

OECD Public Governance Reviews

Towards an Open Government in Kazakhstan



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Foreword

As part of the Kazakhstan 2050 Strategy, the Government of Kazakhstan has developed five institutional reforms namely, the creation of a modern and professional civil service; ensuring the rule of law; industrialisation and economic growth; a unified nation for the future; and a transparent and accountable state. These reforms aim to support the country in its endeavour to join the 30 most-developed countries in the world by 2050.

The country has already taken steps towards greater transparency, accountability of the state and citizen participation in policy making, such as the approval of laws on access to information and the creation of public councils. Further efforts would be essential however if Kazakhstan is to overcome remaining challenges and ensure the success and long-term sustainability of its open government reforms. This review provides an analysis and actionable policy recommendations on how to better position open government as a national strategy and enhance its strategic leverage and impact, including in promoting effective citizen engagement and a sound implementation of the access to information and public council laws.

This review was carried out under the programme of work of the OECD Public Governance Committee, based on its longstanding expertise in public governance and open government reforms in OECD member and non-member countries. This work was conducted within the 2015-2016 OECD Kazakhstan Country Programme, which aimed to support the country during a period of critical transitions and reforms. The Country Programme seeks to facilitate the implementation of public governance reforms, including the organisation and management of the public sector, decentralisation, openness and transparency and gender-sensitive decision-making processes, while promoting Kazakhstan's adherence to the OECD instruments and use of OECD standards and good practices.

This review is part of the series of reports prepared in the framework of the Country Programme on public governance that includes: *Towards a more effective, strategic and accountable state in Kazakhstan*; *Decentralisation and multi-level governance in Kazakhstan*; and *Gender*

policy delivery in Kazakhstan. All of these reviews aim to deepen the analysis and support the implementation of the recommendations outlined in the 2014 OECD Review of the Central Administration in Kazakhstan.

The review comprises three chapters. Chapter 1 identifies and assesses key good governance indicators, providing an overview of the cultural, economic, historical and political context for open government reforms. It examines the challenges and ongoing efforts by the Kazakhstan's government to further promote sound governance and open government reforms as key catalysts for inclusive economic growth and social well-being. Chapter 2 examines efforts put in place by the Kazakhstan's authorities to promote open government and identifies areas for improvement in order to translate the reforms into tangible results. Chapter 3 analyses the environment for effective citizen engagement and its potential to improve service delivery and policy making in the country. It also examines the current policies and practices in the area of citizen consultation and engagement.

This work provides a foundation for future engagement between Kazakhstan and the OECD as the country progresses its efforts to build a modern and diversified economy based on the rule of law and inclusive institutions.

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Table of contents

Acronyms and abbreviations	12
Executive summary	13
Key findings and recommendations	17
Summary action plan	23
Chapter 1. The cultural, economic, historical and political context for open government reforms in Kazakhstan	29
Key development indicators in Kazakhstan	30
Kazakhstan’s efforts to promote good governance	32
References	39
Chapter 2. A national open government strategy to ensure better good governance outcomes in Kazakhstan	41
Defining open government	42
Designing a national open government strategy	48
Steering and co-ordination of an open government strategy	73
Monitoring and evaluation of the open government strategy	83
Recommendations and proposals for action	86
Notes	87
References	89
Chapter 3. Towards effective citizen participation in policy making and service delivery in Kazakhstan	93
The benefits of stakeholder participation in policy making and service delivery	94
Access to information, the necessary first step for citizen participation	98
Consultation must go beyond legislation	120
Citizen participation	125
Recommendations and proposals for action	132
Notes	134
References	135

Tables

3.1. Information, consultation and active participation throughout the policy cycle.....	97
3.2. Breadth of freedom of information laws in OECD countries, 2010.....	101
3.3. Proactive disclosure of information by central government across OECD countries, 2010	103
3.4. Most common exceptions in freedom of information laws across OECD countries, 2010	111

Figures

1.1. Key development indicators, Kazakhstan, 1991-2014	31
1.2. Worldwide governance indicators for Kazakhstan, 1996-2014	32
1.3. Government effectiveness indicator for Kazakhstan and selected countries, 2014	33
1.4. Voice and accountability indicator for Kazakhstan and selected countries, 2014	33
1.5. Rule of law indicator for Kazakhstan and selected countries, 2014.....	34
1.6. Control of corruption indicator for Kazakhstan and selected countries, 2014.....	34
1.7. Performance overview for Kazakhstan and selected countries according to the Global Competitiveness Index, 2015-16	36
1.8. Selected indicators of the quality of public institutions pillar for Kazakhstan and selected countries according to the Global Competitiveness Index, 2015-16	37
1.9. Perceived levels of confidence in national government vs. perceived levels of corruption in government in selected countries, 2015 ...	38
2.1. OECD open government theory of change	45
2.2. Existence of a single official definition of open government in OECD countries, 2015	47
2.3. Framework for an open government strategy.....	53
2.4. Existence of a single open government strategy in OECD countries.....	56
2.5. Objectives of OECD countries when implementing an open government strategy	59
2.6. Initiatives on open government currently being implemented, or already implemented, by OECD member and accession countries	60
2.7. E-government Development Index, 2014.....	62
2.8. Actors involved in the development of the open government strategy in selected OECD countries, 2015.....	64
2.9. Freedom of the press indicator for Kazakhstan and OECD countries....	65

