

GUIDELINES FOR PRACTICAL APPLICATION OF THE DECREE ON THE MANNER AND PROCEDURE OF COOPERATION BETWEEN STATE ADMINISTRATION AUTHORITIES AND NON-GOVERNMENTAL ORGANIZATIONS



Project "Civil Society Decides Too" is funded by the European Union within IPA Civil Society Facility Programme Montenegro2013. The content of the present document is exclusive responsibility of the Centre for Development of Non-Governmental Organizations and does not anyhow reflect the opinion of the European Union.

GUIDELINES FOR PRACTICAL APPLICATION OF THE DECREE ON THE MANNER AND PROCEDURE OF COOPERATION BETWEEN STATE ADMINISTRATION AUTHORITIES AND NON-GOVERNMENTAL ORGANIZATIONS



This Manual has been prepared with the support of the European Union. The content of the present Manual is exclusive responsibility of the Centre for Development of Non-Governmental Organizations (CRNVO) and does not anyhow reflect the opinion of the European Union

PUBLISHER:

Centre for Development of Non-Governmental Organizations
(CRNVO)

FOR PUBLISHER:

Ana Novaković

AUTHORS

Lidija Knežević, Ana Novaković

PREPARATION AND PRINTING:

Studio Mouse, Podgorica

Number of Copies:

50 copies

CIP - Каталогизација у публикацији
Национална библиотека Црне Горе, Цетиње

ISBN 978-86-85579-45-5
COBISS.CG-ID 26793744

Podgorica, March 2015

Table of Contents:

1. INTRODUCTION	5
1.1. Legal basis for the enactment of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations	7
1.2. Reasons for the enactment of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations	9
2. EXPLANATION OF THE SOLUTIONS PROVIDED IN THE DECREE ON THE MANNER AND PROCEDURE OF COOPERATION BETWEEN STATE ADMINISTRATION AUTHORITIES AND NON-GOVERNMENT ORGANIZATIONS	11
3. TEMPLATES OF ENACTMENTS FOR THE IMPLEMENTATION OF THE DECREE ON THE MANNER AND PROCEDURE OF COOPERATION BETWEEN STATE ADMINISTRATION AUTHORITIES AND NON-GOVERNMENTAL ORGANIZATIONS	25
3.1. Template of a Public call to non-governmental organizations for participation in consultations during the drafting and adoption of annual work programme	25
3.2. Template of Application for NGO participation in consultative process	26
3.3. Template of a List of non-governmental organizations which expressed their interest for participation in the process of development and adoption of enactments from annual work programme of the body:	27
3.4. Template of the Report on the conducted consultations with non-governmental organizations regarding draft	28
3.5. Template of a Public call to non-governmental organizations to propose a candidate for a working group member	30
3.6. Template of a List of candidates proposed to be the members of a working group	33
3.7. Template of a Decision on the selection of candidates proposed to be the members of the working group for the creation of	34

I. INTRODUCTION

Guidelines for practical application of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations aim to make closer and facilitate the understanding of implementation of the solutions contained therein, i.e. to guide the work of the state administration authorities concerning the inclusion of non-governmental organizations in the process of drafting, adopting and monitoring of the implementation of enactments in the best possible manner. They are primarily intended for civil servants and state employees in the state administration who apply the Decree in everyday work, so as for non-governmental organizations wishing to have an active role in the process of drafting and implementation of adopted public policies.

We hereby stress that the Guidelines do not represent interpretation of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations (hereinafter referred to as the Decree), but aim at its efficient and more appropriate application in practice.

The Guidelines have been the outcome of the Project "Civil Society decides too", implemented by the Centre for Development of Non-Governmental Organizations in partnership with the Network of Institutes and Schools of State administration in Central and Eastern Europe (NISPAcee) and NGO "Bonum", supported by the Office for Cooperation with Non-Governmental Organizations and Human Resource Management Authority. Project "Civil Society Decides Too" is funded by the European Union within IPA Civil Society Facility Programme Montenegro 2013. Main objectives of the project include the contribution to increasing involvement of civil society organizations in the creation and implementation of public policies in Montenegro, so as the improvement of cooperation of the state administration authorities and civil society organizations in these processes.

The importance of adoption of the Decree is worth mentioning as it is for the first time that the key forms of cooperation have been standardized in detail between government and non-government sectors, which have been envisaged by the Law on State Administration including: sharing of information with non-governmental sector by the state authorities, consultation with NGOs in the process of drafting enactments arising from the Annual Work Programme of the mentioned authorities, as well as the participation of

NGO representatives in the work of working bodies set up by the head of the line state authority.

However, despite the fact that the procedure of involving NGOs in creating public policies has been standardized with the adoption of the Decree, there is an obvious lack of more significant and appropriate application of the provisions of this binding enactment. The need for the complete and permanent application of the Decree has been also recognized in the Strategy for Development of Non-Governmental Organizations 2014-2016.¹ Therefore, the Action Plan for the implementation of the Strategy defined a measure – development of annual report on the implementation of the Decree, while the Ministry of Interior and the Council for development of NGOs are in charge of its implementation in cooperation with state administration authorities. In addition, Annual Report on Monitoring of Implementation of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations for 2012², published by the Centre for Development of Non-Governmental Organizations, indicates inefficient and unbalanced application of certain provisions of the Decree and most common problems faced in practice. Data published in the mentioned Report show that in 2012 only half of the state administration authorities made their annual work programmes and reports on their work available on the web page, while **consultations with non-governmental organizations in the process of drafting enactments coming out of the work programme of the state authorities is the least applied provision**. The received data indicate that **announcement of reports on consultations conducted with NGOs is “the most problematic obligation”**. Research has shown that the main reason for this is insufficient knowledge and distinction of various forms of cooperation by the civil servants. To that end, we remind that the Strategy for Development of Non-Governmental Organizations 2014-2016 also points out the need for education of all civil servants and state employees, especially the focal points for cooperation with NGOs, on the mechanisms for involvement and cooperation with NGOs prescribed by this Decree. Starting right from these needs, the Guidelines have been

1 The *Strategy for Development of Non-Governmental Organizations in Montenegro* 2014-2016, available on the website of the Ministry of Interior
<http://www.mup.gov.me/biblioteka/strategije>

2 Annual Report on the Monitoring of the Implementation of the Regulation on the Manner and Procedures of Cooperation between State Administration Authorities and Non-Governmental Organizations available on the website of the Centre for Development of Non-Governmental Organizations
<http://www.crngo.me/programi/program-za-istraivanje-i-analize.html>

drafted, in order to provide assistance to civil servants and state employees for efficient implementation of the Decree and in meeting their obligations stipulated therein.

