

U4 REPORT

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Open government reforms

The challenge of making public consultations meaningful in Croatia

Aránzazu Guillán Montero and Nils Taxell



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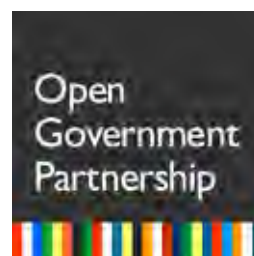
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Open government reforms and the challenge of making public consultations meaningful in Croatia

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Contents

Abstract..... v

Acknowledgements vi

1. Croatia and the Open Government Partnership 1

2. Beyond transparency: A focus on citizen participation and accountability 3

3. The prioritization and adoption of consultation commitments in Croatia 9

4. Is OGP contributing to improve citizen participation in policy-making
in Croatia? Understanding emerging results and the uptake of reform..... 15

5. Visible progress in public consultations yet limited impact 25

6. The lessons of the Croatian case 32

Annex I: List of interviews..... 34

References 35

Abstract

A strong dialogue between government and civil society provides a sound foundation for open government reforms in Croatia. The adoption and implementation of commitments aimed at strengthening public consultations in policy-making responds to long-term priorities of both government and civil society. There is visible progress in citizen participation, as well as in the number of public consultations held and comments received. However, the overall level of public involvement is still low and the impact on the quality of laws and regulations remains unclear. The number and quality of public consultations varies significantly across state institutions, but it is very low at the sub-national level. Limited administrative capacity, compounded by a prolonged economic crisis, political and bureaucratic legacies, the low costs of not implementing consultations, and limited citizen awareness about consultation mechanisms, explain these shortcomings.

Keywords: Croatia; open government; participation; consultation; OGP.

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The views expressed are the authors' and do not necessarily represent those of U4 Anti-Corruption Research Center or its partners.

1. Croatia and the Open Government Partnership

By joining the Open Government Partnership (OGP) in September 2011,¹ Croatia aimed to deepen the transition towards a stronger rule of law and a more transparent and accountable political system started with its transition to democracy. Endorsing the OGP's principles and values was a continuation of the commitment to democratic values, human rights protections and freedom guarantees that had granted Croatia access to the North Atlantic Treaty Organization (NATO) in 2009 and to the European Union in 2013.² Moreover, for the administration of President Ivo Josipović (2010-2015), the OGP coincided with their government program of improving service delivery, ensuring more effective use of public resources and "introducing a new approach to establishing co-operation between state administration bodies, citizens and civil society in order to open the space for united action in creating, implementing and supervising the policies which have direct impact on the citizens."³

The unit responsible for coordinating open government reforms in Croatia is the Government Office for Cooperation with NGOs (GOFCNGO), established in 1998 to create conditions for cooperation and partnership with the non-profit sector.⁴ After the parliamentary elections of December 2011, Croatia established the National OGP Council, a cross-sectoral body responsible for developing and monitoring the 2012-13 National Action Plan (NAP), which was presented at the OGP International Conference in Brazil in April 2012. Building on the results of the independent assessment, the government's self-evaluation, and the inputs received through the consultation process, Croatia developed a second NAP (2014-16), currently under implementation.

Croatia has a good track record in the implementation of open government reforms. According to the Independent Reporting Mechanism (IRM) report 2012-2013, two of the nine commitments of the first NAP were complete, five others showed substantial implementation, and most of the activities (6 out of 9) were on schedule to be completed (Bagić 2014). Similarly, only one of the five activities related to public consultations (commitment #9 of the 2012-13 NAP) --which constitute the focus of this study-- was significantly delayed; two activities were complete, one was almost complete, and the last one is an ongoing activity. Following advice from the IRM, the 2014-16 NAP included monitoring the implementation of these activities.

Despite its success with implementation, OGP reforms in Croatia also faced substantive challenges related to administrative capacity constraints and limited public awareness. This case study contributes to understand the constraints that may limit the effectiveness and impact of open government reforms related to citizen participation. It provides valuable lessons for improving open government processes and helps identify challenges and opportunities for citizen engagement in policy-making.

Following this introduction, section 2 identifies the commitments selected for analysis. Section 3 examines the process that led to the adoption of these commitments, considering the features of the

1 Croatia was part of the second cohort of 39 countries. It fulfilled all requirements for joining OGP and received a score of 16 points over 16 on the indicators of fiscal transparency.

2 Croatia, Letter of intent to join OGP. <http://www.opengovpartnership.org/country/croatia>

3 Government Programme for 2011-2015. The President run on a platform (*New Justice* or *Nova Pravednost*) that called for a new legal framework to address deep social injustice, corruption and organized crime.

4 Regulation on the Office for Cooperation with NGOs (http://narodne-novine.nn.hr/clanci/sluzbeni/2012_03_34_820.html).

consultation process and the role of different actors. Section 4 explores the emerging results of these reforms and reflects on the challenges for assessing their impact. The analysis of the implementation process is the focus of Section 4, which highlights several factors that facilitated implementation but also some of its challenges and constraints. The last section summarizes the main lessons of the Croatian experience.

2. Beyond transparency: A focus on citizen participation and accountability

Like other countries, Croatia focused on transparency policies as a starting point for enhancing open government (OECD 2014).⁵ However, the action plans have also emphasized public sector accountability and the need for strengthening citizen participation in policy-making through open government reforms (TI 2014). In addition to transparency and access to information (reflected in 8 out of 9 commitments), the 2012-13 NAP included commitments relevant to accountability (6 commitments) and participation (3 commitments), as well as to the use of technology for transparency and accountability (3 commitments). (See Table 1.)

The second NAP shows a clear continuity in terms of the objectives of the reforms included. Although transparency continues to be a core theme (9 relevant commitments), there is a stronger focus on citizen engagement in policy-making and monitoring (6 relevant commitments out of 16). The thematic focus of the 49 activities related to 12 of the commitments in the 2014-16 NAP includes budget transparency (7), access to information and records management (8), open data (4), participation (6), e-government (21) and capacity building (9), among other themes (OGP dataset).⁶

Table 1. Commitments /initiatives per thematic areas

Area / Theme	NAP 2012-13 9 commitments	NAP 2014-16 16 commitments
ATI / Transparency	8	9
Participation	3	6
Accountability	6	-
ICTs	3	-
Open data	-	1

* Each commitment/initiative may be relevant to more than one theme.

Strengthening citizen engagement in policy-making and monitoring has been a critical goal in Croatia's post-transition context. Limited spaces for citizen and civil society participation characterized the socialist regime (1945-1990) (Ott and Bronić 2015). Although some institutional involvement of civil society occurred before the 1990s, civil society development and the opening of spaces for influencing policy-making have been indicators of progress towards a truly democratic society (Obuljen 2005).

Nonetheless, involving citizens in policy-making in meaningful ways is still a significant challenge in Croatia.⁷ According to Freedom House (2015), 8 civil society operates in a safe democratic space in the

5 The introduction of the access to information law in 2013 has had a significant impact on improving transparency on the public sector (TI 2014).

6 See <http://www.opengovpartnership.org/blog/abhinav-bahl/2014/11/13/so-what%E2%80%99s-those-new-ogp-action-plans-anyway-2014-edition> .

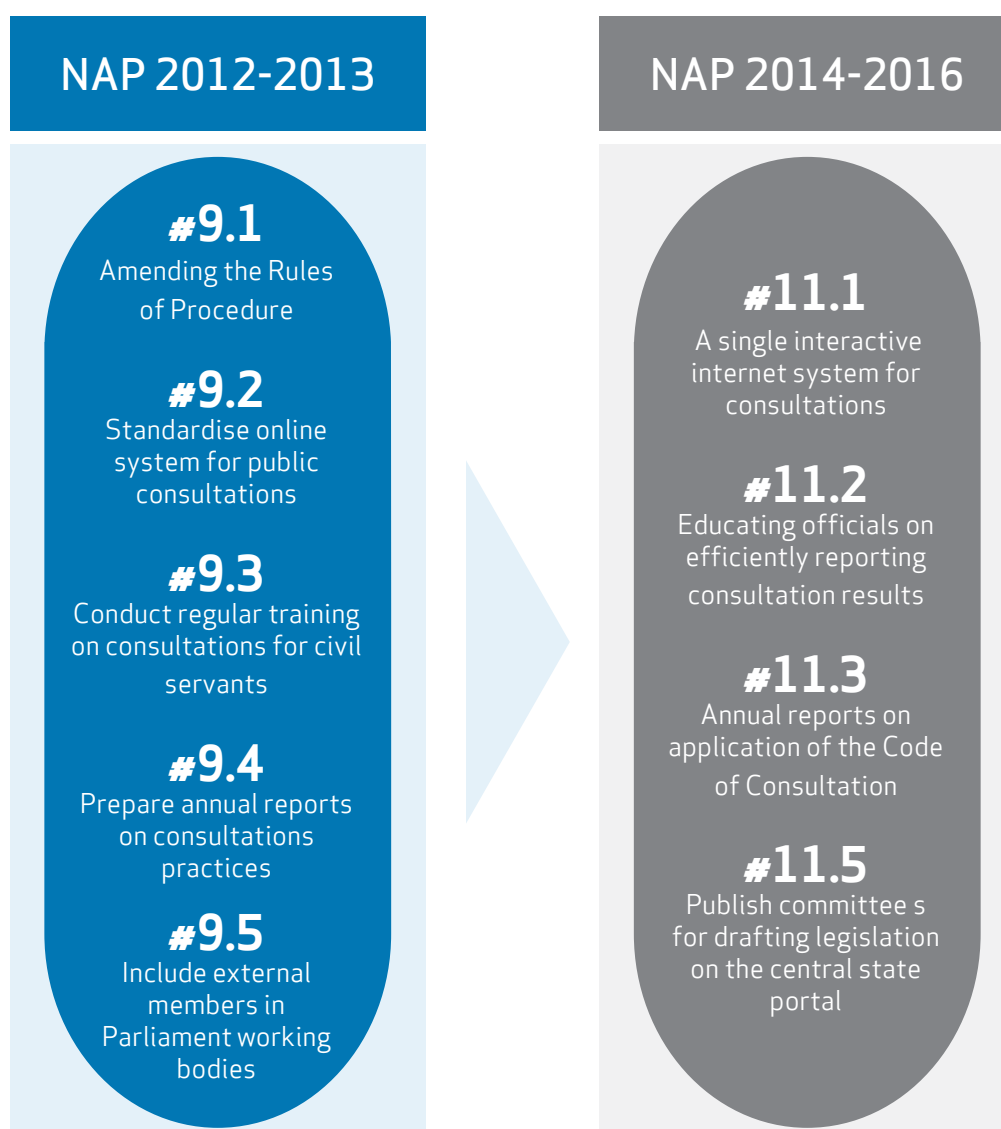
7 Interview (Zagreb, March 23, 2015). All interviews cited were conducted in Zagreb by Aránzazu Guillán Montero and Nils Taxell in March 2015.