Figures *(continued)*

2.10. Functional activities undertaken by non-governmental organisations, 2014.....	69
2.11. Functions carried out by the office in charge of open government in OECD countries	73
2.12. Existence and location of an office responsible for horizontal co-ordination of open government initiatives in OECD countries	74
2.13. Varied responsibilities but clear priorities for centre of government ..	78
2.14. Level of co-ordination/collaboration between ministries and within administrations in selected OECD countries.....	82
2.15. Monitoring the implementation of open government initiatives in OECD countries	83
2.16. Evaluating the impact of open government initiatives in OECD countries	84
2.17. Mechanisms to monitor open government initiatives across OECD countries	85
2.18. Mechanisms to measure the impact of open government initiatives across OECD countries.....	85
3.1. Ladder of participation practices: Levels of stakeholder participation ..	96
3.2. Location of information proactively disclosed by the central government across OECD countries	106
3.3. Individual protection granted to those requesting information across OECD countries, 2010	108

Acronyms and abbreviations

CEPH	International Profiles Database
CIA	Central Intelligence Agency
CoG	Centre of government
CSOs	Civil society organisations
EITI	Extractive Industries Transparency Initiative
FOI	Freedom of information
GDP	Gross domestic product
ICNL	International Center for Non-for-Profit Law
ICT	Information and communications technology
NGOs	Non-governmental organisations
OGIS	Office of Government Information Services
OGP	Open Government Partnership
OGSC	Open Government Steering Committee
OSCE	Organization for Security and Co-operation in Europe
RIAs	Regulatory impact assessments
WEF	World Economic Forum

Executive summary

Kazakhstan is making progress towards greater openness and democratization, however, like many other countries around the world, it faces complex challenges, including rising inequality, slow economic recovery, low levels of productivity, and low commodity prices. Against this backdrop, good public governance has been recognised as a crucial factor for economic development and social well-being and although further improvements in Kazakhstan are still needed, the country has been steadily reforming its public governance. Widely accepted principles of good governance include openness, transparency and accountability; as well as fairness and equity in the government’s relationship with its citizens, including mechanisms for consultation and participation. Good governance also entails efficient and effective services; clear, transparent and enforced laws and regulations; consistency and coherence in policy formation; and respect for the rule of law and high standards of ethical behaviour. These principles represent the basis upon which open government is built. Open government is defined by the OECD “as a culture of governance, based on innovative and sustainable public policies and practices inspired by the principles of transparency, accountability and participation that fosters democracy and inclusive growth.” Furthermore, open government initiatives are a driver for inclusive growth as they are the foundation for inclusive institutions that offer broad citizen participation, pluralism and a system of checks and balances, which, in turn, provide better access to services.

The government of Kazakhstan has expressed its strong interest in enhancing transparency, accountability and participation in the policy-making process in order to bolster public trust in government and improve the quality of public services. As part of the Kazakhstan 2050 Strategy, the government developed five institutional reforms, which will help the country strengthen the capacity of the state and become one of the 30 most-developed countries in the world by 2050. One of these five institutional reforms includes “Transparency and Accountability of the State”, which underlines the administration’s commitment to open government reforms.

Kazakhstan has taken important steps towards implementing open government and has already made significant achievements in various areas,

including the approval of an access to information (ATI) law and the creation of public councils to promote citizen participation. However, Kazakhstan still needs to make additional efforts and overcome different challenges to ensure the success and long-term sustainability of its open government reforms.

Among the most pressing priorities is to establish a single definition of open government that is fully recognised and acknowledged by the whole public sector, and communicated to, and accepted by, all stakeholders. This definition is crucial for developing a national open government strategy in Kazakhstan. The open government strategy should be conceived as a whole-of-government approach to have a broad and sustainable impact. Indeed, it is critical for achieving policy goals in a wide range of areas such as integrity and transparency in the public sector, public service delivery and public procurement among others. Kazakhstan's full-fledged open government strategy should include principles, long-term outcomes, medium-term outputs and concrete initiatives to be carried out in collaboration with citizens, civil society organisations and the private sector.

An open government strategy will not be effective without buy-in from important actors both inside and outside the government. In addition to civil servants and citizens, media outlets and non-governmental organisations (NGOs) also play important roles in implementing open government initiatives, as they act as channels of communication, watchdogs and participants in reforms. However, recent changes in Kazakhstan legislation restrict the independence and freedom of expression of media and NGOs, which, in turn, limits the ability of open government initiatives to foster inclusive growth and trust in government.

Furthermore, effective and efficient implementation of an open government strategy is crucial for the evidence-based change envisioned by the country's 2050 strategy. Nevertheless, this process requires appropriate legal, policy, and institutional frameworks and mechanisms, as well as the related human and financial resources. Horizontal and vertical inter-institutional support is key to ensure that open government strategies become cross-cutting initiatives. OECD evidence suggests that a single office in charge of co-ordination, implementation and monitoring responsibilities is most effective for achieving positive results, especially if it is placed at the highest level of government. Moreover, informed decision making requires the knowledge, experiences, views and values of the general public. Effective approaches to citizen participation throughout the entire policy cycle can provide guidance for government action and allow it to better address society's priorities and deliver policies in a more accountable, innovative and cost-effective manner. Kazakhstan recently passed an access to information law, which represents the necessary first

step for citizen participation, but the law still needs to be fine-tuned to ensure proper implementation. For example, OECD practice suggests that to promote the effective implementation of the ATI, the entity in charge should have legal personality and operative, budgetary and decision-making autonomy, and should report to the legislature.

Finally, active participation is based on the recognition of the autonomous capacity of citizens to discuss and generate policy options. As a precondition for active participation, governments must share their plans and commit to incorporating jointly generated policy proposals in the final decision-making process. Kazakhstan has taken steps to strengthen its consultation process through the creation of public councils composed of two-thirds of civil society and one-third of public officials. However, Kazakhstan's system assigns control functions to public councils. In general, control bodies or institutions are usually either independent from the entity that they are supposed to control or solely composed of members of the entity (e.g. an internal control unit). Kazakhstan's hybrid system should be closely monitored in order to ensure that the councils can effectively perform their role of promoting citizen's active participation.

