**OECD Public Consultation**

[**https://survey.oecd.org/Survey.aspx?s=0eebe7643ee94eddb00bedeed2cd96df**](https://survey.oecd.org/Survey.aspx?s=0eebe7643ee94eddb00bedeed2cd96df)

**SECTION A**

**\*A.1 Do you agree with the following definition of open government?**

"Open Government: a citizen-centred culture of governance that utilizes innovative and sustainable tools, policies and practices to promote government transparency, responsiveness and accountability to foster stakeholders’ participation in support of democracy and inclusive growth"

**Please select one**

 Yes No

**A.2 If you have suggestions for this definition, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

Open Government: a citizen-centred culture of governance that **is transparent, participatory, responsive and accountable, and that** **~~utilizes innovative and sustainable tools, policies and practices to promote government transparency, responsiveness and accountability to~~** foster**s** stakeholders’ participation in support of democracy and inclusive growth**, better decision making, more effective policy-making and public services, and the respect for fundamental human rights.**

**A.3. If you have any additional comments or suggestions for clarifications relating to this definition, please add them below:**

Access Info Europe does not agree with the OECD definition of ‘open government’ in its current form.

We argue that an open government is one that is transparent, accountable, responsive and participatory. These are the necessary conditions for citizen-centred and democratic culture of governance.

As the OECD states on its website, “the opening up of government processes, proceedings, documents and data for public scrutiny and involvement - is now considered as a fundamental element of a democratic society. Both greater transparency and public participation can not only lead to better policies and services, they can also promote public sector integrity, which is essential to regaining the trust of citizens in the neutrality and reliability of public administrations.”

With this in mind, it would be more appropriate to place transparency, participation, and accountability as the foundation stones of what open government should achieve; better decision-making, policies and public services, a healthier democracy and respect for fundamental human rights, and inclusive growth.

In addition, whilst “innovative and sustainable tools” are useful in ensuring transparency, participation and accountability in government, it is also important to remember that tried and trusted can also be useful and should not be wholly side-lined.

Our changes to the text help to reflect that vision.

**\*A.4 Do you agree with the following definition of open state?**

Open State: "when all public institutions of the executive, parliament, and the judiciary, independent public institutions, and all levels of government join forces and collaborate with civil society, academia, the media, and the private sector to design and implement a reform agenda to make public governance more transparent, accountable and participatory"

**Please select one**

 Yes No

**A.5 If you have suggestions for this definition, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

Open State: when all public institutions of the executive, parliament, and the judiciary, independent public institutions, and all levels of government join forces and collaborate with civil society, academia, the media, and the private sector to design and implement a reform agenda to make public governance more transparent, accountable and participatory;

**A.6. If you have any additional comments or suggestions for clarifications relating to this definition, please add them below:**

Access Info Europe does not agree with the OECD definition of ‘open state’ in its current form.

In short, the end goal of an “open state” should not be just a transparent, accountable and participatory government, the end goal should be a functioning democracy that best serves the public, within a human rights framework.

Transparency, accountability and public participation are the foundations upon which an open and democratic government and state should be achieved, rather than the end goals in themselves. A consequence of an open and democratic state therefore would mean that the government collaborates with civil society, academia, the media, and the private sector to design and implement reform, respect and protect human rights, take better decisions, produce better policy, ensure effective public services, and support democracy and inclusive economic growth.

**SECTION B**

**\*B.1.a How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

I. RECOMMENDS that Members and non-Members having adhered to the Recommendation (hereafter the “Adherents”) develop and adopt open government strategies and initiatives that follow the principles of transparency, responsiveness, accountability and participation with a view to designing and delivering public policies and services in an open and inclusive manner.

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**B.1.b If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 **I. RECOMMENDS**that Members and non-Members having adhered to the Recommendation (hereafter the “Adherents”) develop and adopt open government strategies and initiatives that follow the principles of transparency, responsiveness, accountability and participation with a view to designing and delivering public policies and services in an open, **democratic** and inclusive manner.