The Guidelines are composed of three chapters. The first chapter relates to the legal basis and reasons for the adoption of the Decree on the Manner and Procedures of Cooperation between State Administration Authorities and Non-Governmental Organizations. The second Chapter comprises more detailed explanations of articles of the Decree, referring to the problems faced with in practice, while in the third Chapter templates of enactments for its implementation have been presented (template of the public call for consultations with NGOs, template of the report on conducted consultations with NGOs, template of the public call for appointment of the NGO representative in the work of working bodies, etc.).

We hope that the Guidelines and the proposed templates will help those who implement them, in their better understanding of the Decree and contribute to its consistent implementation. Even though the Guidelines are primarily intended for civil servants and state employees, they will also be published on CRNVO website and available to all interested parties, representatives of non-governmental organizations for their better information on existing mechanisms and more active participation in the processes of adoption and implementation of public policies.

1.1. Legal basis for the enactment of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations

Forms of cooperation between the state administration authorities and NGOs have been prescribed by Article 80, paragraph 1 of the Law on State Administration ("Official Gazette of the Republic of Montenegro", No 38/03 and "Official Gazette of Montenegro" no. 22/08 and 42/11) which reads as follows:

Ministries and other administrative authorities shall ensure the cooperation with non-governmental organizations, which shall specifically be implemented by:

1. consulting the non-governmental sector on developing strategies and analysis of circumstances in the specific area, on drafting laws and other Decrees governing the exercise of rights and freedoms of citizens,
2. enabling the participation in the work of working groups for the consideration of issues of common interest, or for the normative Decree of specific issues,
3. organizing joint public discussions, round tables, seminars and other forms of joint activities and in other appropriate forms;
4. informing about the content of the work programme and of reports on activities of the state administration authorities.

Legal basis for the enactment of the Decree on the Manner and Procedure of Cooperation between the State Administration Authorities and Non-Governmental Organizations is contained in **Article 80, paragraph 2 of the Law on State Administration**, which reads as follows:

»Manner and procedure for establishment of cooperation referred to in paragraph 1, items 1, 3 and 4 of this Article, as well as the criteria and procedure for the selection of NGOs to be active in the work of the working groups and other bodies set up by the Government and state administration authorities are defined by the Government“.

As stated in the introduction, for the first time the Decree has standardised the above mentioned forms of cooperation envisaged by Article 80 of the Law on State Administration. However, the **obligation to apply specific forms of cooperation defined by the Decree should be interpreted in the context of all Decrees concerning the work of the state administration authorities** (Law on State Administration, Decree on Organization and Method of Work of the State Administration Authorities and the like). By all means, the mentioned forms of cooperation governed by the Decree in detail (informing non-governmental sector by the state administration authorities, consulting the non-governmental sector on development of strategies and analysis of circumstances in the specific area, on drafting laws and other Decrees governing the exercise of rights and freedoms of citizens, as well as participation in the work of working groups formed by the heads of state administration authorities) are obligatory, however, the authority may, for example, in case of development of a strategic document, decide to engage all three prescribed forms of cooperation, but also to

choose one or two of them. In this respect, we remind that Article 80, paragraph 1 of the Law sets forth that "Ministries and state administration authorities shall ensure cooperation with non-governmental organizations, **achieved in particular**"..... , so that with this formulation – "**achieved in particular**" it is left on the state authority to choose the most appropriate form of cooperation with non-governmental organizations, depending on the nature of the enactment itself, deadlines and other circumstances.

1.2. Reasons for the enactment of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations

This Decree has been adopted in order to improve regulatory and institutional framework for cooperation between the Government and non-governmental organizations, as well as in purpose of further democratization of Montenegrin society and in accordance with principles defined by the Government of Montenegro in 2006 in its first document «Basis for Cooperation of the Government of Montenegro and Non-Governmental Organizations». This document has defined cooperation of the state administration authorities and NGOs through five principles: partnership, transparency, responsibility, mutual awareness raising and autonomy of non-governmental organizations.

Based on this document and in accordance with the initiative of the Coalition of NGOs "Cooperation towards the Goal", the Government of Montenegro adopted the "Strategy of Cooperation of the Government of Montenegro and Non-Governmental Organizations" in 2009 and the Action Plan for the period 2009-2011. The mentioned plan envisaged "establishment of the combined group to regulate issues of informing, consulting and participation of NGOs in the process of creation of public policies" and "development of the enactment containing criteria and procedure for the selection of NGO representatives to be involved in the relevant bodies and working groups".

Delay in the implementation of these activities (they were only implemented in 2011 instead in 2009) has been reflected in the Opinion of the European Commission about Application of Montenegro for EU membership which says that " cooperation of the Government with non-governmental organizations, especially within the legislative process and creation of the major public policies remains insufficient", and therefore "there is a

need to improve the quality of consultations with all stakeholders in the process of development of laws, including civil society". This is the reason why one out of seven recommendations in the Opinion of the European Commission from November 2010 was "Improvement of the freedom of media, particularly through the alignment of legislation with the case law of the European Court for Human Rights with regard to defamation and **strengthening cooperation with civil society organizations**".