8 See <https://freedomhouse.org/report/freedom-world/2015/croatia>.

country, but legacies from the non-democratic period explain the limited involvement of citizens in civil society organizations (CSOs) and other aspects of public life.

Some measures for strengthening civil society and public participation took place within broader reform processes linked to the accession to the European Union (for example, the signature of the Aarhus Convention).⁹ Additionally, since the late 1990s several initiatives have helped institutionalize dialogue and cooperation between government and civil society, in addition to contributing to secure a safe environment for CSOs. For example, the National Foundation for Civil Society Development, a National Strategy for NGO development, a Council for Civil Society, and the Government Office for Cooperation with NGOs (OGP n.a.) emerged in this period. The OGP provided an additional opportunity for deepening these transformations.

Figure 1. Sequencing of National Action Plans in Croatia – selected commitments



9 It establishes a number of rights for participation regarding environmental issues.

This study analyses a selection of commitments related to citizen participation. It examines the adoption and implementation of the first NAP's commitment #9 ("Improving the Practice of Consulting the Interested Public in Procedures of Adopting New Laws") and of commitment #11 from the second NAP (which kept the same title). These commitments incorporate several related activities. For example, a standardized online system for public consultations (first NAP #9.2) is followed-up in the second NAP by commitment #11.2, which aims at establishing a single interactive internet system for consultations. Commitment #9.3 of the first NAP (regular training on consultations for civil servants) was continued and deepened with the second NAP's commitment #11.2, which seeks to conduct training on the efficient reporting of consultation results for state officials and civil servants in state bodies and in local and regional self-government units. Similarly, the inclusion of external members in Parliament working bodies (first NAP #9.5) continued through commitment #11.4, which requires disclosure of the composition of all parliamentary working groups and committees. (See Figure 1. and Table 2.)

Several institutions share the responsibility for leading the implementation of these two commitments and their nine related activities, including the Ministry of Administration, GOFCNGO, Parliament and the Public Relations Office of the Government of Croatia. These institutions work in close cooperation with additional institutional partners. (See Table 2.)

Through civil society participation in the drafting and implementation of laws, regulations and acts, these commitments seek to enhance the quality and effectiveness of decision-making processes, and of the resulting decisions and public policies. They aim to provide an open and transparent process for consultations, and to foster a culture of proactive consultation within government. As noted in the IRM report, the "full implementation of all the envisaged activities would significantly contribute to overall government transparency and citizen participation in public affairs" (Bagić 2014). Better and more inclusive decision-making processes help strengthen the citizens' trust in their government as well as enhance the transparency and legitimacy of public decisions and policies.

These initiatives build on the 2003 Access to Information Law, which required public bodies to disclose draft laws and to ensure that the public has an opportunity to comment.¹⁰ However, since these provisions did not require that consultations actually had place, Croatia adopted the "Code of Practice on Consultation with the Interested Public in the Procedures of Adopting Laws, Other Regulations and Acts" in November 2009, as part of reforms undertaken during the European Union accession process.¹¹

While the adoption of this Code was a significant step, it did not guarantee real change towards more inclusive and effective consultations because it is not legally binding (Pernar ND). Achieving such change required additional implementation efforts (in terms of training, creation of institutional spaces for consultation, disclosure of information, etc.) and effective commitment from public institutions.

10 Cf. <http://www.revizija.hr/en/access-to-information/law-on-the-right-to-access-information>.

11 The working group that was developing the National Strategy for the Creation of an Enabling Environment for Civil Society Development 2006-2011 identified the need for developing the Code, whose drafting started in 2007 and was finally adopted by the Government in November 21, 2009. The adoption of the Code was a consequence of intensive advocacy efforts by CSOs, in particular through the Council for Civil Society Development (Vidačak, 2013), but also of the EU accession, since it was part of the Anti-Corruption Action Plan, adopted in June 2008 and regularly monitored by the European Commission. On the influence of the EU accession process, see Pernar (ND). Also, interview (Zagreb, March 22, 2015).

Some implementation efforts were undertaken prior to joining the OGP (for example, the development of implementation guidelines in 2010, the appointment of consultation focal points in ministries and government offices, and the development of a manual for training on consultation procedures) (Pernar ND),¹² but the OGP NAPs helped obtain the additional efforts needed for the effective implementation of public consultations. Moreover, the adoption of a new Access to Information Law in 2013 emphasized the importance of publishing consultation documents and of providing feedback on the outcomes of consultation processes--in line with the second NAP's commitment #11.2 (Croatia ND).

12 GOfCNGOs developed the guidelines, training materials, and was responsible for monitoring through annual reports the implementation efforts.

Table 2. Croatia's commitments on public consultation

NATIONAL ACTION PLAN 2014-2016							
Commitment 9: Improving the Practice of Consulting the Interested Public in Procedures of Adopting New Laws							
Activity	Leading Institution	Theme	Specificity	Potential Impact	Actual Completion	Schedule	Starred
9.1. Amendment of the Rules of Procedure of the Croatian Government	Government of Croatia	Public participation	High	Transformative	Complete	On schedule	Yes
9.2. Standardize online system for public consultations	Ministry of Administration <u>Support</u> : Office of the President	E-government Legislature	High	Transformative	Limited	Behind schedule	Yes
9.3. Conduct regular training on consultations for civil servants	GOfCNGO <u>Support</u> : State School for Public Administration	Public participation	High	Transformative	Substantial	Behind schedule	Yes
9.4. Prepare annual reports on consultation practices	GOfCNGO. <u>Support</u> : State administration bodies.	Public participation	High	Moderate	Complete	On Schedule	Yes
9.5. Include external members in Parliament working bodies	Parliament	Public participation	High	Moderate	Substantial	Behind schedule	Yes

NATIONAL ACTION PLAN 2014-16		
Commitment 11: Improving the Practice of Consulting the Interested Public in Procedures of Adopting New Laws		
Activity	Lead Institution	Theme
11.1. Establishment of a single interactive internet system for consultations with the public in procedures for adopting new laws, other regulations and acts	GOfCNGO. <u>Support:</u> Ministry of Administration; Access to Information Commissioner Public Relations Office; Digital Information Documentation Office.	Public participation E-government
11.2. Conduct education of state officials and civil servants in state administration bodies and local and regional self-government units on the efficient reporting on consultation results	GOfCNGO. <u>Support:</u> State Public Administration School.	Public participation Capacity building
11.3. Draw up and publish annual reports on efficiency of application of the Code of Consultation with the interested public in the adoption of new laws, other regulations and acts	GOfCNGO. <u>Support:</u> State administration bodies.	Public participation
11.4. Publish the composition of working groups and committees for drafting laws, other regulations and acts on the central state portal	Government of Croatia Public Relations Office. <u>Support:</u> GOfCNGO; State administration bodies.	Public participation E-government

Source: Author based on Croatia's NAP 2012-13 and NAP 2014-16.

3. The prioritization and adoption of consultation commitments in Croatia

The consultation process for the adoption of commitments is a key element in OGP processes at the country level, which affects the scope and ambition of action plans and the implementation process. In Croatia, the existing structures and ongoing practices of dialogue between government and civil society have facilitated a collaborative process to develop the OGP actions plans. The resulting NAPs enjoy high level of consensus and reflect commonly agreed policy priorities.

The challenge of including consultation commitments in the first action plan

After joining OGP, Croatia developed the first NAP between September 2011 and April 2012 and implemented it between July 1, 2012 and July 31, 2013. GOfCNGO, which provides administrative support to OGP, coordinated the development of the first NAP through the National OGP Council.

The National OGP Council was established in 2012 to facilitate coordination and communication between government bodies and other actors involved in the process. It is composed of 19 representatives --appointed through an open and transparent process-- of central, local and regional government bodies, civil society (selected by CSOs themselves), the academic community and the media. The Council is responsible for the development of the NAP, the consultation process, the monitoring of the implementation of commitments, and can make amendments to the action plan as needed. It has played a critical role in bringing different actors together around common goals for open government reform in the country.¹³

GOfCNGO invited different stakeholders to provide inputs for the NAP through three public meetings, which were jointly organized with other partners between September 2011 and March 2012.¹⁴ The number of participants in the meetings declined as discussions became more technical--from 180 in the first meeting to 40 in the last one. Based on the inputs obtained, the OGP Council developed and discussed several drafts for the first NAP. Then, the draft action plan went through a three-week non-binding consultation process (January 27-February 13, 2012). Civil society only submitted four proposals (Bagić 2014).

Civil society participation in the consultation process was wide.¹⁵ GOfCNGO invited representatives from CSOs based outside the capital; however, consultation at the subnational level remained limited (Bagić 2014). Some civil society proposals were incorporated into the plan, and the government replied to all the proposals and suggestions received, published the minutes of the Council's meetings, reported on all public discussions, and fulfilled the deadlines for announcing the different consultation instances to allow a meaningful participation. Overall, all actors agree on the high quality of the consultation process for the formulation of Croatia's first NAP (Bagić 2014).

13 Interview (Zagreb, March, 2015).

14 These included a roundtable discussion organized with the Office of the President and the US Embassy (Sept. 15, 2011); a public discussion with the Ministry of Foreign Affairs and the US Embassy (Feb. 1, 2012), and a public consultation on the implementation of the plan (March 29, 2012) (Bagić 2014).

15 With a more limited involvement of the business sector.

The inclusion of a commitment on public consultation in the first NAP reflected a widely supported priority. GOfCNGO and the Council worked together in defining the specific activities comprised under this commitment in order to ensure their implementation.¹⁶ These activities included the amendment to the Croatian Government's rules of procedure (commitment #9.1), which would make the 30-day consultation process mandatory.