**B.1.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

**\*B.2.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

1. Take measures, in all branches and at all levels of the government, including politicians, senior public managers and public officials, to ensure commitment to develop and implement open government strategies and initiatives in collaboration with all relevant stakeholders in order to ensure their success and overcome obstacles related to resistance to change

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**B.2.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 1. Take measures, in all branches and at all levels of the government, including politicians, senior public managers and public officials, to ensure commitment to develop and implement open government strategies and initiatives in collaboration with all relevant stakeholders in order to ensure their success and overcome obstacles **~~related to resistance to change~~**

**B.2.c If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

**\*B.3.a How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

2. Ensure the existence, where necessary, of a robust open government legal and regulatory framework - including laws on access to and free flow of information, open data, freedom of speech and assembly, independence and pluralism of the media, and transparency - and its successful implementation, including through standardised procedures - such as guidelines and manuals , while establishing adequate oversight mechanisms

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**B.3.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

2. Ensure the existence, where necessary, of a robust open government legal and regulatory framework - including laws **that are in line with international standards** on **transparency and** access to **~~and free flow of~~** information, open data, freedom of **expression and of** speech **and the free flow of information**, **freedom of association** and **of** assembly, **and** independence and pluralism of the media, **~~and transparency~~** - and its successful implementation, including through standardised procedures - such as guidelines and manuals , while establishing adequate **and** **independent** oversight mechanisms

**B.3.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

It is imperative not only that the legal frameworks to support open government exist, but that they are in line with international human rights standards (or indeed, that they surpass these standards) and are safe from harmful reforms in the future. Of course, however good the legal framework may be, it is essential that it is respected in practice.

It should be noted that transparency is the consequence of having a robust and meaningful access to information regime that includes open data, and with proactive and reactive disclosure, the respect of other human rights. It is essential that other civic space rights are also protected.

**\*B.4.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

3. Proactively make available clear, complete, timely, reliable and relevant public sector information and data developed in consultation with civil society stakeholders that is easy to find, understand, use and reuse and is disseminated using a multi-channel approach.

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**B.4.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 3. Proactively make available clear, complete, timely, reliable and relevant public sector information and data **in open formats ~~developed in consultation with civil society stakeholders~~** that is easy to find, understand, use and reuse and is disseminated using a multi-channel approach. **The priorities for publication of this information and data should be developed in consultation with stakeholders.**

**B.4.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

It is important that the public be given the opportunity to analyse and use the data published in order to better understand and explain their opinions. Sometimes, a non-governmental actor will find a better way to explain or display proactively published data or information, thanks to it being in an open format.

**\*B.5.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

4. Provide public officials with adequate human, financial, and technical resources, including the necessary skills and professional incentives, to design and implement successful open government strategies and initiatives, while promoting a supportive organisational culture

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**B.5.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 4. Provide public officials with adequate human, financial, and technical resources, including the necessary skills and professional incentives, to design and implement successful open government strategies and initiatives, while promoting a supportive **and transparent** organisational culture

**B.5.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

**\*B.6.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

5. Coordinate, through the necessary institutional mechanisms, open government policies and initiatives - horizontally within and vertically across - all levels of government to ensure that they are aligned with and contribute to relevant national socio-economic objectives

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**B.6.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 5. Coordinate, through the necessary institutional mechanisms, open government policies and initiatives - horizontally within and vertically across - all levels of government to ensure that they are aligned with and contribute to relevant **local, regional and** national socio-economic **and human rights** objectives

**B.6.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

It is important that open government practices are encouraged at all levels of government to really effect change in the governance culture in a country. Indeed, at the local or regional level, this may be more effective than at the national level in some thematic areas. Beyond socio-economic objectives, government policy should also contribute towards, or at a minimum, maintain, the exercise of all human rights.