Stemming from the mentioned recommendation of the European Commission, in the Action Plan for Monitoring of the Implementation of recommendations referred to in the EC Opinion related to civil society and in compliance with the Action Plan for the implementation of the Strategy of Cooperation of the Government with NGOs, the Government has been committed to adopt enactment on the criteria and procedure for NGO involvement in the process of creation of public policies, so as enactment on the criteria and procedure for the selection of NGO representatives to be involved in the relevant bodies and working groups established by the Government/ministries for development of Decrees. To that end, and in order to make the prerequisites for the achievement of this commitment, the Law on State Administration has been amended (in July 2011) to define legal basis for enactment of this Decree, as there was no legal basis contained in the Law which was in force at that time to adopt the by-law which would stipulate in detail manner and procedure for establishment of various forms of cooperation, governed by Article 80 of the Law.

To implement the mentioned recommendation referred to in the Opinion of the European Commission, the Centre for Development of Non-Governmental Organizations (CRNVO), within the project "Active Participation of Civil Society in the Process of Creation and Implementation of Public Policy", organised the development of draft Decree on the manner and procedure of cooperation between the state administration authorities and non-governmental organizations, developed by a combined (inter-sector) working group. CRNVO submitted the draft version to the Ministry of Interior, which was a partner in the implementation of the mentioned project, for its further procedure with the Government, considering that the Ministry of Interior, as per the general Decrees, is in charge for affairs with NGOs. In accordance with the Rulebook of the Government, the Ministry of Interior has thereafter elaborated, in a procedural manner, draft text in the form of a proposal of Decree, which was adopted by the Government at its session held on 22 December 2011.

2. EXPLANATION OF THE SOLUTIONS PROVIDED IN THE DECREE ON THE MANNER AND PROCEDURE OF COOPERATION BETWEEN STATE ADMINISTRATION AUTHORITIES AND NON-GOVERNMENT ORGANIZATIONS

Article 1

The present Decree stipulates the manner and procedure for establishment of cooperation between ministries and other state administration authorities (hereinafter referred to as the state administration authorities) and non-governmental organizations, so as criteria and procedure for the selection of NGO representatives to be involved in working groups and other bodies established by the state administration authorities.

This Article defines subject of the Decree, in compliance with already cited Article 80 of the Law on State Administration, and in this manner, for the first time this Decree has standardized in detail all forms of cooperation between the state administration authorities and NGOs envisaged by the Law.

Article 2

State administration authorities shall ensure consultations with non-governmental organizations (seminars, round tables, workshops and the like) on drafting and adopting enactments outlined in the Annual Work Programme (strategies and analysis of circumstances within the specific area, draft laws and other Decrees governing exercise of citizens' rights and freedoms), as well as written and e-communication (submission of proposals, suggestions, comments and the like).

This Article stipulates the obligation of the state administration authorities to consult non-governmental organizations in the initial-preparatory phase of the development of documents and in practice it is often interchanged or made equal with consultation of the interested public referred to in Article 7 of the Decree on the Manner and Procedure for Conducting Public Debate in Preparation of Laws.

Therefore it is necessary to stress that **consultation with NGOs referred to in Article 2 of the present Decree** implies **expression of interest of NGOs exclusively for their participation in the consultations through: submission (in written or e-form) of their suggestions, initiatives, proposals in relation to the development of various enactments arising from the Annual Work Programme (strategies, laws, Decrees, rulebooks etc.) or organization of meetings (seminars, round tables, workshops and the like).** Unlike the mentioned consultations with NGOs, consultations with the interested public referred to in Article 7 of the Decree on the Manner and Procedure of Conducting Public Debate in Preparation of Laws implies consultations, not only with NGOs, but also with interested public as a whole – citizens, expert and scientific community, NGOs, trade unions, media and the like in the initial phase of the development of law.

With regard to the enactments whose development was supported by the consultations of the state administration authorities with NGOs, it was decided that they should be enactments arising from the Annual Work Programme of the state authorities and in compliance with the Law on the State Administration and the Decree on Organization and Manner of Work of the State Administration (strategies and analysis of circumstances in the specific area, draft laws, other Decrees and secondary legislation governing the manner of exercise of citizens' rights and freedoms). It is of paramount importance for the improvement of cooperation of the state administration authorities and NGOs, as well as for increasing participation of NGOs in the creation and implementation of public policies, to link the consultative process with the Annual Work Programme, since it covers all activities of the state administration authorities for one-year period.

As stated earlier, there are two forms of consultations with NGOs: a) meetings and b) written and e-communication. Diversity of mentioned forms of consultations contributes to efficiency and effectiveness of this process, as the authority in each individual case, depending on the type of enactment, deadline and interest of the NGO, may choose appropriate forms of consultation.

Article 3

State administration authority shall make available on its website the following: public call to non-governmental organizations to participate in consultations referred to in Article 2 of the present Decree, deadline, address and place for the submission of applications.

Application referred to in paragraph 1 of this Article shall contain the name of enactment whose development the non-governmental organization is interested in, proposal on how to conduct consultations, as well as contact details of the non-governmental organizations.

Paragraph 1 stipulates publishing of the public call for NGO's participation in consultations, and its content. Paragraph 2 sets forth the data which need to be presented in the application of the NGO interested in taking part in the consultations. This paragraph does not stipulate the obligation of preparing application form, though some authorities have done so in practice.

The results of monitoring of implementation of the Decree on the Manner and Procedure of Cooperation between the State Administration Authorities and Non-Governmental Organizations in 2012³ show that non-governmental organizations have not been consulted to the necessary extent by the state administration authorities, having in mind that during 2012 only 12 invitations for consultations were announced, which means that they have been consulted in all cases when that was appropriate.

Article 4

State administration authority shall make available on its website the list of non-governmental organizations interested in taking part in consultations within three days upon the expiration of deadline referred to in Article 3, paragraph 1 of the present Decree.

This Article stipulates the obligation to announce the list of NGOs interested in taking part in the consultative process, thereby providing transparency of the process and of the work of the state administration authorities.

Article 5

When deciding upon the manner of consultation during development of enactment arising from the annual work programme, the state administration authority shall take care about the number of non-governmental organizations for interested in being consulted during development of that enactment, deadline defined for its development and the proposed manners of consultations.

