

OPENNESS OF THE EXECUTIVE POWER IN SERBIA

Proposals for the improvement of a current state



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1. Openness of the Executive power in Serbia

The openness of the Executive administration that includes its transparency and accessibility to citizens and as well as the opportunities for citizen participation in decision making, development of laws and policies, is one of the main principles of the public administration reform in Serbia. The progress in the level of the public administration openness is a result of European Union integration process established as one of the main preconditions for the EU accession. Nevertheless, deficiencies and problems still persist and it is therefore necessary to invest further efforts to achieve full openness of the public administration in Serbia.

The openness index in Serbia is 42%, whereas the executive institutions openness (Government, ministries, of the Autonomous Province of Vojvodina and other government institutions) is 56%. The institutional openness of the executive powers indicates unequal practices and performance regarding the compliance with the legislature stipulating transparency, accessibility, integrity and efficiency of all institutions, as well as significant differences in the degree of fulfilment of indicators.

The **transparency** of institutions is positively influenced by the Commissioner for Information of Public Importance and the application of the Law on free Access to Information of Public Importance. The Law stipulates the obligation for government bodies to publish an Information booklet on their work at least once a year and to inform the public about general data about the work, in order to contribute to the respect of proactive transparency principles. Nonetheless, the problem of non-compliance of the Information Booklets with the Guidelines for Publishing Information Booklets continues to restrict the public access to information. Moreover, the format currently used for Information Booklets publishing (Word and/or PDF), as well as the updating system cause a difficult control over the application and a limited ability to search and compare the information.

In comparison to the access to organisational information, the access to information about public procurements and budgets is at a somewhat lower level, which shows the tendency of the executive power to hide the information about economic affairs and management of public resources from the public.

The issue regarding the openness of the public administration has been recognised as an important preventive mechanism within the anti-corruption policies. The implementation of the anti-corruption legislature contributed to the higher access to information about public officials, such as the public officials' property cards, income and sources of income, which can be found at the Anti-Corruption Agency's website in an organised and structured form. The result thereof is a score realised in the **integrity** indicator fulfilment.

Although there is a number of mechanisms aiming to attain the openness, one of the most frequent ones are public consultations with the interested public. The gaps in communication and **interaction with citizens** were noticed in practice within some institutions. Legislation process improvements, aiming to include citizens in the public policies creation, have been continually repeated in a series of documents adopted in the previous period. However, civil society participation in creation of public policies is more the exception than the rule. It is partly the consequence of the lack of systemic approach to the civil society engagement in policy development, as the space that national institutions give to civil society and the consultation with civil society remain mainly formal and do not influence the decision-makers, but rather serve to satisfy basic standards. Interestingly, the majority of executive institutions recognise the importance and benefits of social networks as tools and channels for communication with citizens, these channels are irregularly and insufficiently used by institutions.

Executive institutions show very low level of efficiency, reflecting in reporting, monitoring and strategic planning. Such score can be linked to the current situation, to the absence of an organised planning system and public policies governing systems in the Republic of Serbia and to the lack of an efficient mechanism aiming to undertake and follow-up the implementation of public policies.

The improvement of the legislation regarding the level of the public administration openness, together with

the level of institutional framework for its implementation has in the recent years lead to progress in the implementation of the principle of openness within the public administration system in Serbia.

1.1. GOVERNMENT OF THE REPUBLIC OF SERBIA AND GOVERNMENT OF THE AUTONOMOUS PROVINCE OF VOJVODINA

The Government of the Republic of Serbia (National Government) and the Government of the Autonomous Province of Vojvodina (Province Government) fulfil 59% of indicators of openness. The Province Government has a somewhat higher efficiency fulfilling 60% of indicators compared to the National Government that fulfils approximately 58%.

In the area of **transparency** both institutions fulfil 61%, even separately. The most questionable aspect in the area of transparency refers to the preparation and publishing of the annual budget. Both institutions fulfil 41% of indicators. However, it has to be pointed out that the National Government fulfilling 57% is far ahead the Province one (25%). The Budget System Law stipulates the obligation to publish the budget and the annual financial statements on the website of each public resources beneficiary. Nevertheless, it is impossible to find such information on the Province Government website, with the exception of the annual financial statement for 2015 which is available in the Work Information Booklet of the Province Government. It convenes to point out that there is a website “Transparency of the budget of the Autonomous Province of Vojvodina”, but that it is not linked to the Province Government website where budgets for 2016 and 2017 are published, as well as annual financial statements for years 2004 to 2015. The National Government publishes budgets and annual financial statements available for the last two years. Civil budget is not prepared by any other institutions, whereas the principles of transparency and participation in the preparation of the budget are not established by positive legislation.