Key findings and recommendations

Open government as a national strategy

- Kazakhstan’s government has expressed strong interest in enhancing transparency, openness, accountability and participation in policy making in order to further develop public trust in government and improve the quality of public services.
- The country has been taken important steps towards implementing an open government agenda. The country has already made significant achievements in various aspects, including the approval of a new Access to Information (ATI) Law and the Public Councils’ Law. However, Kazakhstan still needs to carry out additional efforts and overcome different challenges to ensure the success and long-term sustainability of its open government agenda.
- As part of the Kazakhstan 2050 Strategy, the government of Kazakhstan has developed five institutional reforms, which will help the country to strengthen the state and facilitate its entry into the 30 most-developed countries in the world by 2050, as expressed in the Kazakhstan 2050 Strategy. One of these five institutional reforms is Transparency and Accountability of the State.
- Although, Kazakhstan foresees open government principles in its long-term strategy, the country would benefit from creating a single definition of open government and establishing a long-term, comprehensive and coherent open government national strategy. Recently, the government of Kazakhstan has developed a more structured approach to the development of open government in the country. Looking ahead, it would be important to articulate the activities to be carried out in depth, how they are to be achieved, by when and who will be responsible for them, in order to ensure effective implementation and ultimate impact.
- Kazakhstan’s approach towards open government has been mostly driven by an open data agenda as the government set the development of e-government as a priority, being the first country in

Central Asia to develop an e-government initiative. This has enabled Kazakhstan to rank 28th out of 198 countries in the UN E-government Development Index in 2014.

- Recent changes to the criminal code may limit the role of free media and journalist freedom of expression if they are taken to the extreme. Recent reports from various international organisations have expressed their concerns regarding the climate for the media and free of speech in Kazakhstan.
- Civil society in Kazakhstan has progressively become more diverse, visible, and robust since the fall of the Soviet Union. At the same time, a number of local non-governmental organisations (NGOs) and international stakeholders have expressed concerns that the new law on state social order, grants and awards for NGOs, in its current form may lead to a monopoly of the government in determining the types of NGOs and their activities to be supported.
- The effective implementation of open government initiatives will depend on the ability of the country to overcome a culture of secrecy, to establish a climate of openness and transparency, and to facilitate better co-ordination/collaboration between ministries and within administrations in Kazakhstan.

Effective citizen participation in policy making and service delivery

- Kazakhstan recently passed an Access to Information Law that represents the necessary first step for citizen participation, but the law still needs to be fine-tuned to ensure proper implementation.
- Kazakhstan has recently established the Commission on Access to Information (Resolution No. 1175 of 31 December 2015). The commission shall meet as necessary, but not more than once every six months, and its decisions are advisory in nature. Although it is a positive step, further efforts may be required to monitor the implementation of the law and provide solutions to reduce the gap between the law and the practice.
- Kazakhstan has taken further steps in advancing its consultation process through the creation of public councils. Public councils are composed of civil society (two-thirds) and public officials (one-third). This mixed composition of actors that are both internal and external to the administration is in line with most OECD countries, in particular if related to consultative and participative functions of the councils, as well as for the identification of needs and design of

public policies and services. At the same time, in most OECD countries, control bodies or institutions are usually either independent from the entity that they are supposed to control or solely composed of members of the entity (e.g. an internal control unit), which is not the case of public councils in Kazakhstan.

- Participatory budgeting was among the top priorities for the administration. However, as participatory budgeting is implemented in the framework of the decentralisation process of Kazakhstan, it would be important to enhance the capacity of local authorities and citizens to fully understand the potential of this activity and become active participants in its process.

Key recommendations

Kazakhstan included many principles of open government as part of its overall national strategy, which is an important step towards greater transparency and culture of openness. However, further efforts would be beneficial for the country to effectively implement its open government agenda. To this end, the government may wish to consider the following recommendations.

To position open government as a national strategy:

- To better achieve its “100 Concrete Steps” and the “Five Institutional Reforms”, Kazakhstan could develop a single definition of open government. This definition needs to be created with, accepted by and communicated to the whole public sector and all stakeholders (citizens, civil society, private sector, etc.). Having a well-defined understanding of what open government entails contributes to a more efficient and sustainable implementation of the major pillars of the President’s fifth institutional reform. This definition could take the criteria of a good concept/definition into account and should be elaborated through a consultative process to ensure better buy-in and ownership by all stakeholders.
- Kazakhstan could develop a full-fledged open government strategy (a single document) that includes principles, long-term goals, medium-term objectives, strategy instruments or initiatives to be carried out to achieve the goals. The strategy could also include the challenges, risks and threats that the country may face when implementing an open government strategy. For instance, Kazakhstan could use the elements contained in the national open government strategy for each of the components (open data, open

legal acts, open dialogue and open budgets) of the new structured approach to the development of open government.

- Kazakhstan could develop a more extensive open government strategy in co-operation with civil society. To this end, it could include more non-governmental actors, including citizens, civil society and the media, as well as regional and local governments, in the development and communication of the strategy.
- Kazakhstan could review its legal provisions with regard to the restrictions on journalists and ensure that their implementation does not undermine the freedom and independence of the media, in order to promote the participation of the media in the open government strategy and initiatives, and promote open and accountable government.
- Kazakhstan could clarify the reporting requirements and to remove any area of misunderstanding or misinterpretation, in order to promote the participation of NGOs in the open government strategy and initiatives. It could also ensure that funding decisions are based solely on objective and transparent criteria and make the decisions public.
- Kazakhstan could reconsider the conditions by which opinions can be considered as criminal acts of defamation, libel and insult

To enhance the strategic leverage of open government:

- The government of Kazakhstan could ensure that the open government agenda is both officially and practically one of the key priorities of the newly established Ministry for Information and Communications and that there are necessary mechanisms, human and financial resources to support this task and ensure the co-ordination of the new Ministry of Information and Communications with the presidency and centre of government.
- Kazakhstan could strengthen the necessary institutions, mechanisms and provide the necessary human and financial resources to ensure that the qualities and functions of the CoG are properly operationalised in order to ensure that open government strategy is successful and sustainable in the long term.