3 For more details see Annual Report on the Implementation of the Regulation on the Manner and Procedure of Cooperation between the State Administration Authority and NGOs for 2012, prepared by the Centre for Development of Non-Governmental Organizations, which is available on www.crnvo.me

If consultations are carried out at meetings, in terms of Article 2 of the present Decree, the state administration authority shall inform interested non-governmental organizations thereof at least ten days prior to the date of the consultations.

Paragraph 1 prescribes the circumstances which the authority shall take into account on determining the manner of consultations. To that end, number of NGOs that expressed their interest, may have an impact on the form of consultations, for example, if there are only two interested NGOs, no seminar will be organised but meeting with representatives of these NGOs. In addition to this, the deadline for development of the enactment shall also impact the manner of consultations. If the deadline is short, the authority will not envisage time consuming submission of written comments, but will decide on the manner appropriate for that short deadline (meeting or workshop). This Article is especially important as it stipulates that the authority has to take into account proposal of the manner of consultations submitted by NGOs in their applications, but also objective conditions for the implementation of the mentioned proposals in purpose of cost and time effectiveness for the state administration authority and NGOs. All circumstances that the authority should consider have been defined in purpose of an efficient and quality implementation of the consultative process.

Paragraph 2 of this Article provides for an obligation of the state administration authority, in case of organization of consultations at meetings, i.e. seminars, workshops and round tables, to inform the NGOs about the planned form of meeting and details of its organization within 10 days prior to the date of the meeting. Bottom line is additional quality assurance of the consultative process, as the NGOs are given enough time to become familiar with subject to be governed by the enactment, and to prepare appropriate suggestions, comments and proposals.

Article 6

State administration authority shall prepare a report on the conducted consultations and publish it on its website within seven days as of the date of the consultations.

Importance of introduction of this obligation lays in the provision of transparency of the consultative process, so as in transparency of the work of state administration authorities. Development and publishing of reports are important as they assess if and to what extent, suggestions and proposals of NGOs

have been taken into account, while comparison with the draft enactment witnesses how many NGO proposals and suggestions have been integrated in the enactment. Obligation of the state administration authority to explain in detail the reasons for not accepting suggestions and proposals made by NGOs ensure that the consultative procedure is not carried out formally, but in purpose of the development of quality enactments.

However, the application of this Decree is questionable as the Annual Report on the Implementation of the Decree on the Manner and Procedure of Cooperation between the State Administration Authority and NGOs for 2012⁴ shows that this is the least applied provision, since only three state administration authorities have published on their websites five reports on the conducted consultations. In this respect, it would be necessary, due to frequent remarks of civil servants in relation to short deadlines for development of reports, to consider possibility of changing the defined deadline for possible changes and amendments of the Decree.

Article 7

Consultations with non-governmental organizations shall also be conducted in the manner stipulated by Articles 2-6 of the present Decree for development of enactments that have not been planned by the Annual Work Programme of the state administration authorities.

This Article stipulates the obligation of the state administration authorities to conduct a consultative process for development of enactments which have not been envisaged by the Annual Work Programme. Process of consulting NGOs during the preparation of these enactments is carried out in the same manner as during the preparation of enactments planned by the Annual Work Programme, which is very important as the state administration authority may be obliged during the year to develop an enactment not envisaged by the annual work programme. Having in mind the negotiations within the EU accession process, it is quite possible that the state administration authorities, within their areas of competence, are obliged to adopt legal and other public policy enactments that have not been planned in the Annual Programme. This Article ensures the applications of the provisions referred to in previous articles related to consultations with NGOs during development of those enactments.

4 For more details see Annual Report on the Implementation of the Regulation on the Manner and Procedure of Cooperation of the State Administration Authority and NGOs for 2012, prepared by the Centre for Development of Non-Governmental Organizations, which is available on www.crnvo.me

Article 8

State administration authority shall ensure the participation of the representative of the non-government organizations in the working groups and other bodies established by that authority (hereinafter referred to as the: working body).

This Article has for the first time standardized the procedure for the selection of NGO representatives in the working bodies of the state administration authorities, set up by the Deputy Prime Minister, Minister or Head of an independent state administration authority, in compliance with Article 55 of the Decree on the Organization and Manner of Work of the State Administration ("Official Gazette of Montenegro, no 5/2012, 25/12, 44/12, 61/12, 20/13, 17/14). Therefore, participation of the representatives of NGOs in the working bodies concerns ministries and independent state administration authorities.

Involvement of the NGO representatives in the work of working bodies established at the state administration level is a form of cooperation with a continuing progress as of the date of enforcement of the present Decree. Data published in the Strategy of Development of non-Governmental Organizations 2014-2016⁵ are in favour of this fact, as well as the Annual Report on the Implementation of the Decree on the Manner and Procedure of Cooperation between the State Administration Authorities and NGOs for 2012⁶.

Procedure and criteria for the selection of NGO representatives to be involved in the working bodies have been precisely defined by Articles 9-14 of the present Decree, and are characterised by the fact that the selection of NGO representatives is based on the proposal of NGOs themselves, i.e. NGOs decide about who will represent them in the process, which is 'administered' by the state administration authority. Such an approach was established in some areas and the related Decrees (the Law on Public Broadcasting Services of Montenegro and the like). This procedure is appropriate for

5 For more details see Strategy for Development of the Non-Governmental Organizations in Montenegro 2014-2016, which is available on the website of the Ministry of Interior: <http://www.mup.gov.me/biblioteka/strategije>

6 For more details see Annual Report on the Implementation of the Regulation on the Manner and Procedure of Cooperation between the State Administration Authority and NGOs, which is available on the web page of the Centre for Development of the Non-Governmental Organizations: <http://www.crngo.me/programi/program-za-istraivanje-i-analize.html>

the involvement of NGO representatives in the working body, whose role is to represent opinion of citizens and their proposals. A candidate who is proposed and appointed by the colleagues from an organization recognised as professional and active in their field of work, may be considered a legitimate representative of the non-governmental organizations. This procedure is in accordance with the principle of representation democracy. The prescribed criteria for NGOs and their candidates are rather demanding in order to provide participation of professional and qualified representative of NGO in the working body.