**\*B.7.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

6. Develop and implement monitoring and evaluation mechanisms for open government strategies and initiatives:

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**B.7.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 6. Develop and implement monitoring and evaluation mechanisms for open government strategies and initiatives by:

**B.7.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

**\*B.8.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

6. Develop and implement monitoring and evaluation mechanisms for open government strategies and initiatives by:

6.1. Selecting institutional actors to be in charge of collecting consistent, up-to-date and reliable information and data on the implementation of open government strategies and initiatives

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**B.8.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 6.1. Selecting institutional actors to be in charge of collecting consistent, up-to-date**, publically accessible** and reliable information and data on the implementation of open government strategies and initiatives

**B.8.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

 **\*B.9.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

6. Develop and implement monitoring and evaluation mechanisms for open government strategies and initiatives by:

6.2.Identifying sound and comparable indicators to measure processes, outcomes, and impacts;

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**B.9.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 6.2. **Working with civil society, the private sector, and academia to identify ~~Identifying~~** sound and comparable indicators to measure processes, outcomes, and impacts;

**B.9.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

To ensure indicators are relevant, it is important that all sectors working to ensure open government are involved in some way. The collaboration with variety of views and opinions will help to ensure robust, complete and detailed indicators that have buy-in from all sectors. This is particularly important with regards to the expectations on civil society, the private sector and academia in the next paragraph.

**\*B.10.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

6. Develop and implement monitoring and evaluation mechanisms for open government strategies and initiatives by:

6.3. Fostering a culture of monitoring and evaluation among public officials by increasing their capacity to conduct such exercises, in collaboration with civil society, the private sector and academia.

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**B.10.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 6.3. Fostering a culture of monitoring and evaluation among public officials by increasing their capacity to conduct such exercises, in collaboration with civil society, the private sector and academia.

**B.10.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

**\*B.11.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

7. Actively communicate about open government strategies and initiatives that are carried out as well as about their outcomes and impact in a transparent, accurate and timely manner in order to ensure that they are well-known, to favour stakeholders’ uptake, as well as to close the feedback loop and to stimulate buy-in both within and outside government;

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**B.11.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

7. Actively communicate about open government strategies and initiatives that are carried out as well as about their outcomes and impact in a transparent, **understandable,** accurate and timely manner in order to ensure that they are well-known, to favour stakeholders’ uptake, as well as to close the feedback loop and to stimulate buy-in both within and outside government;

**B.11.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

 Wherever there is a feedback mechanism, it is crucial that this is done in a timely, transparent and accurate manner. It is also essential that the feedback is understandable to the public for which it is aimed at, as well as the general public.

**\*B.12.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

8. Grant all stakeholders equal and fair opportunities to be informed and consulted, and to actively engage in policymaking and service design and delivery, at a minimal cost, avoiding duplication to minimise consultation fatigue, with adequate time, dedicating specific efforts to reach out to the most relevant, vulnerable, underrepresented, or marginalised segments of society, while avoiding policy capture by interest groups

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**B.12.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 8. Grant all stakeholders equal and fair opportunities to be informed and consulted, and to actively engage in policymaking and service design and delivery, at a minimal cost, avoiding duplication to minimise consultation fatigue, with adequate time, dedicating specific efforts to reach out to the most relevant, vulnerable, underrepresented, or marginalised segments of society, while avoiding policy capture by **private interests ~~interest groups~~**

**B.12.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

It is hugely important to specify that policy capture by private interests be avoided. An interest group is not necessarily the same as a private in-house lobbyist, and this should be clear in this paragraph. Those representing and/or defending private interests have a right to participate in public debate, but it is essential private interests do not capture the policy process and outcome.

**\*B.13.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

9. Explore innovative ways to effectively engage with stakeholders through experimentation to source ideas and co-produce solutions and seizing the opportunities provided by digital government tools to support the achievement of open government goals, including through the use of open government data

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**B.13.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 9. Explore innovative ways to effectively engage with stakeholders through experimentation to source ideas and co-produce solutions and seizing the opportunities provided by digital government tools to support the achievement of open government goals, including through the use of open government data

**B.13.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

**\*B.14.a. How important are, in your view, the following sections and sub-sections of the draft Recommendation of the Council on Open government?**

10. Promote, with a view to progressively move from the concept of open government toward that of open state, the implementation of the principles of transparency, accountability, and participation across all public institutions of the executive, parliament and the judiciary, independent public institutions and all levels of government, while recognizing their respective role, prerogatives and overall independence, in order to exploit synergies, favour cooperation, build on each other’s strengths, and share good practices, for example through the development of an open state strategy and the creation of adequate coordination mechanisms.