To ensure proper implementation of its Access to Information Law:

- Throughout the Access to Information Law there are references to other laws or legislation of the Republic of Kazakhstan. Kazakhstan

could make the references in the text of the laws and articles very specific.

- Kazakhstan could clearly specify the exceptions for denying access to certain information in the law. It could moreover establish clear criteria for determining which information is “for official use only” and include these criteria in the law.
- The government could develop the methodology for the classification and declassification of information, to guide public officials during their interpretation to decide what information can or cannot be provided. Kazakhstan may consider including a fuller description, or could clarify the procedure to appeal a decision and clearly state the courts that will handle the procedure. Kazakhstan could provide in the law that each public body designate a group of public officials in charge of receiving and resolving access to information requests or make reference to the specific laws and articles where this is stated.
- Kazakhstan could better specify the different types of violations and the sanctions allocated to them in its Access to Information Law or make very specific the references in the text of the applicable laws and articles.
- Kazakhstan may follow the approach that best suits its own institutional framework for the establishment of mechanisms to promote the effective implementation of the ATI Law, but OECD practice suggests that to promote the effective implementation of the ATI, the entity in charge should have legal personality and operative, budgetary and decision-making autonomy and shall report to the legislature.

To effectively engage with citizens:

- The government of Kazakhstan could consider the OECD Guidelines for Public Consultation and OECD good practices to better channel its efforts to include citizens in drafting laws and regulations more efficiently. The country could benefit in this regard from developing clear and simple procedures and guidelines for both public servants and citizens. It is important that this material be accompanied by regular training of local officials and citizens to ensure full and successful implementation. The success and continuity of this type of activity rely on the positive perception that citizens have about the process and the results. Kazakhstan could evaluate the process and communicate the results.

- Awareness-raising campaigns and dissemination programmes need to be carried out in a permanent manner to create active and knowledgeable public officials and citizens. Kazakhstan could also build a database with good practices and share it with the different levels of government. Also, Kazakhstan could develop an ad hoc strategy or general standards of public participation to help public servants conduct high-quality participation processes, like in the case of Austria.
- Kazakhstan could develop specific guidelines that would cover all the relevant procedures pertaining to the functioning of public councils in order to reduce the level of discretion of each entity in addition to the Law on Public Councils.

Summary action plan

Summary of gaps	OECD recommendations	Good practices to consider
<p>1. Position open government as a national strategy</p> <p>Defining open government: Different stakeholders and policy makers could have a different interpretation of what open government means. Although the definition of open government may vary across countries and can be influenced by political, social and cultural factors, it often includes a number of high-level principles such as transparency, accountability, participation or collaboration. To successfully implement open government initiatives, it is crucial to have a single definition, which is fully recognised and acknowledged by the whole public sector as well as communicated to, and accepted by, all stakeholders.</p>	<p>Develop a single definition created with, accepted by and communicated to, the whole public sector and all stakeholders (citizens, civil society, private sector, etc.). Kazakhstan could develop its own definition taking into consideration the criteria of a good concept/definition and through a consultative process to ensure better buy-in and ownership by all stakeholders. Having a well-defined understanding of what open government entails contributes to a more efficient and sustainable implementation of the major pillars of the President's fifth institutional reform.</p>	<p>Canada Korea</p>

Summary of gaps	OECD recommendations	Good practices to consider
<p>Developing a long-term, comprehensive and coherent national open government strategy: Open government is a critical policy area for the achievement of a number of different policy outcomes in specific domains. A long-term, comprehensive and coherent national strategy is a powerful tool for providing a clear direction to the whole public administration and is fundamental for measuring the performance of government actions on that specific area. The full-fledged open government strategy should include principles, long-term outcomes, medium-term outputs and concrete initiatives to be carried out.</p> <p>Building an open-government-wide national strategy requires an inclusive process: An open government strategy needs to count with “buy-in” from key internal and external stakeholders. This is crucial to achieve a good implementation rate. In order to ensure it, it is important that all relevant stakeholders, especially non-governmental organisations (NGOs) and the media participate in the development of the open-government-wide national strategy.</p>	<p>Develop a full-fledged open government strategy (a single document) that includes principles, long-term goals, medium-term objectives, policy instruments or initiatives to be carried out to achieve the goals. The strategy could also include the challenges, risks and threats that the country may face when implementing an open government strategy. For instance, Kazakhstan could use the elements contained in the national open government strategy for each of the components (open data, open legal acts, open dialogue and open budgets) of the new structured approach to the development of open government.</p> <p>Develop a more extensive open government strategy in co-operation with different stakeholders to ensure higher buy-in including more non-governmental actors, citizens and media as well as regional and local governments in the development and communication of the strategy.</p> <p>To promote the participation of media on open government strategy and initiatives, and foster open and accountable government, Kazakhstan could review its legal provisions with regard to the restrictions on journalists and ensure that their implementation does not undermine the freedom and independence of media.</p> <p>To promote the participation of NGOs in an open government strategy and initiatives, Kazakhstan could consider clarifying the reporting requirements and remove any area of misunderstanding or misinterpretation. It could also ensure that funding decisions are based solely on objective and transparent criteria and make the decisions public. Finally, Kazakhstan could reconsider the conditions by which opinions can be considered as criminal acts of defamation, libel and insult.</p>	<p>OECD countries that have developed an Open Government Partnership (OGP) action plans</p>