Legal deadlines for budget proposal for the next budgetary year to the Assembly are not abode. The issue regarding the adoption of the Law on Budget in the last minute has not been solved for the last 15 years. In the last three years, the proposal for the Law on Budget has been addressed to the National Assembly with one month delay in 2016 and 2017. In 2014, such delay was nearly two months.

Both National and Province Governments fulfil approximately 69% of indicators in the area of public procurement, nevertheless Province Government is far ahead in comparison to National Government (80% vs. 58%). Legal framework for public procurement procedures is defined by the Public Procurement Law. The Public Procurement Portal has been established so that citizens can use it as a research tool. Public authorities are obliged to publish bids and agreements with suppliers on the Public Procurement Portal and on their websites. Nonetheless, National Government does not publish the plans for public procurement on its Internet page and it is impossible to find public calls for submission of tender documents, decisions on undertaken public procurements or signed contracts.

Both Governments publish the majority of organisational information. Their mutual result amounts to 71%, the Province Government has a better result than the National Government (76% vs. 66%). However, the annual work plans of the National Government remains inaccessible as well as the annual financial statement. These documents could not be found for the last three years. When these information were being gathered, the calendar of the Government sessions was unavailable, as well as materials and minutes from session. The Report on the work of the Province Government is available only for the year 2014.

Total **accessibility** is 71%, whereby the National Government is more efficient (75%) in relation to the Province (67%). The Law on Public Administration stipulates the obligation for Ministries and special organisations to undertake public debates “in the procedure of preparation of a law which essentially changes the legal regime in one field or which regulates issues of particular relevance for public”. The conduct of public debate in the preparation of a law shall be regulated in detail by the Rules of Procedure of the Government of Serbia. However, the Law on Public Administration does not define this issue for the Province Government, whereby

the participation of citizens is not the object of the Law on Establishing the Competences of the Autonomous Province of Vojvodina, either.

In Serbia, there is no legally abiding act that regulates the participation of citizens in public policies creation. When it comes to non-binding legal acts, the National Government adopted in 2014 Guidelines for civil society organisations' participation in the preparing of regulations and recommendations aiming towards all levels of power: central, provincial and local. Nonetheless, these Guidelines did not have any effect in practice due to their non-binding character. They represent a declarative recognition of the importance and need to include the public in the public policies creation process. In 2014, on the basis of research undertaken by the Office for Cooperation with Civil Society of the Government of the Republic of Serbia, a public discussion was held for one in ten regulations.

There is a significant difference between the republic and the province government when it comes to every-day interaction with citizens. The Province Government fulfils a mere 19% of indicators. Twitter account of the Province Government was opened in 2013, but up until the preparation of this report there have been no tweets from that account. On the other hand, the Government of Serbia has got a Twitter account that is regularly updated.

Regarding the participation and interaction with citizens on the state and provincial level, both governments fulfill a significant percentage of indicators when it comes to the access to information of public importance. At the provincial level, the fulfilment amounts to 86%, whereby at the state level this percentage is somewhat lower and amounts to 78%. Both governments prepare an Information Booklet about the work in accordance with the Law on Free Access to Information of Public Importance. However, several discrepancies have been observed. For instance, on the basis of the analysis of the Information Booklet on the work undertaken by the Office of Commissioner for Information of Public Importance and Personal Data Protection, the Government of the Republic of Serbia prepared an Information Booklet on the work that is not harmonised with the Instructions on several important items. The system for professional trainings of the public employees to duly note, stock, keep and submit the Information of Public Importance has not been established. The state government does not have an employee in charge of the information of public importance.

Both institutions' **integrity** is 65%, but there is a significant difference in indicator fulfilment. In this area, the Provincial Government fulfils nearly two times more indicators (81%) than the National Government (49%). The National Government has not got a special *code of ethics* although there is a Code of conduct of public employees, adopted at the state level that defines integrity standards and rules of conduct of public employees working in public administration institutions, governmental services and professional services of administrative districts. On the other hand, the Provincial Government adopted the Decision on the Code of Conduct in the provincial institutions that provides a disciplinary liability for violation of its provisions (article 34).