Article 9

The procedure for the selection of the representative of non-governmental organizations in the working body shall be initiated with the announcement of public call on the website of the relevant state administration authority.

Public call referred to in paragraph 1 of this Article shall contain the number of representatives of non-governmental organizations in the working body, prerequisites for non-governmental organizations which may propose their representatives, prerequisites for candidates, documentation to be submitted along with the proposal of candidate as a member of the working body, as well as the deadline and manner of submission of the proposal.

Deadline for submission of the proposal referred to in paragraph 2 of this Article is eight days as of the date of announcement of the public call.

Article 9 of the Decree stipulates that public call should contain the number of the NGO representatives, prerequisites for the proposing non-governmental organizations, prerequisites for candidates to be proposed, necessary documentation, as well as the deadline and manner for submission of the proposal.

According to the data from the Annual Report on Monitoring of the Implementation of the Decree on the Manner and Procedure of Cooperation between the State Administration Authorities and Non-Governmental Organizations for 2012 and the Report on Cooperation between the State Administration Authorities and NGOs during the first six months in 2013, it may be concluded that this provision is applied in practice to a great extent, so as that this is the most used form of cooperation in the previous period. For example in 2012, 11 state administration authorities published

95 invitations based on which 83 NGO representatives were involved in various working bodies.⁷ Progress was made in 2013 since only in first six months, the state administration authorities announced 105 invitations for NGO representatives to be included in those bodies, based on which 108 NGO representatives were selected, with a remark that 31 invitations had no response and proposed candidate⁸. This information refers to the conclusion that there are areas with no registered or profiled non-governmental organizations or they are possibly not interested for this form of cooperation. In these cases we talk about very specific areas for which Montenegro is deficient in appropriate expert profile. For example, there was no response to the public call to non-governmental organizations to appoint their representatives for the working group for development of the Draft Rulebook on the Prerequisites for Biological Waste Processing and the criteria for the quality of organic waste recycling products, which was published of the Ministry of Sustainable Development and Tourism. Another question that may arise from this is whether the authority should have published public call or it should have organized another form of cooperation (ex. organization of on-line consultations and round tables) to involve NGOs and receive anticipated inputs. In practice, the issue of quality of this form of cooperation is also raised when it comes to more significant contribution of NGOs in development of appropriate Decrees, but also attitude of the state administration toward proposals and suggestions received from NGOs, i.e. whether and how much NGO proposals have been integrated in the final version of enactments.

It is also worth mentioning that one of the issues causing dilemmas in practice is whether the authority could announce one call to NGOs to propose their candidate as a member of the working group for development of the specific enactment and one for the consultation of NGO in relation to the development of this enactment (consultations referred to in Article 2 of the present Decree). In this case, there is no obstacle for an authority to issue

7 For more details see Annual Report on the Implementation of the Regulation on the Manner and Procedure of Cooperation between the State Administration Authority and NGOs, which is available on the web page of the Centre for Development of the Non-Governmental Organizations:

<http://www.crngo.me/programi/program-za-istraivanje-i-analize.html>

8 For more details see Annual Report on the Implementation of the Regulation on the Manner and Procedure of Cooperation between the State Administration Authority and NGOs for the first six months in 2013, which is available on the web page of the Government of Montenegro:

<http://www.gsv.gov.me/biblioteka/izvjestaji?pagerIndex=10>

both invitations at the same time, since these two forms of cooperation are not mutually conditioned. Hence, the authority may issue public call for the consultations with NGOs, either prior to, or at the same time or after the announcement of public call for the proposal of the NGO representatives to be involved in the working group for the development of the specific enactment.

Article 10

A non-governmental organization may propose only one candidate to be the member of a working body.

A non-governmental organization may propose a candidate to be the member of a working body if:

- **it is entered into the registry of NGOs before publishing a public call referred to in Article 9 of the present Decree;**
- **its activities and goals in the field related to the task of a working body are defined by its Memorandum of Association and Articles of Association;**
- **in previous year, it implemented at least one project or activity related to the task of a working body;**
- **it submitted data for previous fiscal year to a tax authority (balance sheet and income statement);**
- **more than a half of the members of the NGO governing body are not the members of the bodies of political parties, persons occupying public functions, management persons or civil servants and state employees.**

This provision stipulates the criteria which an NGO has to fulfil in order to propose its candidate as well as the "limitation" to propose only one candidate to be the member of a working body. The prescription of these criteria is aimed at ensuring that candidates be proposed by competent and qualified NGOs which prove their competence and qualification by appropriate documentation, related to the field for which certain candidate is being proposed.

As the basic prerequisite, an NGO has to be entered into the registry of NGOs before publishing a public call, which ensures the prevention of possible misuses in terms of establishing new NGOs following the publishing of a public call, which would be the proposers of certain candidate and whose number would significantly influence his/her rating on the candidate list.

Another important prerequisite is that NGO has its activities and goals in the field related to the task of a working body defined by its Memorandum of Association and Articles of Association, as well as that it implemented at least one project or activity related to the task of a working body in the previous year. This ensures that the candidates may be proposed only by the organizations which are active in the respective area and which have achieved the results. The last prerequisite is related to the Decree of potential conflict of interests which is essential for the quality of the whole process. Therefore, these are primary prerequisites necessary for the proposal of candidates, while the number of proposals is crucial, only if these prerequisites are previously fulfilled and if the candidate fulfils the prescribed prerequisites.

Article 11

NGO Candidate for the member of a working body may be a person who:

- **is Montenegrin citizen, with residence in Montenegro;**
- **is experienced with regard to the task of a working body;**
- **is not a member of a political party body, a person occupying public function, civil servant or a state employee.**

The goal of establishing the prerequisites for candidates is the provision of expertise of NGO representatives for certain working body. There are different opinions in practice regarding the justifiability of the prerequisite related to Montenegrin citizenship, since it prevents experts and professionals for certain area who are not Montenegrin citizens to be NGO candidates. However, having in mind the fact that Montenegrin citizenship is a prerequisite for NGO representative in advisory bodies of the Government, as well as the prerequisite for the work in state administration authority, this has been an attempt to find a “unified” solution for the selection of NGO representatives in state administration working bodies. The experience related to the task of a working body has been the main prerequisite, prescribed for the sake of ensuring expertise of the candidates. NGO representative who achieved certain results by his/her work in certain area is eligible to become the member of a working body. In addition to this, with the aim to prevent conflict of interests, it has been prescribed that a candidate cannot be a member of a political party body, a person occupying public function, civil servant or a state employee.