The amendment to the rules of procedure was the most controversial initiative. Civil society saw this amendment as a way to promote the actual implementation of consultations, which the access to information law and the consultation code had failed to achieve.¹⁷ The government also had a strong interest in implementing this amendment since the initiative had been under development for several years.¹⁸ However, some ministries were reluctant to include the amendment as an OGP commitment, because they perceived it as a civil society demand that would slow down the process of law- and policy-making.¹⁹ Overcoming this opposition required an active role of the Office of the Prime Minister. The Office of the Prime Minister, the president of the Council, and GOfCNGO helped move the commitment ahead, despite ministerial complaints. The Council was the arena for the discussions among the different actors, as well as the space for negotiating a wording for the amendment that would satisfy both civil society and government representatives.²⁰

The inclusion of the amendment as an OGP commitment enhanced the government and GOfCNGO's leverage for reform. It was an opportunity to obtain resources and high-level government support (absent in the previous government) for an initiative that was seen as a priority in the long-term process of democratic consolidation in Croatia.²¹ This strong commitment was evident in GOfCNGO's leading implementation role in the first NAP (leading two of the five activities under commitment #9). Other institutions responsible for implementing activities under commitment #9 did not directly advocate for the inclusion of the activities, but also saw the value added of their inclusion in OGP. For example, the online consultation system was aligned with the Ministry of Administration's wider e-government strategy, and OGP provided a way of "showcasing" their work.²²

Finally, for civil society, the commitment on consultation reflected many years of ongoing CSOs' efforts to strengthening participation in the country. The adoption of the commitment was seen as a win-win --a way to obtain some significant changes quickly rather than investing in completely new initiatives.²³ The political timing, just before the December 2011 elections, provided civil society

16 Interview (Zagreb, March 23, 2015).

17 Interview (Zagreb, March 25, 2015).

18 The Government's Legislation Office had worked on the amendment for several years and was ready to pass it. Interview (Zagreb, March 23, 2015).

19 Interview (Zagreb, March 23, 2015).

20 The amendment to the Code was a CSO proposal that found strong opposition from certain government actors. Due to the inability to reach consensus, some members suggested a vote on the proposal. CSOs even threatened with leaving the Council. The negotiations between the different actors delayed the final adoption of the plan for some months. Finally, with facilitation of some members, the Council reached an agreement by consensus and the proposal was included as an OGP commitment. Interviews (Zagreb, March 23 and 25, 2015).

21 Interview (Zagreb, March 23, 2015).

22 Interview (Zagreb, March 23, 2015).

23 Interview (Zagreb, March 24, 2015).

with a window of opportunity to obtain government buy-in.²⁴ In addition, Croatian organized civil society, learning from the experience of the EU accession process, saw international mechanisms and processes as favorable tools for advancing reforms at the country level.²⁵

The first consultation for the development of the 2012-13 NAP represented a successful process for all the actors involved. Building on existing structures for collaboration with civil society, the government implemented a wide consultation process. However, despite the meaningful consultation, the resulting plan did not depart significantly from the pre-existing policy agenda, and most commitments responded to ongoing reforms rather than introduced completely new initiatives. The existing consensus regarding transparency, participation and accountability reforms, and the fact that the institutions leading open government processes at the country level (particularly, some members of the Council and GOfCNGO) were familiar with the civil society agenda and had advocated for some of the same reforms within the government, explain this result.²⁶ Nonetheless, even if it did not generate new initiatives, the action plan helped refine and prioritize the reform agenda.

GOfCNGO and the Council were very effective in driving the OGP process and in their capacity to harmonize, coordinate and communicate the efforts of different government agencies and civil society. They played a critical role in the development of the plan, providing an institutional space for exchange and discussion on the inputs that would shape the NAP. However, the consultation process also showed the limits of the capacity of Croatian citizens and organized civil society to actively engage and participate in the reform process (something that will also be evident when looking at the results of implementing the consultation mechanisms).

Continuing the successful engagement for the second action plan

Consultation and dialogue with civil society in the development of the second NAP followed on the steps of the successful first consultation process. The National OGP Council, with support from GOfCNGO, continued leading the process. The council's role did not experience major changes, although there was an increase in its membership, adding more CSO representatives and incorporating the Information Commissioner and the Institute for Public Administration.

During a first meeting in October 2013, the Council identified the initial priorities for the development of the new action plan, and decided to continue the implementation of the commitments and related activities from the first NAP that were unfinished or partially implemented. This decision incorporated the inputs from the IRM mechanism. For example, the IRM Report 2012-13 recommended to continue monitoring the implementation of the activities under commitment #9 (Bagić 2014).

A two-week online consultation on the priorities initially identified for the new plan took place between October 28 and November 11, 2013. Then, between December 15, 2013 and June 2014, the Council and GOfCNGO organized a series of more than 30 working meetings to discuss the proposals received during the online consultation and to submit additional ones. The OGP Council engaged relevant institutional and civil society actors in the discussion of all the proposals received. The

24 Interview (Zagreb, March 24 and 25, 2015).

25 Interviews (Zagreb, March 22 and 25, 2015).

26 Key personnel from GOfCNGO came from civil society and the Council had a strong representation of CSOs and other civil society sectors.

preliminary NAP resulting from these discussions was the subject of a one-month online consultation (March 19-April 18, 2014). Additionally, participants at the Open Croatia Conference (March 26, 2014), focused on the status of transparency reforms in the country, discussed a draft of the second NAP.

All the information and inputs received during these discussions contributed to define the final 2014-16 NAP. The Council and GOfCNGO submitted the final NAP to the Government of Croatia for approval. This submission included an annex with information on all the proposals (considered and adopted), and the rationale for their adoption or rejection. Citizens can access the report online through GOfCNGO's website.²⁷

The formulation of the second NAP also benefitted from feedback from monitoring the implementation of the first NAP and from the results of the independent assessment mechanism. In addition to continuing the monitoring of the implementation of commitment 9, the IRM Report 2012-13 recommended to continue educating citizens and civil servants on how to engage in Internet consultations, and to develop non-virtual forms of consultations as part of the 2014-16 Action Plan (Bagić 2014).

Commitment #11 of the second NAP, which addresses some of the limitations found in the implementation of the first plan's consultation-related activities, illustrates this policy continuity. For example, the relevant new commitments aim to strengthen the capacity for implementing consultation mechanisms and reporting their results, by expanding the number of state officials trained and by targeting officials at the regional and local level. In addition, these commitments set the ambitious objective of providing a single access point for information and participation on ongoing consultations through an online state consultation portal (Croatia 2014). The portal would address the lack of a common approach to consultation among different state bodies.²⁸

27 At <http://www.uzuvrh.hr/stranica.aspx?pageID=208>

28 The system will enable citizens to monitor the drafting of individual documents, from the working group to its adoption and publication in the Official Gazette, as well as become directly involved during the public consultation procedure by providing comments to the draft proposal. Cf. 2014-16 NAP.

Box 1. OGP consultation processes in Croatia: Dialogue and collaboration

First consultation

- A specialized body (National OGP Council) leads the development of the NAP, with strong support from GOfCNGO.
- Wide consultation and participation:
 - One roundtable and two public dialogues held for obtaining civil society inputs.
 - Representatives from local civil society--though their participation is still limited.
 - Three-week online consultation.
 - Active role of the OGP Council.
- Wide dissemination of consultation initiatives and results.
- Still limited inputs from citizens – only four proposals received.
- Publication of consultation reports.

Second consultation

- The OGP Council continues to lead the process, with GOfCNGO support.
- The OGP Council decides to continue implementation of ongoing first NAP activities.
- Wide consultation and participation:
 - Initial identification of priorities by the Council.
 - Two-week online consultation for discussing priorities.
 - Working meetings with civil society for discussing priorities and receiving additional inputs.
 - Draft NAP submitted to one-month online consultation and discussed at the Open Croatia Conference.
- Final draft, including consultation report, submitted for government approval.
- Publication of consultation reports.

The consensus reached during the development of the NAPs and the leading role of GOfCNGO reinforced the feasibility of the consultation commitments. As the institution leading the implementation of three of the four proposed activities, and supporting the implementation of the other one, GOfCNGO has ensured the conceptual sustainability and continuity of the initiatives. In addition, GOfCNGO's strategic role as a support unit for OGP processes, providing coordination and technical advice in the relations with civil society, also contributes to ensure continuity and provides strong leadership and capacity for the implementation process. Moreover, the nature and institutional placement of the office, with close relations to the Office of the Prime Minister, promotes the mobilization of leadership in support of the implementation process.

Croatia has excelled in the consultation process, fulfilling all the conditions of a strong and widely encompassing dialogue with civil society. The bodies coordinating OGP processes in the country (the National OGP Council and GOfCNGO), with strong presidential and government support at the time, effectively led the consultation and dialogue.

Despite the strong consultation, the resulting NAPs have not fulfilled many actors' expectations about the scope and ambition of the commitments.²⁹ In this regards, the case of Croatia illustrates the potential limits of the positive effects of consultation processes on the scope of the action plans. Contextual factors --such as limited expertise, constraints on the state's administrative capacity, limited human resources, or administrative legacies-- and contingent factors --such as economic crisis and recession-- affect the capacity of the state to commit to specific reforms, as well as civil society's ability to influence the scope of the plans and to push them in a transformative direction. Nonetheless, good dialogue and strong consultation processes enhance the legitimacy of open government reforms and reinforce future OGP processes, while providing a methodology and serving as an example for other public policies in the country.

29 Personal communication with Institute of Public Finance (March 24, 2015).

4. Is OGP contributing to improve citizen participation in policy-making in Croatia? Understanding emerging results and the uptake of reform

The National OGP Council systematically monitors the implementation and results of OGP commitments since 2013. GOfCNGO coordinates and leads monitoring efforts. It uses a standardized log framework to gather information from the implementing agencies, which is integrated into the government's self-assessment report. However, GOfCNGO did not track implementation advance in measurable ways and did not publish monitoring data, nor had any public interface to facilitate access to information on OGP advances and citizen monitoring of the implementation process.