In the area of *prevention of conflicts of interests* 83% of indicators have been fulfilled which is a rather noteworthy score. The National Government fulfils 74%, the Provincial Government a significant 91%. What contributes to this result is the fact that data such as the public officials' property cards, income and sources of income can be found at the Anti-Corruption Agency's website in an organised and structured form. The Anti-Corruption Agency publishes a statistical analysis of a gift catalogue relating to the execution of a public function on the yearly level, about which public officials are held to inform the state or other body, organisation, public service where they perform public duties and that are obliged to keep a special record on gifts.

Lobbying is not legally regulated in the Republic of Serbia. The Lobbying Act has not yet been passed, i.e. it has not been even introduced to the parliament, although it was presented as one of the key regulations in the prevention of corruption. The report on anti-corruption strategy implementation shows that there have been no advancements in regard of publicity of information concerning the attempts to influence legislative and executive power.

Both institutions show very low levels in the area of **efficiency**, only **11%**, whereby the Provincial Government

does not fulfil a single indicator. Monitoring and evaluation systems have not been established, i.e. the internal document that regulates monitoring and evaluation in programme and project implementation has not been adopted. Furthermore, the system of indicators that ensure measuring of influences of public policies, programmes and projects does not exist. In respect of reporting, only the Rules of Procedure of the Government of Serbia define the form and deadlines for reporting by corresponding Ministries. However, the Rules of Procedure of the Government do not prescribe the type of information that reports prepared by Ministries should comprise, nor the procedure that ensures the reporting on realised and unrealised results of public policies. Systematic monitoring of the effects of regulations and planned management of public policies is still in its infancy. On the national level, the Republic Secretariat for Public Policies has been established as a body that performs professional work and gives support to the Government in analysing and strategic management of public policies.

1.2. MINISTRIES

A total score of Ministries in Serbia is 62%. The differences in openness score between ministries vary, so that the highest ranking ministry fulfils 81% of openness criteria and the lowest ranking one nearly half as much, only 47%. Moreover, there are important differences between individual ministries in separately evaluated transparency, accessibility and efficiency aspects.

A total **transparency** score of Ministries in Serbia is 64%. The highest transparency score of Ministries is in the area of organisational information publishing, amounting to 68%. Organisational information about names, salaries and contacts of public officials are published by the majority of Ministries, whereby only one Ministry publishes on its web page the list of public officials and employees with their titles.

The accessibility of information regarding the process of *public procurement* (61%) and budget (55%) is at a somewhat lower level comparing to the total transparency score of Ministries. Documents and data on public procurement are available on official web sites of all Ministries. However, agreements and annexes to the agreements on public procurements are not published by any Ministry. The majority of Ministries publishes also the plans for public procurement. The overview of Internet pages shows that two ministries have not published the plan of public procurement.

The majority of Ministries abide to the Budget System Law and publishes information on the budget and on the annual financial statements. 25% of Ministries have published budgets for the last three years on their official web pages, whereas two Ministries have not made available their budgets for the said period on their web sites. The annual financial statements are published by the majority of Ministries, whereby two Ministries have not published any annual financial statements in the last three years.

Individual Ministry's scores depend on the type of information. While one Ministry has the best ranking when it comes to the information about the budget (73%) and organisational information (78%), it has a very low score in the area of public procurement information (36%).

A total **accessibility** score of Ministries in Serbia is 58%. The highest ranking accessibility aspect relates to granting and abiding by the procedure of free access to the information of public importance and amounts to 68%. Interactions with citizens (53%) and public debate mechanism (52%) have a somewhat lower score in the area of accessibility.

Three Ministries fulfil 100% of indicators relating to the respect of the procedure of free access to the information of public importance, whereas one Ministry fulfils a mere 24%. All Ministries publish on their Internet pages a Registry of documents they keep shown in the Information Booklet on the work, nonetheless, only eight Ministries have designated the contact person responsible for information of public importance.

Two Ministries have the highest ranking when it comes to two aspects: interaction with citizens and organisation and conducting of public debates. What poses a serious concern is the fact that two ministries scored a mere 18% in the area of interaction with citizens. Calls for civil society organisations to participate in working groups for drafting laws and other legal acts, as well as notice of organising and conducting public debates are

published on the website by more than one half of ministries (9 out of 16). However, there are no defined and unified sections for this type of information on Ministries' web sites. Consequently, some web pages do have a section dedicated to public debates, whereas on other pages, such information are published under different section such as: announcements, information, news, projects of the Ministry, draft laws, etc. The search for information is rather difficult as there are several different ways of research. The results depend on the perseverance of the researcher. On the other hand, websites of institutions that do have a special section dedicated to public debates do not contain all information.