Article 12

Non-governmental organization referred to in Article 10 of the present Decree, shall submit the following documents along with the proposal of a candidate for the member of a working body:

- **copy of a decision on entering into the registry of NGOs;**
- **copies of the Memorandum of Association and Articles of Association;**
- **summary of implemented projects and activities in the previous year related to the task of a working body;**
- **copy of a certificate on submitted tax data for the previous year;**
- **statement of NGO authorized representative that more than a half of the members of the NGO governing body are not members of the bodies of political parties, persons occupying public functions, management persons or civil servants and state employees.**

Besides the documentation referred to in paragraph 1 of this Article, NGO shall also submit the following:

- **copy of ID card or other personal identification document of a candidate for member of a working body;**
- **CV of the candidate, containing the data on experience regarding the task of a working body;**
- **statement of the candidate of not being a member of political party body, person occupying public function, management person or civil servant or state employee;**
- **statement of the candidate on the acceptance of being a candidate for member of a working body.**

This Article prescribes necessary documentation submitted by a proposing NGO. Each document has been prescribed with the aim to ensure the confirmation of fluffiness of prerequisites of a proposing NGO (Article 10) and the proposed candidate (Article 11). Frequently asked question in practice is whether, in case when several organizations propose the same candidate, each organization has to submit, besides the proposal of a candidate and the document which proves the credibility of the NGO, the documentation referred to in paragraph 2 of this Article – documentation related to the candidate: copy of ID card, statement and the rest. It is certain that the proposal of a candidate has to be regarded as whole and comprehensive, which means that each proposing NGO has to submit complete documentation, prescribed for both NGO and the candidate.

These dilemmas in practice are the relict of solutions from previous Decrees when the candidates were selected on the basis of the number of supports, and not based on the number of complete proposals in compliance with the public call prescribed by this Decree. For this reason, the public call always specifies that only **timely and complete proposals** will be taken into consideration.

Article 13

State administration authority, within three days from the expiration of the deadline referred to in Article 9, paragraph 3 of the present Decree, shall publish on its website the list of candidates proposed to be the members of a working body, along with the names of NGOs which proposed them.

For the sake of the provision of transparency of the selection procedure of NGO representative for the member of a working body, it is prescribed that state administration authority, within three days from the expiration of the deadline specified in the public call for submitting proposals, publish the list of candidates proposed to be the members of a working body, as well as the names of NGOs which proposed them.

Article 14

Within five days from the expiration of the deadline referred to in Article 13 of this Decree, the head of a state administration authority shall select the candidate who is proposed by majority of NGOs.

This Article defines the principle based on which the head of state administration authority will select a candidate to be the member of a working body, who fulfilled all prerequisites envisaged by the public call in compliance with this Decree and for whom the largest number of timely and complete proposals was submitted by "qualified" NGOs for certain area. The number of proposals of professional and competent organizations ensures the selection of the representative proposed by majority of relevant NGO in the certain area of action, which would usually be the evidence of the quality of the candidate and his/her future contribution in the work of the working body. The principle of the largest number of proposals of NGOs should ensure that a professional and representative candidate participate in the work of a working body, proposed by majority of relevant organizations, which should be the guarantee that such candidate will provide a high-quality contribution.

One of the questions arising in the practice is how to select the candidate in case of equal number of proposals of NGOs, i.e. in case when two or several

candidates have the same number of complete and timely proposals. In such case, the head of a state administration authority has a discretionary authorization to decide which candidate will be selected to be the member of a working body, based on submitted documents, primarily CVs of candidates, but also the level of involvement of particular NGO in the area in which the candidate is proposed. The fact that there is no regulated practice in such situations allows the head of the body to decide who will be the representative of NGO in the working bodies, based on submitted documents, principally for the sake of effectiveness of the procedure as these are temporary working bodies. Also, in case no candidates are proposed for the public call, the head of the body may decide to establish the team of NGO representatives, if this is required by rationality reasons, deadlines for the development of an enactment, etc. but also to repeat the public call, if allowed by the terms and conditions.

Article 15

State administration authority shall inform NGOs on its work by publishing Annual Work Programme and Work Report on its website, within three days from the day of their adoption.

Informing is a prerequisite for all other levels of cooperation, and only by timely publishing of information on their work, undertaken and planned activities, state administration authorities provide the space for involving non-governmental sector in the processes of drafting public policies, and what is more important, they provide citizens an insight into their work. In terms of this Decree, informing entails publishing of annual work programme and work report on the website of the authority.

In this context, it is important to clarify that, in compliance with Article 52 and 52a of the Decree on the Organization and Work of State administration ("Official Gazette of Montenegro", no. 5/2012, 25/12, 44/12 and 61/12, 20/13, 17/14), these are the ministries and independent state administration authorities which adopt work programmes and submit the reports to the Government. However, adequate implementation of this provision is absent from the practice, as majority of state administration authorities still do not publish their annual work programmes on their websites⁹.

9 For more details please refer to Annual Report on the implementation of the Regulation on the Manner and Procedure of Cooperation between State administration Bodies and NGOs, as well as the Strategy of Development of Non-Governmental Organizations in Montenegro 2014-2016

Article 16

The head of state administration authority shall appoint an officer for cooperation with non-governmental organizations.

Contact data of the officer referred to in paragraph 1 of this Article shall be published on the website of the state administration authority.

This Article has standardized the obligation of the head of state administration authority to appoint a focal point that will develop cooperation with NGO in the implementation of public policies under the responsibility of the body. In this way, all necessary prerequisites for efficient cooperation are created, in compliance with Law and the present Decree. However, the problem of insufficient knowledge and education of focal points with regard to NGO sector is identified in practice and cooperation activities with NGO are not precisely defined, along with frequent changes of persons who are focal points for cooperation with NGO. For the sake of more efficient cooperation between state administration authorities and NGO, it is primarily essential that each body precisely define the job description of the focal point for cooperation with NGO in the act on internal organization and systematization of the authority, which would be attached to certain working position along with other primary tasks of such working position.