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**B.14.b. If you have suggestions for this provision, including specific wording changes, please edit the text here as much as possible, using the “bold and underline” features for your additions or changes:**

 10. Promote, with a view progressively to move from the concept of open government toward that of open state, the implementation of the principles of transparency, accountability, and participation across all public institutions of the executive, parliament and the judiciary, independent public institutions and all levels of government, while recognizing their respective role, prerogatives and overall independence, in order to exploit synergies, favour cooperation, build on each other’s strengths, and share good practices, for example through the development of an open state strategy and the creation of adequate coordination mechanisms.

**B.14.c. If you have any additional comments or suggestions for clarification relating to this provision, please add them below:**

It is important to note that that one of the key preconditions to achieving an open state is an open government.

An open government and open state go hand in hand, rather than evolving from one into another. This also means that to maintain an open state, it is important than there is a functioning democratic and open government that respects fundamental human rights, transparency, public participation and accountability.

Open government and open state are the consequences of ensuring transparency, participation, accountability and responsiveness, rather than the way with which a government pursues policies to achieve these conditions. The OECD needs to ensure that its interpretation of open government and open state understands that they are a goal for better democracy, not a means to only being more transparent, accountable and participatory.

**SECTION C**

**C. Are there other dimensions/areas beyond those included previously, that you deem important to ensure effective and sustainable governance of open government reforms? Are there any general comments you would like to make?**

There is a lack of detail on the need to ensure professionalism and prevent corrupt or ethically questionable practices of (both elected and non-elected) public officials. It is essential that any open government has adequate mechanisms in place that reduce the potential for conflicts of interest to arise. This may include rules on appropriate behaviour of public officials, assets declarations, transparent regulation of lobbying activities (for example, see the International Standards for Lobbying Regulation http://lobbyingtransparency.net/) , whistleblower protections, transparency of procurement procedures, as well as independent enforcement bodies of these rules.

Furthermore, essential to open government is transparent decision making. Recent research published by Access Info has demonstrated a lack of transparency in decision making across Europe, preventing members of the public from following and participating in decision-making processes as well as from holding public officials to account over their exercise of power.

The research into 12 European jurisdictions and 96 decision making processes found that 60% of key decision-making information is not available to the European public. Just 20% of information was proactively available and only 30% was fully disclosed when requested using national laws, despite European legal frameworks in theory permitting access to information regarding decision-making processes such as minutes of meetings or documents submitted by lobbyists.

Therefore, we recommend the OECD address the following points in its open government recommendation:

Transparency applies to all decision-making bodies and processes - All bodies which bear responsibility for public decision making, should fall under the scope of the national access to information law.

Establish an obligation to create records - Public authorities should be obliged by law to document decision-making processes so that there exists information necessary for public participation and scrutiny, as well as for the historical record.

Require proactive publication of key decision-making information - There should be a legal requirement to publish key information about decision-making processes, including details on the process itself, with key decision-making moments, agendas of upcoming meetings, minutes of meetings, documents from lobbyists and third parties (submitted as part of or outside public consultations) and information justifying decisions taken.

Reduce time taken to make information publically available - Prompt responses to information requests are essential to facilitate potential participation in decision-making processes. This also applies when responding to appeals. At a minimum, for all information that is not published proactively, it should be available in time for requesters to participate in the relevant process.

Apply exceptions narrowly to information related to decision making - Exceptions should always be applied narrowly and always taking into account any overriding public interest in full (or partial) disclosure of information. There should, by law, be a presumption of disclosure of information needed to follow, participate in, and hold officials accountable for, a decision-making process. A harm and public interest test should apply to all exceptions.