The Portal "e-Uprava" (e-Government), maintained by the Directorate for Electronic Government, is supposed to be the main point of communication between the state authorities and public administration and citizens in order to facilitate the information research, as well as a platform ensuring the citizens' participation in public policies creation. However, public authorities do not recognise sufficiently this portal. Although the use of the "e-Government" portal has been established as compulsory, it is not rare that competent institutions disregard this obligation. In the observed period, three ministries conducted public debates online.

In view of the fact that the Report on the public debate is the main source of information that can depict to what extent the public was involved, the quality of discussion and comments regarding the draft law, i.e. to what extent the public contributions were considered by the public authorities, it is extremely important to publish it. Nevertheless, although the majority of Ministries publishes the reports, their contents vary from very detailed ones to those that only globally show the results of public debates.

Five Ministries realise a direct communication with citizens via their websites. Interestingly, the majority of Ministries recognises the importance of social networks as means and channels of communication, so that eleven Ministries have active accounts on social networks (Facebook and Twitter). However, the majority of Ministries does not manage their accounts and they do not update their accounts on regular basis.

The **integrity** score of Ministries in Serbia has been evaluated on the basis of the prevention of conflicts of interests and it amounts to 100%. All Ministries abide by the Law on the prevention of conflicts of interest and regularly file reports on their property thus achieving the maximum result.

The **efficiency** score of Ministries in Serbia amounts to a total of 53%. The highest ranking aspect is the reporting (64%), whereby the monitoring scored rather low (31%) as well as the strategic planning (25%).

More than one half of Ministries files report to the Government on their work and has so far submitted reports for the previous year (a total of seven Ministries). According to the Rules of Procedure of the Government of Serbia, the public administration authority is obliged to submit the report on the work no later than March 1st of the current year for the previous one. The situation is significantly better when it comes to the annual financial reports submissions, as all Ministries file statements within the legal deadline. The majority of Ministries does not have established rules and procedures that describe in detail conditions for communication/counselling between different Ministries. Six Ministries have detailed rules and procedures whereas only three Ministries publish minutes from consultations/counselling. 25% of Ministries fulfilled a maximum score of 100% of all indicators regarding reporting.

Five Ministries fully realise monitoring through regular measuring of effects of the application of the implemented policies and public policies programmes. Bearing in mind on one hand the importance of monitoring and the use of gathered information for strategic planning of further activities regarding the process of creation and implementation of public policies, and on the other, modest efficiency of Ministries in this particular area, it is clear why strategic planning is the lowest ranking segment in the total score. 25% Ministries perform some kind of ex post programme and policies evaluation in order to plan public policies. Such score can be linked to the current situation, to the absence of an organised and regulated strategic planning and to the existence of a large number of mutually uncoordinated strategies that contain unrealistic goals and unclear methods of determining priorities.

1.3. OTHER EXECUTIVE GOVERNMENT INSTITUTIONS IN SERBIA

Other executive government institutions in Serbia fulfil 48% of indicators of openness. The lowest result is in the area of efficiency – reports on the work of executive government institutions and their monitoring – 26%. The total indicator of integrity for Serbia is rather low (33%); however, in other executive government institutions, this indicator has the highest percentage of fulfilment (95%). Although the fulfilment of transparency indicators is 52%, proactive transparency of other executive government institutions needs to be improved, especially their communication with citizens via Internet and social networks.

The publicity of work of other executive government institutions, including agencies and other services founded by the Government, has been determined by the Law on State Administration as “the obligation of institutions to enable the public an insight into their work in accordance with the law regulating free access to the information of public importance”. Besides this regulation which guarantees to the public an access to the documents owned by executive government institutions, state administration institutions also have the obligation to inform the public about their work through the means of public information and in other appropriate ways, such as via information technologies and new media.

In the area of **transparency**, other executive government institutions fulfil 53% of indicators of openness. The indicator of the openness of the budget is rather low – 39%. Reports on the work and expenditure of budget resources are irregular or completely non-existent. The level of proactive transparency of other executive government institutions is low in terms of availability of information regarding incomes and expenditures. It is indicative that one fourth of institutions do not publish their financial plans on their official Internet presentation, whereas even 50% of institutions do not publish their annual financial statement.