Article 17

This Decree shall enter into force on the eighth day from its publishing in the "Official Gazette of Montenegro".

This Article defines entering into force of the present Decree.

3. TEMPLATES OF ENACTMENTS FOR THE IMPLEMENTATION OF THE DECREE ON THE MANNER AND PROCEDURE OF COOPERATION BETWEEN STATE ADMINISTRATION AUTHORITIES AND NON-GOVERNMENTAL ORGANIZATIONS

3.1. Template of a Public call to non-governmental organizations for participation in consultations during the drafting and adoption of annual work programme

Pursuant to Articles 2 and 3 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations ("Official Gazette of Montenegro", number 7/12), the Ministry of _____ announces the following:

PUBLIC CALL

to non-governmental organizations for the expression of interest for participation in consultative process related to drafting and adopting enactments from Annual Work Programme of the MINISTRY of

(strategy and analysis of situation in certain area, draft law, other Decrees and bylaws which regulate the manner of exercising the freedoms and rights of citizens)

+ enactments not planned by annual work programmes

The Ministry of _____ hereby invites non-governmental organizations to get involved in the procedure of development and adoption of enactments from Annual Work Programme of the Ministry of _____ by expressing their interest for certain enactment/s and in a manner most favourable for particular NGO.

NGOs are supposed to submit the expression of interest along with the name of the enactment, manner of consultation and contact data in written or e-form to the Ministry of _____ via mail to the following address: _____ or via e-mail to the following address: _____.

Applications are to be submitted within _____ days from the day of the announcement of the Public Call.

Focal point for the coordination of consultative process is _____ phone: _____.

Within three days from the day of submitting applications, the Ministry of _____ will publish the list of non-governmental organizations which expressed the interest for participation in consultative process on its website.

3.2. Template of Application for NGO participation in consultative process

Title of document/s for which NGO is interested to participate in consultative process	
Name of NGO which expresses the interest for participation in consultative process	
Manner of conducting consultative process	
Initial comments and proposals related to development of the document subject to application	
Name and surname of responsible person in NGO, e-mail address and telephone	
Date of application submission	

We would like to point out that the creation of application form is not mandatory, but it has been done as a model for NGOs which are willing to use it.



3.3. Template of a List of non-governmental organizations which expressed their interest for participation in the process of development and adoption of enactments from annual work programme of the body: _____

Pursuant to Article 4 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations ("Official Gazette of Montenegro", number 7/12), the Ministry of _____ announces the following:

LIST OF NON-GOVERNMENTAL ORGANIZATIONS which expressed their interest for participation in consultation in the process of development and adoption of enactments from annual work programme

In compliance with Public Call to non-governmental organizations for participation in consultation in the process of development and adoption of enactments from Annual Work Programme of the **MINISTRY/BODY** published on _____ the interest for participation in consultative process in development of enactments has been expressed by the following organizations:

1. Title of the enactment from annual work programme (e.g. Law on NGOs)
 - NGO _____; (round table)
 - NGO _____; (suggestions in written form)
 - NGO _____; (participation in the working group)
2. Title of the enactment from annual work programme (e.g. Rulebook on...)
 - NVO _____; (round table)
 - NVO _____; (suggestions in written form)
 - NVO _____; (participation in the working group)

In compliance with Article 5 paragraph 1 of the Decree and proposed manners of consultations by NGO, the Ministry - body _____ will define the manner for conducting consultations for certain enactments from the Annual Work Programme and timely inform on this matter the non-governmental organizations which expressed the interest for participation in consultative process.

3.4. Template of the Report on the conducted consultations with non-governmental organizations regarding draft

Consultative meeting was held on _____ in the premises of the Ministry of _____. The meeting was attended by the members of the working group in charge for the creation of Draft _____:

1. Name and surname of the coordinator;
2. Name and surname of other members of the working group.

Pursuant to Article 3 paragraph 1 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations ("Official Gazette of Montenegro", number 7/12), the Ministry of _____ on _____ announced the Public Call to non-governmental organizations for the expression of interest to participate in consultative process regarding the development and adoption of enactments from Annual Work Programme of _____. The interest for participation in consultative process related to the creation of e.g. Draft Law on NGO, by the defined deadline, was expressed by the following NGOs:

1. NGO _____;
2. NGO _____;
3. NGO _____;
4. NGO _____;
5. NGO _____;
6. NGO _____;

Taking into account the number of non-governmental organizations which expressed their interest to participate in the consultative process, as well as the proposals of those organizations, the Ministry of _____ has decided to conduct the consultative process by organizing a consultative meeting with NGO representatives on _____ in the premises of the Ministry.

At the very beginning, the participants were welcomed by the coordinator of the working group _____. S/he pointed out the need for

the adoption of the Draft _____ and the most significant novelties proposed by this document.

During the discussion, the participants presented their views with regard to what is and in what manner needed to be regulated by the Draft _____. NGO representatives who attended the meeting reached consensus in relation to the following:

-
-
-

Besides the above-mentioned, certain NGO representatives provided the following proposals:

-
-

Considering the proposals obtained from the NGO representatives during the meeting, working group members largely agreed to what was proposed. However, according to the majority of the working group members, some solutions commented by the NGO representatives are considered to be good, along with certain upgrade, they provide the efficiency of the process.

At the end, the following was concluded:

- During the creation of the Draft _____, the working group will take into consideration all proposals provided by NGO representatives at the consultative meeting;
- NGO representatives who participated at the consultative meeting may submit written proposals and suggestions to the working group not later than _____.