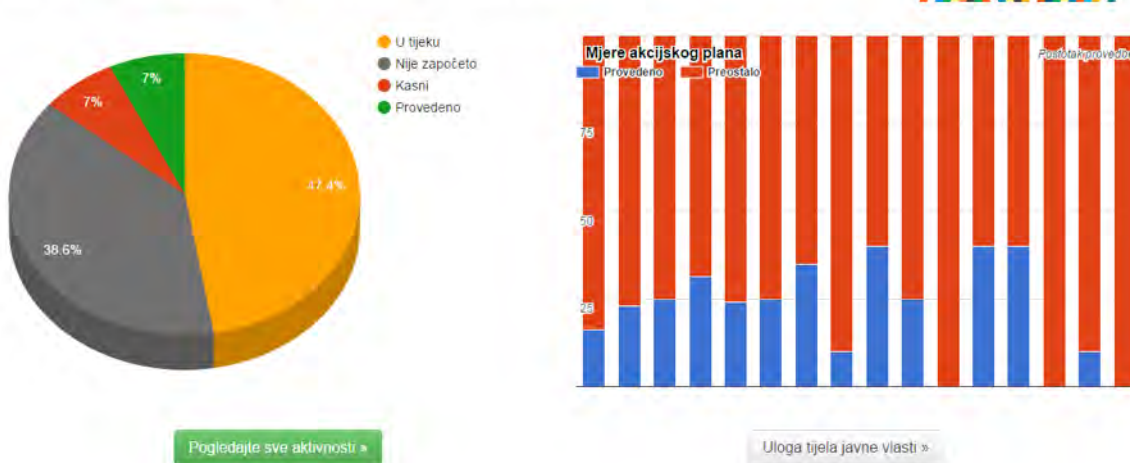
Given these limitations of the monitoring framework, a civil society initiative started monitoring independently the implementation of OGP commitments, including the ones selected for this study. They have developed data visualizations to monitor the advance of different initiatives, as well as the performance of each implementing agency. (See Figure 2). More recently, in order to enhance the monitoring of the 2014-16 NAP, GOfCNGO, in collaboration with civil society representatives in the Council, developed a regularly updated dashboard that publishes data on implementation results.³⁰

This section highlights some positive results and impacts from the implementation of open government commitments related to consultation mechanisms in Croatia. It also discusses the results expected from the commitments still under implementation.

Figure 2. Monitoring the implementation of the NAP

Status akcijskog plana za 2014.-2016. u RH

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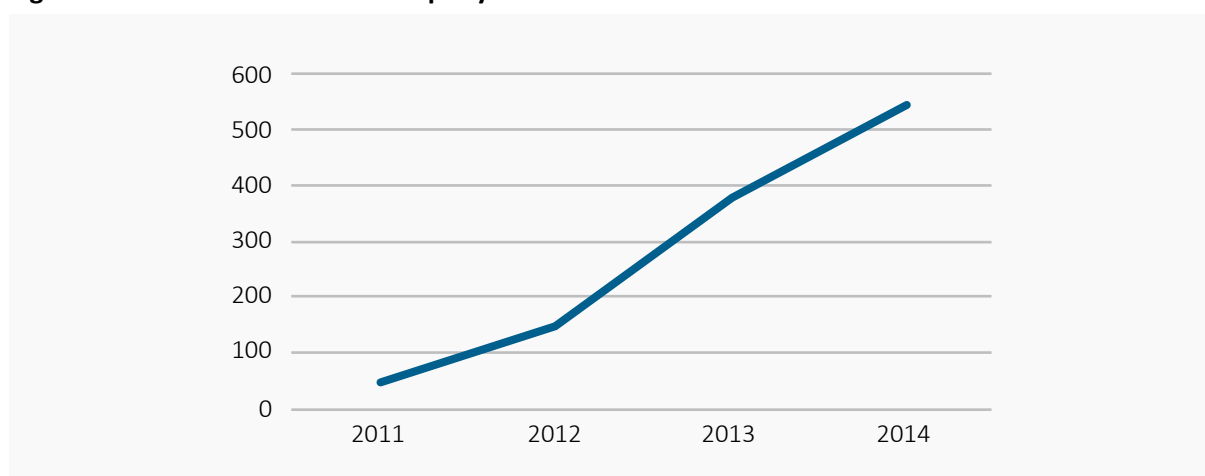


30 Available at <http://otvorenavlada.gov.hr/>.

Regulatory amendments and working groups

The number of consultations skyrocketed because of the amendment to the Code of Procedures (which made consultations obligatory for state institutions and increased their duration), training of civil servants, the promotion of consultations, and the development of standards for consultations, among other measures. While in 2011 public institutions held only 50 consultations, they increased to 144 in 2012, 374 in 2013 and 544 in 2014 (see Figure 3). However, despite this improvement, some sources indicate that approximately 75% of Croatian laws are still passed through speed procedures in Parliament.³¹ In addition, the quality of the consultation processes varies significantly (see below).

Figure 3. Number of consultations per year



Source: Government of Croatia (2014, 2015); Berković (2015).

The number of consultations varies across state bodies. Their level of legislative and regulatory activity influences this variation (see Table 3). For example, one can expect the Ministry of Finance (50 consultations in 2013) or the Ministry of the Environment (52 in the same year) to be responsible for drafting more bills and regulations than less legislative active ministries and government agencies, such as the Central Bureau of Statistics (2 consultations in 2013). However, these figures may also reflect public institutions' different willingness and capacity to fulfil their obligation to conduct public consultations. Overall, in 2014, the number of consultations increased across the board, although some institutions show particularly significant increases. For example, the Ministry of Agriculture increased from five consultations in 2013 to 52 in 2014.

31 Interview (Zagreb, March 24, 2015).

Table 3. Consultations across state agencies in 2013-2014

Institution	2013	2014	
Ministry of Social Policy and Youth Affairs	8	23	↑
Ministry of Veterans	7	11	↑
Ministry of Culture	13	11	↓
Ministry of Environment and Nature	52	45	↓
Ministry of Construction and Physical Planning	8	27	↑
Ministry of Foreign and European Affairs	1	1	=
Ministry of Economy	13	32	↑
Ministry of Science, Education and Sports	28	34	↑
Ministry of Regional Development and EU Funds	1	5	↑
Ministry of Agriculture	7	52	↑
Ministry of Justice	9	31	↑
Ministry of Finance	50	17	↓
Ministry of Interior	5	16	↑
Ministry of Administration	3	13	↑
Ministry of Maritime Affairs, Transportation and Infrastructure	29	30	↑
Ministry of Tourism	4	10	↑
Ministry of Labor	16	20	↑
Ministry of Health	36	23	↓
Ministry of Business and Trade	4	7	↑
Government Office for Combating Drug Abuse	1	-	↓
Office for Human Rights and National Minority	2	-	↓
GOfCNGO	3	5	↑
Office for State Property	2	-	↓
Agency for Electronic Media	4	3	↓
Agency for the Supervision of Financial Services	16	104	↑
SGA	2	5	↑
Office for Radiological and Nuclear Safety	9	3	↓
Central Statistics Bureau	2	2	=
Agency for Post and Electronic Communications	39	-	↓
Information Commissioner	-	1	↑
National Protection and Rescue	-	1	↑
Meteorological and Hydrological Service	-	1	↑
State Office for Intellectual Property	-	2	↑
Agency for Network Activities	-	5	↑
Total	374	544	

Source: Author based on Government of Croatia (2014, 2015).

The quality of consultations varies widely as well. Most institutions rely exclusively on online consultations rather than combining several consultation methodologies. For example, in 2013, public agencies conducted 344 online consultations but only 84 public hearings, 97 consultation meetings and several focus groups and informal consultations; in 2014, there were 499 online consultations, 61 public hearings, and 354 advisory meetings (Croatia 2014, 2015).

It is also a common practice for public institutions not to fulfill the 30-day period recommended by the access to information law. In 2013, for example, 232 of 348 consultations on draft regulations lasted less than 30 days (67%) due to the frequent resort to regulations on emergency procedures. In 2014, although the figures improved, over half of the consultations still fail to fulfil the 30-day period. On average, consultations lasted 23 days in 2014 (Croatia 2015). (See Table 4).

Table 4. Duration of public consultations

	2013	2014
Less than 30 days	232 (67%)	262 (52%)
More than 30 days	116 (33%)	237 (48%)
Total *	348	499

*There is no data available for the duration of some of the consultations.

Source: Government of Croatia (2014, 2015).

Commitment #9.5 of the 2012-13 NAP seeks to strengthen the participation of external actors in parliamentary working groups for the drafting of laws and regulations. Data for 2013 and 2014 indicate that working groups have opened to new external members,³² but results are still insufficient. While 1,383 civil servants participated in 2014, only 404 external actors did--including 168 representatives of associations, 128 from CSOs, and 108 participants from academia (Croatia 2015).

Commitment #11.4 of the second NAP promotes the disclosure of the composition of these groups. An initial directory of members of the working groups was available through the Ministry of Administration website (www.digured.hr) when conducting fieldwork. The online publication of the composition of the groups was not yet available through the consultation portal (<https://savjetovanja.gov.hr/>) or the central state portal (<https://gov.hr>) at the moment of writing.

However, even if this is not yet widespread, there are examples of working groups moving in the right direction. For example, Parliament's constitutional committee did a fully compliant consultation on the draft regulation on electronic media. They used mixed methodologies for consulting with the public, and presented a good quality report on the outcomes of the consultation process.³³

32 Composition varies depending on the issue.

33 Interview (Zagreb, March 25, 2015).

Training activities

GOfCNGO has designed and delivered training contents and workshops to strengthen the implementation of consultation mechanisms. Enhancing public officials' skills and capacities to conduct consultations would make their implementation easier and more effective. Training has focused on strengthening public officials' understanding of the rules of procedure that regulate consultations and on enhancing their capacity to fulfill consultation obligations.

