relevant documents related to the specific draft law on their website and on ENER: Notification of the start of preparation of the law, RIA draft report, draft law, proposal to law.

In 2022 out of a total of 39 draft laws submitted to ENER, for all of them notifications were published for the beginning of the preparation of the draft law as well as the RIA draft report.

However, in addition to the publication of the three basic documents, the ministries very rarely published the final text of the proposal to the law and the RIA report adopted at a Government session.

2.5. Practice of Commenting on ENER

In order to analyse the extent to which the public uses the given opportunity to influence the laws in the phase of their preparation, the practice of commenting on draft laws on ENER was also monitored. Also, the practice of the ministries in providing feedback to the remarks and comments was monitored.

ENER is still insufficiently used by the public as a tool to influence the process of preparing draft laws. Namely, in the reporting period, out of 39 draft laws published on ENER in 2022, 23 draft laws were commented on, for which a total of 112 comments were left. To these 112 comments, the ministries have published 36 feedbacks, however, some of these feedbacks are that the comments and suggestions will be reviewed. More than half of the answers given by the ministries (28) were given by the Ministry of Agriculture, Forestry and Water Economy on the five draft laws submitted to ENER by this ministry.

The highest number of comments were left on the Draft Law on Critical Infrastructure (18 comments), the Draft Criminal Code; Draft law to amend and supplement the law on food safety; Draft law for amending and supplementing the law on agricultural land with 11 comments for each of the draft laws.

As a comparison, in 2021, out of the 65 draft laws published on ENER, 38 draft laws were commented on, for which a total of 274 comments were left, and for those 274 comments, the ministries published 30 feedbacks. In 2019, out of a total of 152 draft laws published on ENER, 37 draft laws were commented on, for which a total of 223 comments were submitted and the ministries published 25 feedbacks.

3. Conclusions and Recommendations

The conclusions derive from the monitoring of compliance with the obligation to publish draft laws on ENER, the minimum period for consultation, updating the status on ENER and publishing the necessary documents, as well as the practice of posting comments by the public and giving feedback by the ministries.

In addition, the conclusions are based on the inclusion in the consultative process of the legislature as a creator of legal solutions.

3.1. Conclusions

- 1. Ministries do not publish the majority of draft laws on ENER.** Although the ministries are obliged to publish on ENER all draft laws that are passed by regular or abbreviated procedure, they did not fully respect the Rules of Procedure of the Government. In 2022, a total of 65 draft laws were submitted from the Government to the Parliament for which there was an obligation to be published on ENER, and for 24 of them (37%) the text of the draft law was previously published on ENER. Consequently, the public was denied the opportunity to be informed about the content of draft laws in most cases. There is a deterioration in the state of publishing draft laws on ENER compared to previous years (41% in 2021 and 49.6% in 2019).
- 2. The minimum period of 20 days for commenting is respected by the ministries.** The 20-day minimum period for commenting was respected by all 24 draft laws adopted at the session of the Government and submitted to the Assembly in 2022.
- 3. Not respecting the "closed/open" status on ENER.** The inconsistency of the status on ENER with the actual situation, whether the law was adopted at a Government session or not, is still a problem. Namely, 95% of the published draft laws that were adopted at a Government session and submitted to the Parliament still stand with the status "Open" on ENER.
- 4. Ministries publish the minimum necessary related documents for consultation.** Notifications for the beginning of the preparation of a draft law as well as a draft report on RIA were published on ENER for all 39 draft laws submitted to ENER in 2022.
- 5. Decreased public interest in commenting on ENER.** During the monitoring period, 112 comments were posted for 23 out of a total of 39 published draft laws on ENER in 2022.
- 6. Ministries rarely respond to the comments.** During the monitoring period, the ministries published 36 feedbacks on ENER to a total of 112 posted comments (32%).
- 7. The Assembly of the Republic of North Macedonia does not implement a consultative process for draft laws that are proposed by MPs and authorized drafters of laws.** Out of a total of 191 proposed laws, a total of 86 laws are proposed by MPs, which represents 45% of the total number. For a significant percentage of the draft laws, it is impossible for them to be consulted with interested parties and for them to be subject exclusively to a legislative procedure for passing laws. With this in mind, laws that are essential to the legal environment can be passed without the public being consulted about them.

3.2. Recommendations

1. **Ministries should adhere to the Rules of Procedure of the Government and publish all draft laws on ENER**, regardless of whether they will be submitted to the Parliament in a regular or abbreviated procedure, because the provisions in the Rules are mandatory and any deviation from them is unacceptable. It is necessary that the consultations on ENER are understood as an indispensable part of the process of law preparation, with the aim of building a positive institutional practice that will contribute to increased participation of citizens in the process of law preparation. It is necessary to increase the control of whether a certain draft law was published on ENER for consultation and that it cannot be adopted at a Government session if it was not previously published on ENER. In addition, this practice would increase the transparency of the processes of creating laws and would provide space for increased public participation and their involvement in the initial stages of the preparation of draft laws. The goal of ENER should also be seen through the impossibility of the political elites to create laws according to their criteria. Therefore, ENER should be accepted as a mandatory step when the Government proposes laws to Parliament.
2. **Ministries should use ENER more promptly.** The obligation for regular administration of ENER by the authorized persons should be raised to a higher level and the statuses of the draft laws should be updated regularly, in order for the public to know at any moment whether the published regulation is actually open for consultation or closed and has entered the parliamentary procedure.
3. **The practice of systematic publishing of the necessary documents should be continued and upgraded.** Although for the most part the basic documents are published regularly, the ministries should also publish the additional documents on ENER after the Government session. In addition, it is necessary for the Government to upgrade RIA and ensure an anti-corruption check of the legislation, which will make it possible to know from the moment of the adoption of the law whether it is subject to corruption risk.
4. **It is necessary to actively work on promoting ENER and increasing citizens' trust in this tool.** The number of comments on ENER indicates the need for increased information to citizens about the opportunities offered by ENER, and building trust that commenting on ENER can really influence the content of draft laws.
5. **Ministries should always respond to comments posted on ENER.** Ministries should respond much more promptly to the submitted comments, in order to increase public confidence in the ENER consultation process and to send a clear message that the institutions take public comments seriously. Also, in their answers, the ministries should provide an explanation as to whether and why certain proposals have been adopted or not.
6. **It is necessary to upgrade ENER.** The ENER upgrade should enable automatic signaling when a draft law is published on ENER for consultation and not only when the Notification is published. Consequently, it is suggested that in the section Latest Proposed Regulations, there should be 10 latest notifications for the start of the draft law preparation process as well as 10 latest draft laws available on ENER for consultation.
7. **It is necessary to foresee in the Rules of Procedure of the Assembly of the Republic of North Macedonia an obligation for a consultative process for the draft laws proposed by the MPs and the authorized proposers.** In this way, it will be possible for all creators of legislative decisions to be included in the consultation process (legislative and executive authorities) and it will disable the option of adopting regulations of essential importance for the society without public consultations.