Minutes taken by:

signature

Report verified by:

signature

3.5. Template of a Public call to non-governmental organizations to propose a candidate for a working group member

Pursuant to Article 9 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations ("Official Gazette of Montenegro", number 7/12), the Ministry of _____ announces the following:

PUBLIC CALL

to non-governmental organizations to propose a candidate for a member of a working group (other working body) for the creation of draft law (strategy, analysis of a situation, draft rulebook or other bylaw which regulates the manner of exercising the freedoms and rights of citizens).

Non-governmental organizations will have one (or more) representative(s) in the working group _____.

Non-governmental organizations whose scope of activity is related to the task of a working group (other working body) have the right to propose one candidate for a member of the working group _____.

Non-governmental organization may propose a candidate for a member of the working group _____, if s/he fulfils the following criteria:

- if it was entered into the registry of NGOs before the announcement of the Public Call;
- its activities and goals in the field related to the task of the working group _____ are defined by its Memorandum of Association and Articles of Association;
- in previous year, it implemented at least one project or activity related to the task of a working body;
- it submitted data for previous fiscal year to a tax authority (balance sheet and income statement);
- more than a half of the members of the NGO governing body are not the members of the bodies of political parties, persons occupying public functions, management persons or civil servants and state employees.

Candidate for a member of the working group may be a person who:

- is Montenegrin citizen, with residence in Montenegro;
- is experienced with regard to the task of a working group;
- is not a member of a political party body (main boards, executive boards, presidencies, etc.), a person occupying public function, civil servant or a state employee.

Along with the proposal of a candidate for the member of the working group _____, non-governmental organization has to submit the following documents:

- copy of a decision on entering into the registry of NGOs;
- copies of the Memorandum of Association and Articles of Association;
- summary of implemented projects and activities in the previous year related to the task of a working group _____;
- copy of a certificate on submitted tax data for the previous year;
- statement of NGO authorized representative that more than a half of the members of the NGO governing body are not the members of the bodies of political parties, persons occupying public functions, management persons or civil servants and state employees;
- copy of ID card or other personal identification document of a candidate for member of a working group _____;
- CV of the candidate, containing the data on experience regarding the task of a working group _____;
- statement of the candidate of not being a member of political party body, person occupying public function, management person or civil servant or state employee and
- statement of the candidate on the acceptance of being a candidate for member of a working group _____.

Deadline for the submission of the proposals is eight days from the announcement of this Call. The proposal of candidates for a member of the working group is carried out by submitting the proposal and required documentation to the archive of the Ministry of _____ or via mail to the address _____, with the note: "Proposal of a candidate for a member of the working group for the creation of _____".

Within three days from the day of expiration of the deadline for submitting proposals of candidates, the Ministry of _____ will publish

on its website the list of the candidates proposed to be members of the working group _____, together with the names of non-governmental organization which proposed them.

Within five days from publishing the list of candidates proposed to be members of the working group, the Minister of _____ will select the candidate who has been proposed by the majority of non-governmental organizations.

The proposal of members of the working group _____ will be taken into consideration only if it was submitted timely and with accompanying required documentation.

3.6. Template of a List of candidates proposed to be the members of a working group

Pursuant to Article 13 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations ("Official Gazette of Montenegro", number 7/12), the Ministry of _____ publishes the following:

LIST OF NGO CANDIDATES

proposed to be the members of the working group for the creation of Draft law (strategy, analysis of a situation, draft rulebook or other bylaw which regulates the manner of exercising the freedoms and rights of citizens), together with the names of non-governmental organizations which proposed them.

In compliance with the Public Call announced by the Ministry of _____ on _____, the following candidates were proposed as NGO representatives in the working group for the creation of Draft Law:

1. Name and surname of the candidate, proposed by NGO

2. Name and surname of the candidate, proposed by NGO

3. Name and surname of the candidate, proposed by NGO

The proposal for appointment has been submitted timely and with all accompanying required documentation.

Having examined the submitted documentation, it has been determined that all prescribed prerequisites have been fulfilled for the acceptance of their candidature.

Within five days from publishing the list of candidates proposed to be the members of the working group, the Minister of _____ will select the candidate for a member in the working group who has been proposed by the majority of non-governmental organizations.

3.7. Template of a Decision on the selection of candidates proposed to be the members of the working group for the creation of _____

Pursuant to Article 14 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations ("Official Gazette of Montenegro", number 7/12), the Ministry of _____ adopts the following

DECISION

On the selection of candidates proposed to be members of the Working group for the creation of _____ (*draft law, strategy, analysis of a situation, draft rulebook or other bylaw which regulates the manner of exercising the freedoms and rights of citizens*)

Selected members of the Working group for the creation of _____ are the following:

1. Name and surname, representative of NGO _____,
2. Name and surname, representative of NGO _____,
3. Name and surname, representative of NGO _____.

EXPLANATION

Ministry of _____ announced the Public Call to non-governmental organizations to propose a candidate for a member of the Working Group for the creation of _____, published on the website of the Ministry of _____ and e-government portal on _____. Following the expiration of the deadline prescribed by the Public Call and following the examination of the proposals submitted to the address of the Ministry, it has been determined that:

1. Name and surname of the candidate, proposed by NGO _____ fulfils all prerequisites of the Public Call (s/he is Montenegrin citizen, with residence in Montenegro; /he is experienced with regard to the task of a working group and its implementation; s/he is not a member of a political party body, a person occupying public or private function, civil servant or a state employee in state administration bodies).

1. Name and surname of the candidate, proposed by NGO _____ fulfils all prerequisites of the Public Call (s/he is Montenegrin citizen, with residence in Montenegro; /he is experienced with regard to the task of a working group and its implementation; s/he is not a member of a political party body, a person occupying public or private function, civil servant or a state employee in state administration bodies).

It has also been identified that non-governmental organizations which have proposed the above-mentioned candidates fulfil the prerequisites of the Public Call for proposing candidates, pursuant to Articles 10 and 12 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations.

In compliance with the above-mentioned and pursuant to Article 14 of the Decree on the Manner and Procedure of Cooperation between State Administration Authorities and Non-Governmental Organizations, which prescribes that the member of a working body shall be a candidate proposed by the majority of non-governmental organizations, the decision has been made as in the dispositive part of this document.

Minister

signature