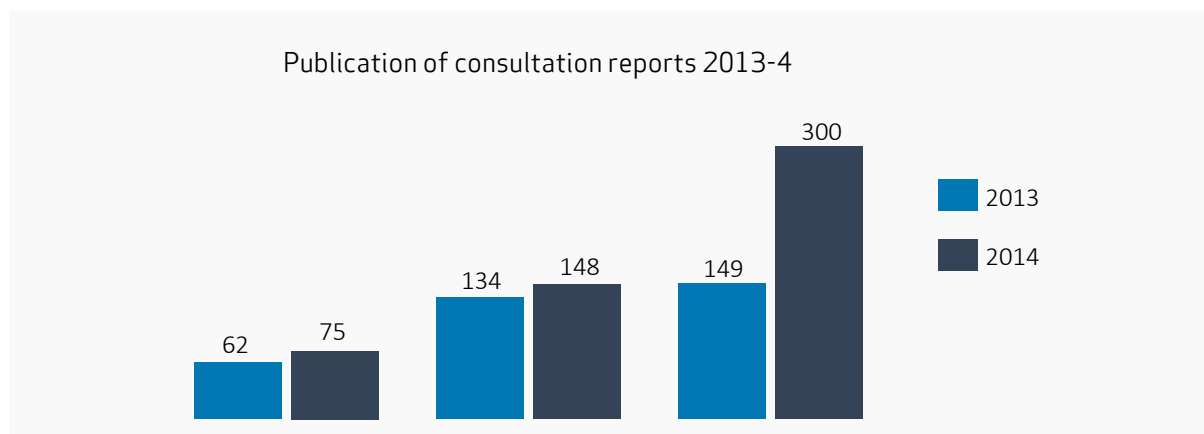
In cooperation with the National School of Public Administration, GOfCNGO organized seven workshops during 2013 and 2014, including three training activities at the local level, and trained 138 public officials. Additional training activities were on hold due to budget constraints. Although these are important efforts, the number of public officials reached through these training efforts is still limited, particularly at the subnational level.

Reporting and disclosure of information

The 2013 access to information law as well as Commitment #11.2 of the second NAP emphasized the importance of proactively publishing information about consultations and consultation reports, as well as of providing feedback on their results to citizens. Although there has been an increase in the publication of consultations reports, this is not yet a generalized practice.

In 2013, the public did not receive information about the results of 123 consultations. Moreover, public institutions did not publish reports on consultations where nobody submitted comments (Croatia 2014). In 2014, each state body published on average 17 reports on conducted consultations. However, the consultation report was included as an annex to the regulation in only 30% of the regulations that were the subject of consults (Croatia 2015: 10).³⁴ Even more, individual thank you notes to participants in consultations, which the Code requires, were sent only for 122 consultations out of 544 (22.4%) (Croatia 2015: 11).

Figure 4. Consultation reports 2013-2014



Source: Author based on Croatia (2014; 2015).

³⁴ There are some exceptions to the requirement of annexing the consultation report. For instance, when the consultation is conducted according to the regulation of Regulatory Impact Assessment (Croatia 2015).

The lack of information on the results of consultation processes can have significant effects on citizens' incentives to engage and participate in these processes. This engagement is still limited in Croatia (see below). If citizens provide feedback but do not know how authorities will use that feedback to improve laws and regulations, they may lose interest and get discouraged to invest the time and resources that participation requires.

Standardized online system and single platform for consultation

One of the main challenges for the implementation of consultations has been the lack of a standardized format for the process. Different public institutions used different methodologies and approaches. Since 2010, the Office has worked on the standardization of methodologies and formats for developing consultations. An online system that centralizes the information about consultations and provides an entry point for participating in consultation processes was also under development for several years. After some implementation delays (see below), the launching of the portal finally took place in April 2015.³⁵

The platform builds on a successful pilot initiative by the Ministry of Entrepreneurship. The system provides a single entry point to open and planned consultations, facilitating institutional and civil society oversight and monitoring of their implementation. It increases the capacity of the citizens to provide comments through a user-friendly online system, as well as their ability to see and "like" comments submitted by other citizens. Moreover, the system involves a significant change on how public institutions internally manage consultation processes and respond to citizens' comments and observations.

The platform provides information about the legal and regulatory framework that regulates consultation processes, their benefits, as well as other general information. It also provides information on the opening of consultation processes and their status as well as reports on specific consultations held, and provides access to open consultation processes and allows seeing comments submitted. One potential limitation in terms of encouraging active citizen participation is that users have to pre-register, either through the national identification system or in the page itself, in order to participate in consultations through the platform. However, for government offices, this feature is an effective way to avoid anonymous comments and limit the number of irrelevant comments received.³⁶

It is too early to assess the results of the platform in terms of increasing citizen participation. However, with the new online system in place, it is going to be difficult to move backwards in terms of implementing consultation processes. Even with limitations, CSOs can use the information available through the online system to push for further reforms. Moreover, the portal provides legislators with easy access to all comments received (both accepted and discarded), potentially improving the quality of legislative debates. However, achieving these goals also requires raising legislators' awareness about the system.³⁷

One of the platform's challenges is effectively integrating public institutions into the system. Recent amendments to the access to information law (85/2015)³⁸ establish the legal framework for using the online system to provide access to consultations implemented by central level institutions (33 agencies

35 Available at <https://savjetovanja.gov.hr/>.

36 Interview (Zagreb, March 25, 2015).

37 Interview (Zagreb, March 25, 2015).

38 Cf. amendment to the access to information law at http://narodne-novine.nn.hr/clanci/sluzbeni/2015_08_85_1649.html.

overseen by GOFCNGO).³⁹ However, it is too soon to assess the impact of the amendments and the effective use of the online platform to conduct consultations at the sub-national level. Other challenges to fulfill the potential of the online system include raising public awareness about the existence of this platform, and creating standardized formats not only to present but also to reuse the information and data available.⁴⁰

Figure 5. E-consultation platform



Impact and sustainability

Ultimately, the impact of the open government commitments on public consultation would be to improve significantly the quality of laws and regulations, due to a strong participation of the public and to the high quality comments submitted.

The number of participants in public consultations is limited, and they do not provide a large number of comments. The launching of the e-consultation portal has not yet reverted this trend. In 2013, 8,299 companies and individuals submitted comments, which involved a significant increase compared to 2012. The largest class of submitters were individuals (3,850). Associations (382), other social organizations --such as trade unions, employers' associations and religious communities-- (237), local and regional governments (88), and academics (67) also provided comments. In 2014, participation decreased slightly, with 7,482 companies and individuals submitting comments, including 2,048 individuals, 516 associations, 256 social organizations, 300 local and regional governments, and 92 academics. (See Figure 6).

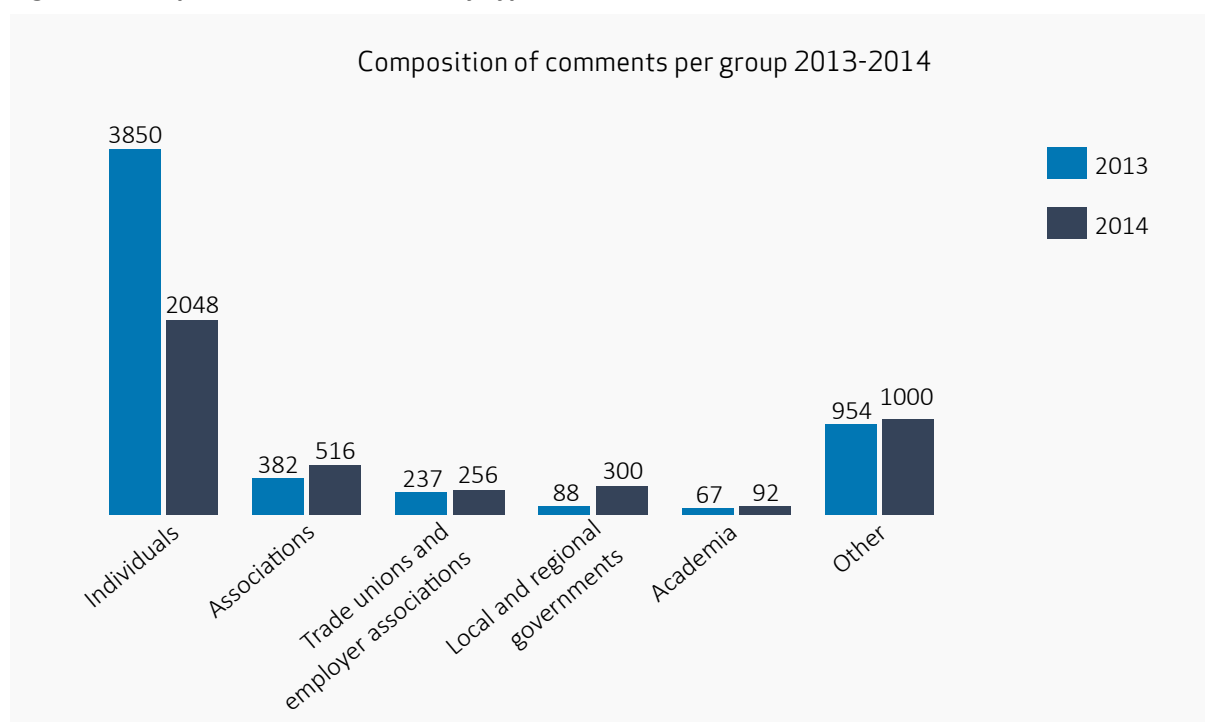
Although the number of participants decreased by 10% in 2014 compared to 2013, the number of comments increased from 12,738 in 2013 to 18,767 in 2014 (Croatia 2015). However, the number

³⁹ However, state institutions at the subnational level, which the Information Commission oversees, are not obliged by the law. Interview (Zagreb, March 25, 2015).

⁴⁰ Interview (Zagreb, March 24, 2015).

of comments remains limited (after 25 days of open consultation, for example, only three comments were received on the amended access to information law),⁴¹ and most concentrate on specific laws and regulations that raise public concerns and/or around which there is civil society mobilization. For example, in 2014, most comments were about regulations of the Ministry of Science, Education and Sports on two issues: the elements and criteria for selecting candidates for admission to secondary schools, and the weekly duties of teachers and assistants in primary schools (around 3,500 comments on each). Moreover, the quality of the comments varies widely, with only a few specialized actors being able to provide informed and high-quality comments on proposed laws and regulations.⁴² Nonetheless, public institutions take over 60% of the comments into further consideration (73% in 2013 and 62% in 2014), and incorporated approximately 18% of the comments received into final regulations in 2013 and 2014. For 2014, 52% of comments taken into further consideration were fully or partially accepted (Croatia 2014; 2015).

Figure 6. Composition of comments by type of user



* The sum of the applicant's comments do not correspond to the total number of applicants because some consultations did not report the data.