Summary of gaps	OECD recommendations	Good practices to consider
<p>2. Enhancing the strategic leverage of open government reforms</p> <p>Steering and co-ordination of the open government strategy: The open government strategy and its initiatives are at the core of the achievement of a number of different policy outcomes and it constitutes a transversal axe of different, but interrelated, policy areas. Although it is a necessary step, it is not enough; the real test for government's strategies is the implementation phase. In order to ensure a proper implementation, the open government strategy needs to remain linked with the activities of what the OECD calls the Centre of Government (CoG).</p> <p>Leadership and vision-setting capacities to change the culture in the public sector is needed: Overcoming the culture of secrecy and strengthening open government culture in the public sector are Kazakhstan's main challenges to implement open government initiatives. In addition, the level of co-ordination/collaboration between ministries and within administration was uneven in Kazakhstan.</p>	<p>Ensure that the open government agenda is both officially and practically one of the key priorities of the newly established Ministry for Information and Communications and that there are necessary mechanisms, human and financial resources to support this task and ensure the co-ordination of the new Ministry of Information and Communications with the presidency and Centre of Government.</p> <p>Strengthen the necessary institutions, mechanisms and provide the necessary human and financial resources to ensure that the qualities and functions of the CoG are properly operationalised in order to ensure that open government strategy is successful and sustainable in the long term.</p>	<p>In 62% of OECD countries the office is placed in the Office of the Head of Government or in the Cabinet Office/Chancellery/Council of Minister. For instance, in Austria the office is at the Federal Chancellery and in Iceland it is a division within the Prime Minister's office.</p>
<p>3. Ensure a proper implementation of the Access to Information (ATI) Law</p> <p>Develop a comprehensive law: Clarifying in the law, all the laws and the elements as throughout the ATI law, one can find references to other laws or legislation of the Republic of Kazakhstan.</p>	<p>Kazakhstan could make the references in the text of the laws and articles very specific.</p>	<p>Mexico</p>

Summary of gaps	OECD recommendations	Good practices to consider
<p>Clearly state the exceptions in the law: Every ATI legislation identifies a list of exemptions to this right, which means in layman's terms, that by law some institutions are permitted to withhold certain types of information. It is common for countries to establish a series of exceptions and they are clearly defined in the law.</p>	<p>Kazakhstan could clearly specify the exceptions to deny access to certain information in the law. Kazakhstan could moreover establish clear criteria to determine information noted as "for official use only" and include these criteria in the ATI law. The government of Kazakhstan could develop policies or guidelines for the classification and declassification of information to guide the public official during her/his interpretation to decide what information can or cannot be provided.</p>	<p>Mexico</p>
<p>Providing the requester information on his/ her request: It is also important that the requester receive the reason and legal provision of why the information is not given as well as about the possibility to appeal the decision the law does not specify if the requester must be informed of this denial.</p>	<p>Kazakhstan may consider including a fuller description or could clarify the procedure to appeal a decision and clearly state the courts that will handle the procedure. Kazakhstan could provide in the law that each public body designate a group of public officials in charge of receiving and resolving access to information requests or make reference to the specific laws and articles where this is stated.</p>	
<p>Sanctions if information is not provided: Comprehensive ATI laws should also specify to whom such violation is applied and what sanctions are provided for the offender. In addition, it is recommended to specify in greater detail the different types of violations and possible sanctions and penalties.</p>	<p>Kazakhstan could better specify the different types of violations and the sanctions allocated to them in its Access to Information Law or make very specific the references in the text of the applicable laws and articles.</p>	
<p>Information commissioner: At a global level, there are four main types of oversight bodies for access to information laws, with some assigning the role to existing entities and others having established a specialised entity.</p>	<p>Kazakhstan may follow the approach that best suits its own institutional framework for the establishment of mechanisms to promote the effective implementation of the ATI law, but OECD practice suggests that to promote the effective implementation of the ATI law, the entity in charge should have legal personality and operative, budgetary and decision-making autonomy and shall report to the legislature.</p>	<p>United States Mexico Chile</p>

Summary of gaps	OECD recommendations	Good practices to consider
<p>4. Effectively engage with citizens</p> <p>Providing feedback on consultation processes increases buy-in and confidence in the process: In the majority of OECD countries, in the area of regulatory policy, feedback is made public, while consultation inputs are formally required to be considered in the development of final regulation. This provides two important anchors for participation. First, it may help address key barriers to participation: a lack of confidence among stakeholders that their input will be used by policy makers that discourages them from engaging. Second, it helps the government to fully capitalise on the value of participation and consultation exercises: the use of stakeholder input to inform, and hopefully improve, decisions.</p>	<p>The government of Kazakhstan could consider the OECD Guidelines for Public Consultation and OECD good practices to better channel its efforts to include citizens in drafting laws and regulations more efficiently. The country could benefit in this regard from developing clear and simple procedures and guidelines for both public servants and citizens. It is important that this material is accompanied by regular training of local officials and citizens to ensure full and successful implementation. The success and continuity of this type of activity rely on the positive perception that citizens have about the process and the results. Kazakhstan could evaluate the process and communicate the results.</p> <p>Awareness-raising campaigns and dissemination programmes need to be carried out in a permanent manner to create active and knowledgeable public officials and citizens. Kazakhstan could also build a database with good practices and share it with the different levels of government. Also, Kazakhstan could develop an ad hoc strategy or general standards of public participation to help public servants conduct high-quality participation processes. Kazakhstan could develop specific guidelines that will cover all the relevant procedures pertaining to the functioning of public councils in order to reduce the level of discretion of each entity in addition to the Law on Public Councils.</p>	<p>Belgium European Union</p> <p>Austria</p>