Executive government institutions do not publish their reports on the work and annual plans of action. Within the observed sample, only 20% of institutions have published their reports in the past three years. Even 80% of other executive government institutions do not publish their annual programme of action, 10% of them have published annual programmes in the past three years and 10% have published only one programme of action in the past three years.

The openness of the process of *public procurement* is 57%. However, the analysis of the openness indicators of the public procurement procedures has indicated unsatisfactory circumstances in this area. Other executive government institutions make bids and decisions on public procurements through Internet pages in 95% of the cases, but they do not publish agreements and annexes to the agreements with suppliers on Internet pages at all. The Commissioner for Information of Public Importance pointed to the problem of the inaccessibility of information regarding big economic state jobs in the State Report for 2015. Other executive government institutions publish the plans for public procurement on their Internet pages in 80% of the cases. Executive government institutions are obliged to publish the Annual Plan of Public Procurement on the Public Procurement Portal and in their Fact Sheet.

Within the *segment of organisational information*, other executive government institutions publish irregularly information about names and positions of employees, whereas information about the description of jobs and distribution of assignments of employees are available on Internet pages of other executive government institutions in 80% of the cases. In this case it can also be concluded that the high level of accessibility of data about the salaries of public officials is due to the implementation of the Law on the Free Access to Information and the Manual for the Creation and Publishing of the Fact Sheets. The obligation of the executive government institutions to publish data about the incomes and expenditures in their Fact Sheets has contributed to the fact that the data about incomes and expenditures are comprehensible and contain sufficient amount of information in 65% of the cases. Especially poor results refer to the regularity and quality of the maintenance of the official Internet pages of executive government institutions. 45% of institutions maintain and update regularly their Internet pages, whereas 65% the websites of institutions have a working browser.

Other executive government institutions fulfil 44% of indicators of **accessibility**. The indicator analysis points to significant possibilities for the improvement of the accessibility of executive government institutions.

Other executive government institutions fulfil 51% of indicators of the access to information. As an indicator of an unsatisfactory level of openness in the area of accessibility to information, it can be emphasised that only 45% of institutions possess publicly available information about the person of reference responsible for the access to information of public importance. Executive government institutions pay little attention to strengthening the capacities of employees to implement the Law on Free Access to Information of Public Importance. Public administration institutions have demonstrated a high percentage of openness in terms of publishing the register of documents in their own possession. In 80% of the cases, executive government institutions publish data about the type of the information they possess, the type of information they enable access to, the method and location of storage of data carrier and description of the procedure for submitting the request for the access to information.

Interaction of other public administration institutions with citizens has fulfilled 34% of indicators. This result also implies that the level of openness of institutions in Serbia is not high enough. In 65% of the cases, the procedure for filing complaints and addressing the institution in terms of decisions and actions concerning the institution is not accessible and clearly defined on the Internet pages of public administration institutions. Certain institutions still do not publish Fact Sheets on their official Internet pages in accordance with the Manual for Publishing the Fact Sheet. Only 35% of other executive government institutions have active accounts on social networks (Facebook and Twitter).

Although the total fulfilment of indicators of **integrity** is rather low (33%), the integrity of other public administration institutions fulfils 95% of indicators. Only in one case out of 20 samples of administration institutions, the report on the property of government officials has not been publicly available on the website of the Anti-Corruption Agency.

The lowest result is in the area of **efficiency** – reports on the work of executive government institutions and their monitoring – 26%. Only 30% of other executive government institutions implement the procedure of measuring the efficiency and effects of their reformatory programmes and plans. Reports on the work and expenditure of financial resources have fulfilled 25% of indicators. Executive government institutions do not abide by legal deadlines for delivery of reports on availability of the budget resources. Other executive government institutions have achieved better results (60%) in terms of regularity in delivery of annual action reports.



ACTION SEE (Accountability, Technology and Institutional Openness Network in the South East Europe region) 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.

CRTA is an independent, non-partisan civil society organizations that advocates for accountability and transparency and improves the skills of citizens and the media to actively participate in the decision making process monitoring. In order to empower citizens, other NGOs and the media to hold public officials to account, CRTA use information and communication technology for exchanging data obtained by monitoring the work of public institutions, investigative and “data” journalism, researches and surveys.

CRTA, also, develops ICT tools that enable citizens to do their own research and publish information as well as developing publicly available mechanisms for holding politicians and institutions to account. CRTA and its partners use the information, tools and mechanisms to encourage the public reaction to the abuse of public office and to exert pressure on institutions to improve existing procedures with regard to the concept of accountable behavior.