Source: Author based on Croatia (2014; 2015)

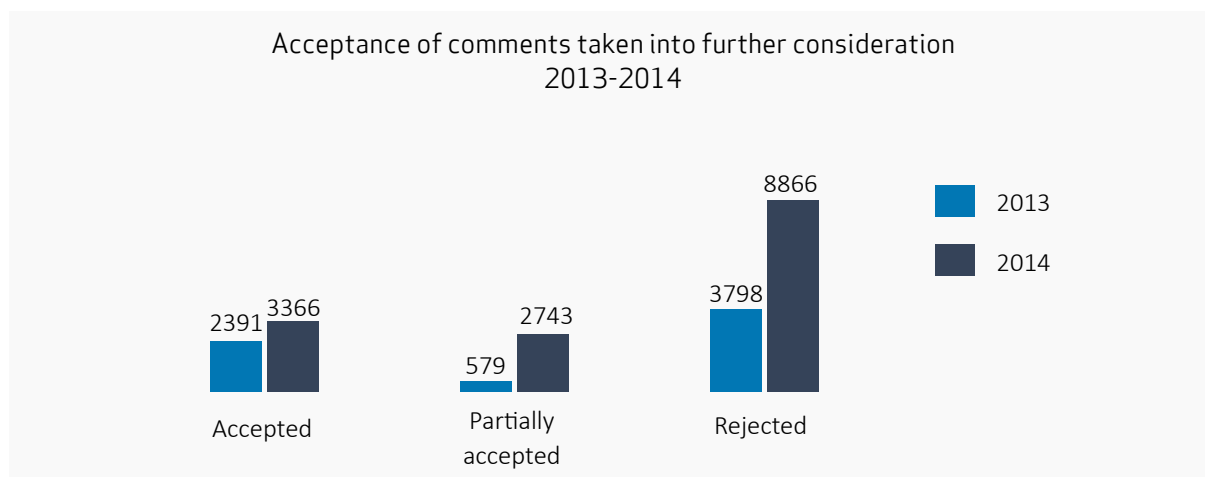
Given these figures, what has been the actual impact of public consultations on the quality of the laws, regulations and policies in Croatia? It is difficult to answer this question, given the lack of any assessment, evaluation or even just a systematic account of changes introduced in the proposed laws and regulations. GOfCNGO's monitoring of consultation processes does not include any qualitative assessment of the

41 Interview (Zagreb, March 23, 2015).

42 Interview (Zagreb, March 2015).

consultations or the changes they produce in the quality of laws and policies.⁴³ Moreover, the online system does not allow an easy comparison between the original draft law or regulation and the amended text resulting from the consultation process. Despite these limitations, some examples illustrate the positive effects of consultation.

Figure 7. Comments taken into further consideration



Source: Author based on Croatia (2014; 2015)

The 2011-2012 consultation process on the draft of the strategic investment act provides a good example. The Ministry of Economy submitted the draft for an expedited legislative procedure. Civil society objected publicly and collaborated with professional associations to support mobilization around the issue. The government responded positively by opening a long consultation process. Through public hearings, CSOs provided comments, and shared good practices from other countries using the consultation mechanism. The online consultation also provided valuable inputs. The consultation actually led to the removal of some controversial aspects on the draft and generally improved the resulting act.⁴⁴

In addition, as a result of the amendments of the Code of Procedure and the advance in the implementation of consultation processes, some recent decisions of the Croatian Constitutional Court have declared the non-constitutionality of some laws and regulations on the ground that they had not been developed following a democratic procedure, including providing opportunities for inputs from the public.⁴⁵

43 Interview (Zagreb, March 25, 2015).

44 Interview (Zagreb, March 25, 2015).

45 The law on the introduction of health education in the curriculum of primary and secondary schools, and the ordinance on the conditions for the election of scientific professions.

Although there might be political considerations involved,⁴⁶ these formal decisions strengthened the obligation to hold consultations.⁴⁷

Despite these positive trends, there are limits to the extent to which consultations have effectively improved the quality of laws and regulations and actively engaged citizens. These limitations have to do with the low awareness of public officials, legislators and citizens about consultation mechanisms,⁴⁸ and with the limited capacity (in terms of time and human resources, for example) of citizens and organized civil society to participate in a significant number of consultation processes. As the IRM rightly noted

Communicating results to the public is important here not only because of the need to inform the broader circle of citizens, but also because access to information and clear communication are the prerequisites for an increased citizen participation (Bagić 2014: 66).

Other factors that explain the limited impact result from the challenges in the implementation of these consultations mechanisms, which is the focus of the next section.

46 From the perspective of some experts, the Court's decisions are often politically biased and the advance or delay of cases responds to political considerations. For example, while supporting consultations, the decision regarding the introduction of health education in the school curriculum was favorable to conservative groups and opposed to the government and to the positions of the most influential CSOs in the country. Interview author (Zagreb, March 25, 2015).

47 The original Court decisions are available at <http://sljeme.usud.hr/usud/praksaw.nsf/Praksa/C12570D30061CE54C1257B7300328A29?OpenDocument> and <http://sljeme.usud.hr/usud/praksaw.nsf/Praksa/C12570D30061CE54C1257BAB0037D09B?OpenDocument>. Some news reports on the decisions can be found at <http://www.tportal.hr/vijesti/hrvatska/263280/Ustavni-sud-ukinuo-zdravstveni-odgoj.html> and <http://www.vecernji.hr/hrvatska/ustavni-sud-ukinuo-pravilnik-o-izboru-u-znanstvena-zvanja-585697>.

48 Interview (Zagreb, March 25, 2015).

5. Visible progress in public consultations yet limited impact

Croatia shows a good record in the implementation of open government reforms. Overall the implementation of the first NAP was successful with two (out of 9) commitments completed and five showing substantial implementation by the end of 2013 (IRM Report 2014). The ongoing implementation of the second NAP shows a comparable record with most commitments on schedule and on track for timely completion.

A good record in the implementation of public consultation commitments

The implementation of Croatia's public consultation commitments has been satisfactory. From the first NAP, only the online system experienced significant delays. Despite delays, there was consensus that public consultation commitments had achieved visible progress, and that the OGP had provided further impulse for advancing consultation mechanisms, and particularly for promoting the adoption of the amendments to the Code of Procedure.

By the end of 2013, the IRM reported commitments #9.1 and 9.4 as complete, following the adoption of the amendments to the Code of Procedure and the online publication of reports on public consultations. However, the reports still fail to provide the full picture of public consultations because some institutions do not report their data. The voluntary basis of reporting makes it difficult for GOfCNGO to gather and disclose full information on consultations. Commitments #9.3 and 9.5 were substantially implemented and only commitment #9.2 (the online system) showed limited implementation at the time.

GOfCNGO developed a training program on consultation mechanisms and, in 2013, partnered with the National School of Public Administration to include it as part of their curriculum.⁴⁹ Three training workshops held in 2012-13 contributed to strengthen public officials' capacity for conducting consultations. The IRM highlighted the importance of strengthening training efforts, not only aimed at public officials but also at citizens. It emphasized the importance of strengthening capacities for implementing and participating in different consultation mechanisms besides online consultations. The IRM also stressed the importance of increasing incentives for citizens to participate in consultations, by communicating their results more widely and through diverse channels (Bagić 2014).

On the expansion of the composition of parliamentary working bodies, the IRM acknowledged that an increasing number of committees had appointed external members, yet noted that the stated goal was to open up all committees and still seven out of 29 lacked external membership. Moreover, the IRM suggested the importance of monitoring and assessing the contribution of external members to the legislative process (Bagić 2014).

The online system is the only consultation commitment from the first NAP that experienced significant implementation delays, due to hold-ups experienced by the wider e-citizen initiative to which the online system is connected. Given that the Ministry of Administration was implementing the e-citizen initiative, and that many citizens had already registered (130,000 users), the consultation system was integrated into this e-government project.⁵⁰ The Ministry's limited resources and capacity to move

49 Cf. OGP 2014.

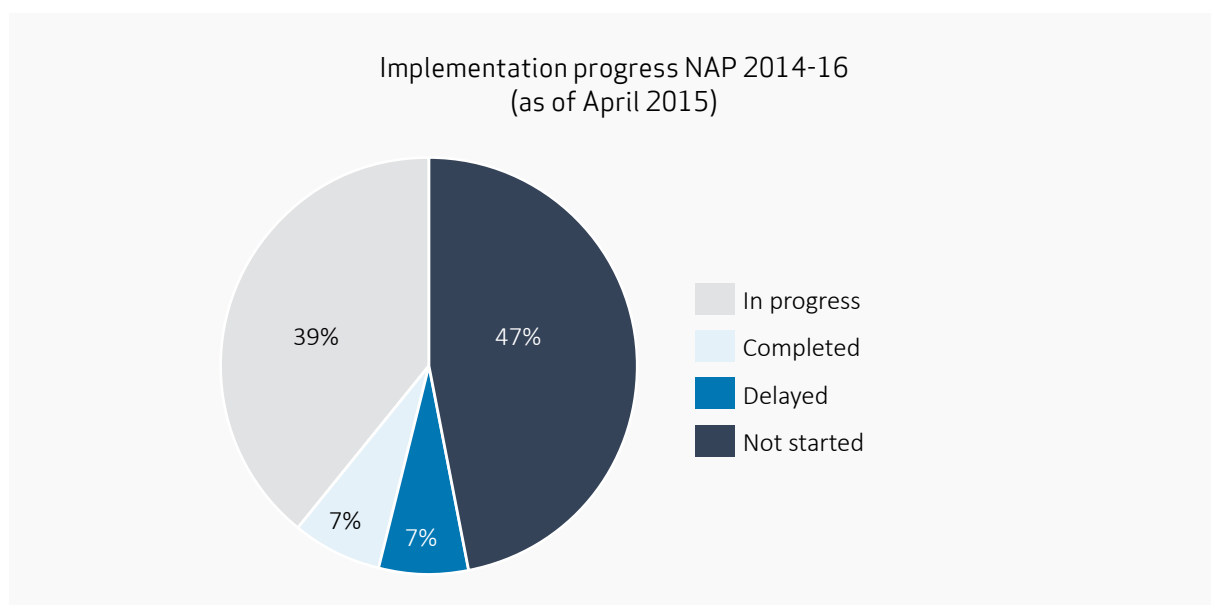
50 Interview (Zagreb, March 23, 2015).

forward with the design and operationalization of the system, which developed incrementally, explain these implementation delays.