Summary of gaps	OECD recommendations	Good practices to consider
<p>Participatory budget: The success and continuity of this type of activity relies on the positive perception that citizens have about the process and the results.</p> <p>Public councils: The law does not provide specific standards for the way public councils are formed and perform their duties. In fact, each entity's working group can decide the provisions of each public council, which include, among others, the terms and procedure for the arrangement of public council meetings and for the decision-making process (Article 13), the procedure for the selection of the civil society members of the public council, timeframe of the selection, list of documents, powers, etc.</p>	<p>Kazakhstan could develop clear and simple procedures and guidelines for both public servants and citizens. It is important that this material is also accompanied by training to ensure full and successful implementation. The success and continuity of this type of activity relies on the positive perception that citizens have about the process and the results. Kazakhstan could evaluate the process and communicate the results. Kazakhstan could also build a database with good practices and share it with the different levels of government.</p> <p>Kazakhstan could develop specific guidelines that would cover all the relevant procedures pertaining to the functioning public councils in order to reduce the level of discretion of each entity.</p>	<p>France United Kingdom</p>

Chapter 1

The cultural, economic, historical and political context for open government reforms in Kazakhstan

This chapter identifies and assesses key good governance indicators, providing an overview of the cultural, economic, historical and political context for open government reforms in Kazakhstan. On the basis of these indicators, the chapter examines the challenges and ongoing efforts by the Kazakhstan government to further promote good governance and open government reforms as key catalysts for inclusive economic growth and social well-being.

This document, as well as any [statistical] data and map included herein, are without prejudice to the status of, or sovereignty over, any territory to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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Key development indicators in Kazakhstan

Kazakhstan and many other countries around the world today face complex challenges, including rising inequality, slow economic recovery, and in some countries, low commodities prices that oblige governments to make difficult choices while they are asked to do more with fewer resources and are expected to communicate the results of their decisions and to match citizen's expectations. As a consequence, countries are increasingly mobilising citizens or end users of public services, involving the private sector and civil society organisations in decision-making processes, and including stakeholders at all levels of governments in service delivery. They are also developing strategies to facilitate reform implementation and help them restore trust. Policy makers, businesses and civil society must now more than ever work closely to ensure inclusive growth and together build legal, institutional and policy frameworks that will contribute to better public governance.

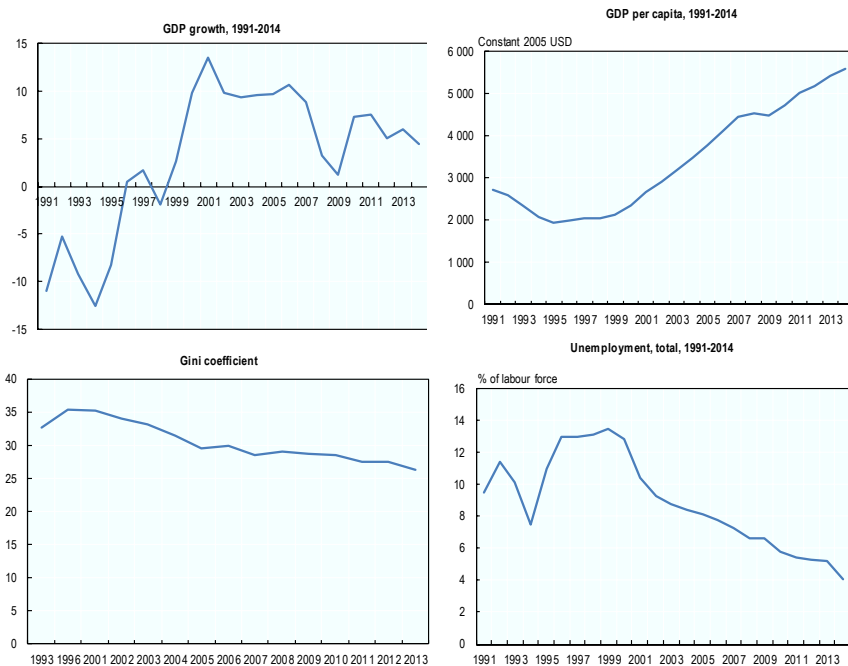
Kazakhstan is moving towards greater openness and democratisation and as witnessed by its Kazakhstan 2050 Strategy, has put in place ambitious socio-economic development plans. Since its independence from the Soviet Union 25 years ago, Kazakhstan has been carrying out a steady process to reform its public governance. Against this backdrop, Kazakhstan's government has expressed a strong interest in enhancing transparency, openness, accountability and participation in policy making in order to further foster public trust in government and improve the quality of public services.

As pointed out in *Kazakhstan: Review of the Central Administration* (OECD, 2014), the country has taken important steps towards implementing an open government agenda. It has already made significant achievements in various aspects, including the approval of an Access to Information Law and the Public Councils' Law. Several stakeholders interviewed during the OECD fact-finding mission for this review recognised that these are initial and necessary steps, but that they are not sufficient. Kazakhstan still needs to carry out additional efforts and overcome different challenges to ensure the success and long-term sustainability of its open government agenda.