Activities included under the second NAP's commitment #11 are progressing well. Overall, as of April 2015, 47.4% of all adopted commitments were in progress and 7% were complete; 38.6% had not started yet, and 7% were delayed.

The online consultation system, launched in early 2015, is operational. The portal provides information on ongoing consultation processes and is a tool for public institutions to conduct and coordinate online consultations. Commitment #11.4 is not complete. The information on the composition of the parliamentary working groups will be available through the consultations portal but was not yet available as of October 2015. The portal will also publish the reports on the efficiency of consultations (commitment #11.3). However, at the time of writing, the published reports only provide quantitative indicators on the conducted consultations but do not include any assessment of the efficiency of the consultation processes. Finally, training activities are ongoing, as GOfCNGO and the National School of Public Administration continue working in the delivery of workshops for public officials, now including the sub-national level.

Figure 8. Implementation level for all commitments as of April 2015



Analyzing implementation challenges and opportunities

Evidence suggests that strong political support, the process of adoption of commitments, the role of the coordinating unit, and an informal network of consultation coordinators are among the most important factors that explain the successful implementation of consultation commitments in Croatia. However, the implementation has also faced significant challenges related to a context of prolonged recession, past legacies of operation of the public sector, the autonomy of local governments, limited citizen awareness, and difficult monitoring and dissemination of results of open government reforms.

Political support and the benefits of strong coordination and good dialogue with civil society

At the time of joining OGP, Croatia's political context favored the adoption and implementation of the NAPs. The open government agenda had a strong support from President Josipović, and the new government, appointed after the 2011 parliamentary elections, embraced the open government values and principles (OGP 2013). The government led by Zoran Milanović saw the OGP initiatives as a way to advance reform processes that had been in Croatia's policy agenda for a long time.⁵¹ The President and his Office provided political support, and facilitated and mediated the dialogue between government and civil society (OGP 2013) through an active presence in the National OGP Council.⁵² Later on, the president of the National OGP Council and of the Prime Minister's Office adopted this central role.

As the political context evolves and changes, with a new conservative President (Kolinda Grabar-Kitarović, elected in January 2015)⁵³ and forthcoming parliamentary elections by the end of 2015 or early 2016, it is uncertain whether open government reforms will continue to have strong political support at the highest levels of government. The impact of this administration change will depend on its effects on the rotation of key staff in the institutions leading the implementation of OGP commitments, the National OGP Council and GOfCNGO. At the time of writing, key government champions continue working in support of the implementation of reforms.

A strong administrative and coordinating support has been critical for the implementation process. GOfCNGO has played a very positive role regarding consultation commitments, providing not only administrative support, coordination and technical advice, but also leading directly the implementation of many of the activities included under the commitments (e.g., training), and coordinating closely with institutional partners for the implementation of other activities (such as the online system). This dual role as implementing agency and administrative/coordination support unit has proved quite successful.

The nature of the GOfCNGO as a transversal coordinating body has facilitated this strong role. It supports the Croatian public administration in developing cooperation with civil society (GOfCNGO 2013), with functional independence but close relations to the highest levels of government. Moreover, its leadership capacity and a highly capable and committed team have contributed to its operational success. The team (with key members having previous experience working with important Croatian CSOs) has provided strong and sustained leadership to OGP processes in Croatia, and facilitated a strong dialogue between government and civil society around the action plans.⁵⁴

The process of adoption of consultation commitments has also been conducive to a strong implementation. Building on existing structures for civil society dialogue in Croatia,⁵⁵ the National OGP Council provided an institutional space for dialogue and negotiation between government and civil society. This institutional space, with high legitimacy due to the open selection and appointment

51 Interview (Zagreb, March 23, 2015).

52 Interview (Zagreb, March 25, 2015).

53 This is the first time that an incumbent president was not re-elected for a second term. The victory of Grabar-Kitarović represents the first conservative victory since 1999.

54 Interview (Zagreb, March 23, 2015).

55 Including more than 200 government advisory bodies involving 800 CSO representatives; parliamentary committees involving over 100 CSO representatives, and an increasing number of local charters of cooperation between CSOs and local governments (GOfCNGO 2013).

of its members, facilitated the adoption of OGP commitments by consensus. Even for controversial commitments (such as the amendments to the code which faced disagreement between civil society and government representatives),⁵⁶ the Council and some key figures within it (including the Deputy Minister of Foreign and European Affairs who presided the Council) played a facilitating role that was conducive to agreement. For civil society, open government processes have been successful due to their involvement at all stages of the process, and because the Council has played a critical role to strengthen consensus among the actors.⁵⁷ Collaboration and dialogue have enhanced the legitimacy and acceptability of commitments, and have created incentives for the different actors to support the implementation process.

In addition, the design and formulation of the NAPs, and the adoption of the public consultation commitments in particular, responded to important policy priorities for both government and civil society. These initiatives had been in the policy agenda in Croatia as part of the EU accession process and several stakeholders perceive them as highly relevant and transformative. Moreover, the implementation of the public consultation commitments did not start from scratch, but there was a prior normative framework to build on, as well as some institutional structures and mechanisms already in place. The adoption of the commitments signaled the willingness to promote the implementation of procedures that formally existed but were not observed in practice. Moreover, its inclusion as OGP commitments gave GOfCNGO the required advantage and legitimacy to promote public consultations.

Finally, another critical factor has been GOfCNGO's collaboration with an informal network of public "consultation coordinators" within the 33 central-level state institutions that it oversees for implementing consultations. The office holds regular meetings with public officials responsible for consultations in each public institution to ensure the harmonized application of the code. They initially met once a month, but now, as the implementation of consultations became a common practice, they meet three to four times a year.⁵⁸ These meetings provide an opportunity for the office to advise the consultations officials. Most importantly, they also facilitate coordination and promote peer learning, the exchange of experiences and the search for solutions to common challenges (OGP 2014). After the approval of the code's amendments, the network has helped routinize public consultations by strengthening the skills of the public officials responsible for implementing consultations at national level institutions.⁵⁹

56 See endnote 20 above.

57 Interview (Zagreb, March 25, 2015).

58 Interview (Zagreb, March 25, 2015).

59 Interview (Zagreb, March 25, 2015).

Box 2. Implementation opportunities and challenges

Opportunities

- High-level political support.
- Strong coordination and administrative support of GOfCNGO.
- National OGP Council leadership and its facilitating role for building consensus.
- Institutional structures and spaces for dialogue between government and civil society.
- Alignment with long-term government priorities.
- Strong civil society support.
- Network of consultation coordinators in central-level state agencies.

Challenges

- Uncertain political context with new appointed President and forthcoming elections.
- Prolonged economic crisis and its effects on the state budget and civil society's access to funding.
- Local governments' autonomy, and limited resources and capacities at the local level, which make consultation virtually inexistent.
- Past legacies of administrative behavior.
- Limited administrative capacities.
- Low cost of not conducting consultations.
- Limited citizen awareness about consultation mechanisms.

The low costs of non-implementing consultations efficiently - Capacity and oversight challenges

Croatia's prolonged economic crisis, following the financial crisis of 2008, has influenced the implementation of open government reforms.⁶⁰ Changing priorities of key government departments to more pressing issues, the crisis affected the formulation of the NAPs (Ott 2012). Moreover, budget constraints also undermined efforts to strengthen the capacity of state level public bodies (e.g., because of a ban on hiring) (OGP 2013). These constraints have affected, for example, the capacity of the Office of the Access to Information Commissioner. With only six staff members, including the commissioner, and a very limited budget, the Office is responsible for multiple OGP commitments and plays a key role overseeing the implementation of consultation mechanisms at the sub-national level. In this case, the OGP commitments have not helped obtain support for additional capacity so far.⁶¹

Moreover, the crisis has also affected civil society capacity. It has made it even more difficult for CSOs to obtain sustainable funding for supporting the long-term engagement and dialogue with government institutions that open government reforms demand (e.g., their evidence-based advocacy work at the

⁶⁰ After the war and before the crisis, Croatia was growing 4-5% annually. The prolonged crisis has tested the country's economy. It is only in 2015 that growth is expected to resume timidly, at 1%. Cf. World Bank (2015).

⁶¹ The limits of staff and budget have been raised at the National OGP Council, since they will affect the implementation of commitments. Interview (Zagreb, March 25, 2015).

National OGP Council).⁶² This situation also undermines their capacity to monitor the implementation process, advocate for further reforms, and act as watchdogs.⁶³

Another important challenge has to do with limited capacities and lack of shared standards throughout the public administration.⁶⁴ Quality of public administration is generally low and there is still a wide perception that ministries are “for exercising power, not for implementing policies.”⁶⁵ Due to legacies from the non-democratic period, central level state institutions have not yet internalized modern public administration routines (policy planning processes, monitoring practices, etc.) and show limited transparency and accountability. For example, according to research conducted by GONG (2014) on the quality of governance and public management in Croatia, government offices and ministries rank very low in terms of capacity to monitor and report on policy implementation, with 36% and 27% respectively. Government budget transparency and accountability reaches only 12% on average (with ministries at 9%, parliament at 7% and government offices only at 4%).⁶⁶

Moreover, ministries are under-staffed, public officials receive low salaries, and there is limited continuity in public jobs. For example, consultation coordinators are usually young staff who do not remain in their position for very long. As a result, public officials have low incentives to acquire new skills and to put new procedures and routines, such as consultations, in practice.⁶⁷ Public institutions need strong policy coordination support, and there is a great need for systematic capacity building, as well as for acknowledging and sharing good practices (GOFCNGO 2013).

Overall, levels of public involvement in policy-making are still low (43% for ministries and 46% for government offices) (GONG 2014). Although OGP reforms have increased the costs of not implementing consultations for public institutions, these costs are still very low.⁶⁸ At the central state level, the focus has moved from whether to consult or not with the public, to how to conduct consultations more efficiently (OGP 2013). However, in practice, many public consultations are still mere formalities. Many public institutions conduct consultations routinely through online channels without any careful planning. The recommended deadlines (30 days for laws and strategies and at least 15 days for others) are often ignored due to political considerations. Information provided to the public on the laws and regulations submitted to consultation is still limited, and the draft bills themselves often are of low quality and prepared on short notice (e.g. draft amendments often do not explain their rationale).⁶⁹ Government institutions must take additional steps to implement meaningful consultations.⁷⁰

62 The crisis has accentuated a situation in which CSOs faced very strict criteria to access European Union and national public funding (GOFCNGO 2013).