Kazakhstan covers an area of 2.7 million square kilometres, making it the ninth largest country in the world and the largest of the former Soviet republics, excluding the Russian Federation. Its gross domestic product (GDP) amounted to USD 195 billion in 2015 (CIA, 2015), with a GDP per capita of USD 24 700 in the same year, making it an upper middle-income country. Kazakhstan's economic growth has been boosted in particular by the extractive industries: it has the largest recoverable crude oil reserves in the Caspian region and its hydrocarbon industry is estimated to account for roughly 50% of the government's revenues. In addition,

Kazakhstan produces 36% of the world’s uranium and has extensive mineral resources such as chromium, copper, gold, iron, lead, manganese and zinc (EITI, 2016). These resources helped the country to grow at almost 8% per annum in real terms between 2000 and 2013, leading to job creation (a decrease in the unemployment rate), an increase of GDP per capita and progress in the well-being of its citizens evidenced by the decrease of income inequality (Gini coefficient) (Figure 1.1).

Figure 1.1. Key development indicators, Kazakhstan, 1991-2014



Source: World Bank (2016), *World Development Indicators* (database), <http://data.worldbank.org/country/kazakhstan>.

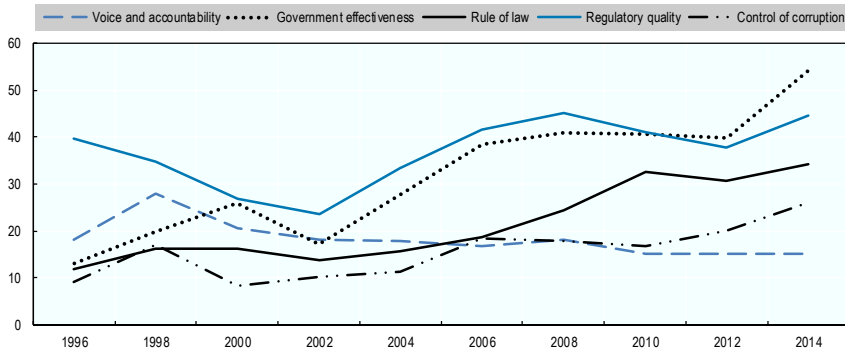
However, the current commodities prices are putting pressure on Kazakhstan’s economy, evidenced by the decrease of real GDP growth from 4.1% in 2014 to 1.2% in 2015. The government of Kazakhstan is aware of the country’s overreliance on oil and extractive industries and has embarked on an ambitious diversification programme, aimed at developing targeted sectors like transport, pharmaceuticals, telecommunications, petrochemicals and food processing. These aims form part of the national strategy, Kazakhstan 2050, that includes plans for economic, social and political

reforms with the aim of placing Kazakhstan among the world’s 30 advanced economies by 2050.

Kazakhstan’s efforts to promote good governance

According to the Worldwide Governance Indicators, the quality of Kazakhstan’s public governance has improved in the last decade (Figure 1.2). However, when looking at each of the indicators individually and comparing them against those of OECD countries and neighbouring countries, there is room for further improvement in Kazakhstan.

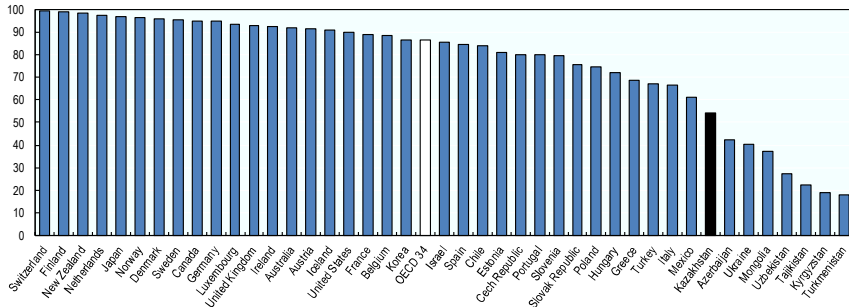
Figure 1.2. **Worldwide governance indicators for Kazakhstan, 1996-2014**



Source: World Bank (n.d.), *Worldwide Governance Indicators* (database), <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 20 January 2017).

For instance, although performing better than its neighbours, Kazakhstan ranks behind OECD countries regarding government effectiveness, which reflects the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies (Figure 1.3).

Figure 1.3. Government effectiveness indicator for Kazakhstan and selected countries, 2014

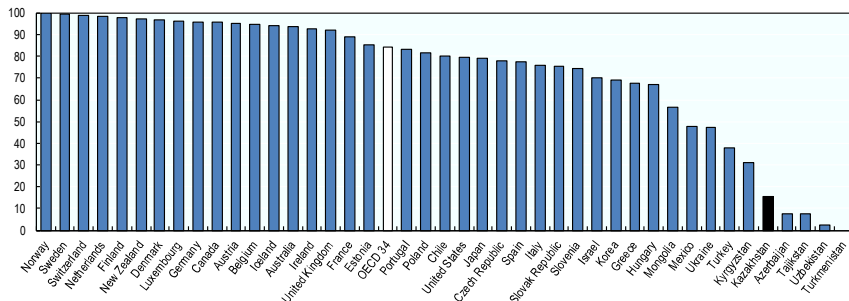


Note: The figure shows percentile rankings among all countries (ranging from 0 [lowest] to 100 [highest]).

Source: World Bank (n.d.), *Worldwide Governance Indicators* (database), <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 20 January 2017).

When comparing Kazakhstan in the World Bank’s voice and accountability indicator, which reflects the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association and a free media, the country ranks below OECD countries and other countries from the region such as Mongolia, Ukraine and Kyrgyzstan (Figure 1.4).