63 Interview (Zagreb, March 25, 2015).

64 Croatia does not have university level education on public administration.

65 Interview (Zagreb, March 25, 2015).

66 The research includes the 29 government bodies (including 20 ministries, 7 Government Offices, and Parliament) that have the most impact on the quality of decisions and their implementation. Cf. results of the research at <http://duh.gong.hr/2013/RezultatiPoDimenzijama.aspx>.

67 Interviews (Zagreb, March 24 and 25, 2015).

68 Interview (Zagreb, March 25, 2015).

69 Interview (Zagreb, March 25, 2015).

70 Interviews (Zagreb, March 25, 2015).

The limited oversight on the implementation of public consultations contributes to the low costs of failing to consult. The Code of Practice is not legally binding and GOfCNGO does not have any sanctioning power. The Information Commissioner regularly receives complaints from citizens and civil society regarding the breach of the Code of Practice, but it does not have any sanctioning power on the issue.⁷¹ Moreover, the limited capacity of the Information Commission makes it virtually impossible to monitor the implementation of the Code in all the public bodies under its jurisdiction, and thus the Commission's efforts have focused mainly on awareness raising and training.⁷²

Moreover, non-central level institutions hardly implement any public consultations. In addition to the 33 state level institutions that GOfCNGO coordinates and oversees, there are approximately other 6000 state bodies, including 575 local government units, which should also follow the Code of Procedure and implement public consultations. However, public institutions at the sub-national level do not regularly conduct public consultations.⁷³ For example, there are no public consultations in Zagreb. This means that, despite the positive figures on the increasing implementation of the Code, the actual reach of public consultations is limited and many citizens in Croatia still do not have any regular opportunity of contributing to policy and law making processes.

The autonomy of local government units affects the limited implementation at the sub-national level.⁷⁴ GOfCNGO and the Information Commission cannot require them to implement public consultations. They can only make recommendations and provide training to strengthen their capacity.⁷⁵ However, so far, the impact of training and recommendations in actually changing public administration practices at the local level has been very limited. This seems particularly relevant since citizens' trust in public institutions at the local level is low and levels of citizen participation limited (Bajo ND).

Finally, another important challenge to the implementation of public consultations is the limited awareness of Croatian citizens about these mechanisms. Although levels of participation in open public consultations have increased since 2013, they remain low. Most comments received during consultation processes come from CSOs rather than individual citizens. Moreover, even within civil society, only strong CSOs have the capacity to monitor the opening of consultation processes systematically and to provide sound comments.⁷⁶ A strong public communication strategy around public consultations is lacking and CSOs perceive that the government focuses on raising awareness among public officials but does not invest enough resources in promoting public consultations among citizens. Under these conditions, it is really up to the CSOs to promote and raise public awareness, but their capacity is constrained by limited financial resources.

71 These powers were included in the draft amendments to the law that were under discussion in early 2015, and were enacted in August 2015.

72 Interviews (Zagreb, March 25, 2015).

73 Interview (Zagreb, March 25, 2015).

74 Croatia is a unitary country with a decentralized administrative structure formed by central, regional and local governments. From 2011, there is a legal presumption that all public affairs are the responsibility of local authorities. Local government units can develop programs and provide services that affect their development, yet in practice taking on additional responsibilities is constrained by inadequate fiscal decentralization. (Bajo ND).

75 In general, administrative capacity at the local level is weak and public service delivery inefficient (Bajo ND).

76 There is large number of CSOs in the country (around 30,000 registered), but only 15-20 CSOs are active on governance and human rights issues and participate more actively in public consultation processes. Interview (Zagreb, March 25, 2015).

6. The lessons of the Croatian case

Open government reforms to strengthen public consultations in Croatia reflect long-term policy priorities of both government and civil society since the democratic transition. The inclusion of relevant commitments has contributed to strengthen the normative framework for conducting public consultations, and to enhance their actual implementation. The analysis of the Croatian case provides several lessons from the implementation of open government reforms related to public consultations.

First, this case illustrates both the advantages and the limits of strong and sound dialogue between government and civil society. OGP processes have benefitted from pre-existent structures for articulation between government and civil society, and have helped strengthen institutionalized spaces for dialogue in the elaboration of the action plans. The National OGP Council has played a strong role in conducting wide consultations with citizens and experts, who have provided valuable inputs for the preparation of the NAPs. At the same time, the Council has provided an open space for bargaining and negotiation between government and civil society actors, where strong open government champions on both sides have contributed to a collaborative definition of the open government agenda.

This collaborative approach has helped identify initiatives and areas of reform that all the actors involved see as both feasible and critical for advancing open government in the country. Both government and civil society actors have learnt to moderate their expectations and to prioritize particular reforms in order to reach agreement on key initiatives that are doable within the time span of the action plans. Although the resulting NAPs may be less ambitious than initially expected, civil society also acknowledges that having real commitment to implement open government initiatives can make a difference for advancing reforms in the medium-term.

However, collaboration has its own limits and challenges. It requires building trust between government and civil society actors, who must learn to work together while keeping in mind their distinctive roles at the different stages of open government reform. Both civil society and government actors must invest in getting to know each other and in finding allies to influence decisions (Ott 2012). Moreover, institutionalized spaces for dialogue and collaboration cannot replace spontaneous and real participation in open government processes and in the design of public policies more generally (GOfCNGO 2013). They represent complementary approaches.

Croatia also illustrates the challenges of implementing open government reforms with limited resources. A prolonged economic crisis has affected the ability to undertake reforms and to strengthen public administration capacity, constraining the impact of some of the open government initiatives. The limited availability of resources has also undermined the capacity of leading institutions to implement their commitments effectively. Moreover, limited resources and scarce opportunities to access international and national funding have also weakened civil society capacity to engage in a sustained way and to monitor the implementation of reforms in an ongoing basis.

Box 3. Lessons from the Croatia experience

- Good government-civil society collaboration creates consensus and legitimacy for OGP reforms, and helps obtain commitment for leading their implementation.
- A strong coordinating unit facilitates OGP processes and can lead by example.
- Economic crises affect the scope and implementation of reforms, changing government priorities, reducing resources, and constraining sustained civil society engagement.
- An online portal streamlines consultation processes and facilitates citizen participation, but different methodologies still need to complement online mechanisms.
- Improvements in consultations do not automatically disseminate to autonomous and less capable subnational governments without monitoring and building capacity.
- Obtaining and disseminating evidence of the positive impact of consultations on the quality of legislation can create incentives for wider, better citizen participation.

Another important lesson --which coincides with the findings of other OGP cases -- is the role of a strong coordinating and support unit in the success of open government reforms. Particularly in contexts where policy coordination is challenging and constraints to public administration capacity exist, a strong support unit (with technical capability, functional autonomy and political support) is a critical element for facilitating the adoption and implementation of open government commitments. Moreover, the supporting unit can also take responsibility for the implementation of some initiatives, helping to lead by example. However, it is also critical that OGP coordinating and supporting units invest resources in monitoring and disseminating the emerging results of open government reforms, and in creating awareness among citizens about the importance and results of reforms.

The implementation of public consultation commitments in Croatia has strengthened the capacity to conduct consultations with the public. However, the strategic long-term impact of these reforms is still constrained by limited oversight, the non-binding nature of consultation, and the autonomy and limited capacity of public institutions at the sub-national level; issues that the open government reforms have not addressed. Moreover, the efforts to raise public awareness about consultations are insufficient, and they have not achieved the expected results. Open government reforms are transforming how public institutions at the central level conduct consultations and approach the public, but they still have not substantially transformed the way citizens participate in Croatia.

Real and meaningful participation in public affairs is a long-term effort that requires not only setting the framework and institutional channels to participate, but also changing public officials' attitudes and enhancing their capacities to open up to the public and to effectively incorporate citizens' inputs into better public policies. Changing the incentives of public officials demands a combination of both training and capacity building, on the one hand, and raising the costs of not complying with consultation requirements, on the other one. Moreover, it requires creating the incentives for citizens to participate. Citizens must be involved for consultations to have a meaningful impact on the quality of laws and policies. This requires raising public awareness and providing information about the institutional spaces for participation and consultation but most importantly, it requires showing citizens the real benefits and impact that their participation can have. Investing in systematic monitoring and assessment of the emerging results of open government reforms related to consultations may facilitate this change.

Annex I: List of interviews

Name	Organization
Aida Bagić	Consultant IRM Report
Anamarija Musa	Access to Information Commissioner
Consultation coordinator	Ministry of Administration
Dalibor Dvorny	Prime Minister Office
Igor Vidacak	Director, Government Office for Cooperation with NGOs
Ivona Mendes	Consultant IRM report, former member of OGP Council
Jelena Berković	GONG
Josip Kregar	President, Parliamentary Committee for Justice
Katarina Ott	Institute of Public Finance
Marina Einbuchler Stilinović	Ministry of Administration
Miroslav Schlossberg	Croatian Association for Open source and Internet (HrOpen)
Sandra Pernar	Government Office for Cooperation with NGOs
Sasa Segrt	GONG
Suzana Grizelj	Consultation coordinator, Ministry of Administration
Tomislav Vračić	E-Croatia Directorate
Zoran Lusa	E-Croatia Directorate

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A strong dialogue between government and civil society provides a sound foundation for open government reforms in Croatia. The adoption and implementation of commitments aimed at strengthening public consultations in policy-making responds to long-term priorities of both government and civil society. There is visible progress in citizen participation, as well as in the number of public consultations held and comments received.

However, the overall level of public involvement is still low and the impact on the quality of laws and regulations remains unclear. The number and quality of public consultations varies significantly across state institutions, but it is very low at the sub-national level. Limited administrative capacity, compounded by a prolonged economic crisis, political and bureaucratic legacies, the low costs of not implementing consultations, and limited citizen awareness about consultation mechanisms, explain these shortcomings.