Figure 1.4. Voice and accountability indicator for Kazakhstan and selected countries, 2014

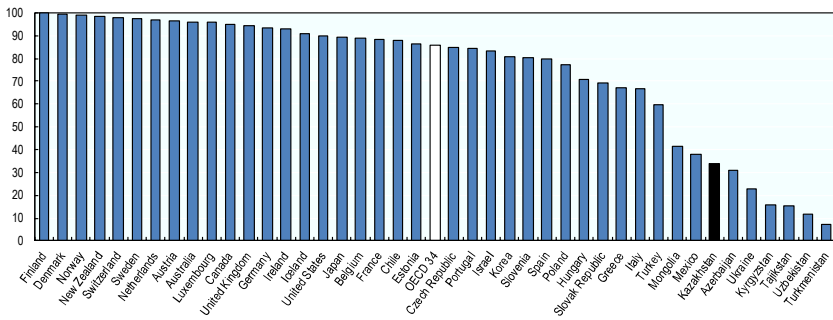


Note: The figure shows percentile rankings among all countries (ranging from 0 [lowest] to 100 [highest]).

Source: World Bank (n.d.), *Worldwide Governance Indicators* (database), <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 20 January 2017).

Another indicator examines the rule of law, which reflects the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police and the courts, as well as the likelihood of crime and violence. It moreover takes into account the control of corruption, which reflects the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests (Figures 1.5 and 1.6). According to the World Bank’s figures, Kazakhstan ranks below OECD countries.

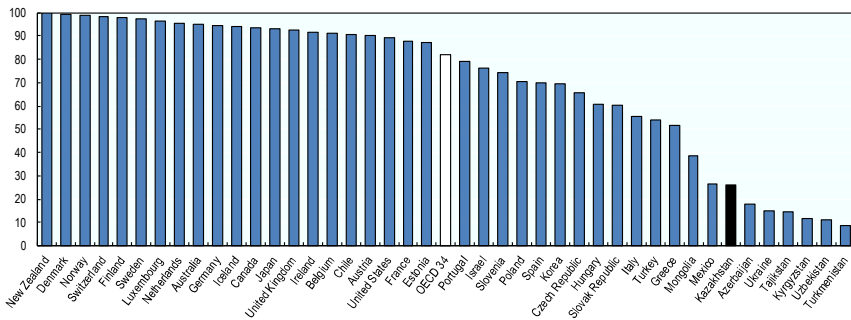
Figure 1.5. Rule of law indicator for Kazakhstan and selected countries, 2014



Note: The figure shows percentile rankings among all countries (ranging from 0 [lowest] to 100 [highest]).

Source: World Bank (n.d.), *Worldwide Governance Indicators* (database), <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 20 January 2017).

Figure 1.6. Control of corruption indicator for Kazakhstan and selected countries, 2014



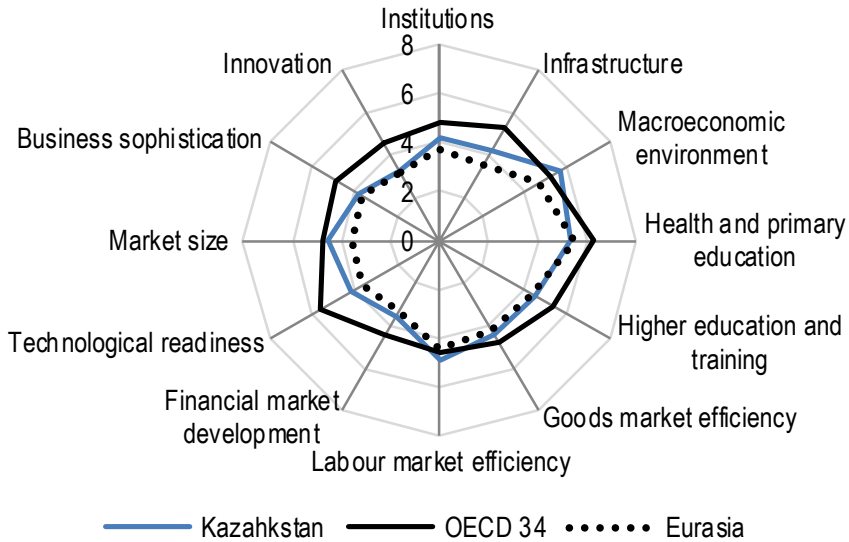
Note: The figure shows percentile rankings among all countries (ranging from 0 [lowest] to 100 [highest]).

Source: World Bank (n.d.), *Worldwide Governance Indicators* (database), <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 20 January 2017).

Using other indicators such the World Economic Forum’s Global Competitiveness Index in 2015-16, similar results for Kazakhstan are exposed. The World Economic Forum’s ranking reflects perceived strengths with respect to factors concerning 12 main pillars: institutions (public and private); infrastructure; macroeconomic environment; health and primary education; higher education and training; goods market efficiency; labour market efficiency; financial market development; technological readiness; market size; business sophistication; and innovation. Kazakhstan ranked 42nd out of 140 countries in the Global Competitiveness Index in 2015-16, showing significant improvement since 2011-12 when it ranked 72nd.

The World Economic Forum defines an institution as a “social infrastructure that avoids diversion, which can be undertaken either by private agents (thievery, squatting and mafia protection) or by public agents – that is, the government itself (e.g. expropriation, confiscatory taxes, and corruption)” (WEF, 2015). The institutional environment of a country depends on the efficiency and the behaviour of both public and private stakeholders. On the one hand, the legal and administrative framework and the practices in which citizens, firms and governments interact determine the quality of the public institutions of a country and how these contribute to growth and how its benefits are distributed within society. On the other hand, the quality of the private institutions has an impact on the sound and sustainable development of an economy. The 2008 global financial crisis has highlighted the importance of ensuring good governance, restoring trust and increasing transparency to prevent fraud and mismanagement. In its last report, the World Economic Forum ranked Kazakhstan 50th in the quality of its institutions, and while doing better than its neighbours, it falls below OECD scores (Figure 1.7) (WEF, 2015).

Figure 1.7. Performance overview for Kazakhstan and selected countries according to the Global Competitiveness Index, 2015-16

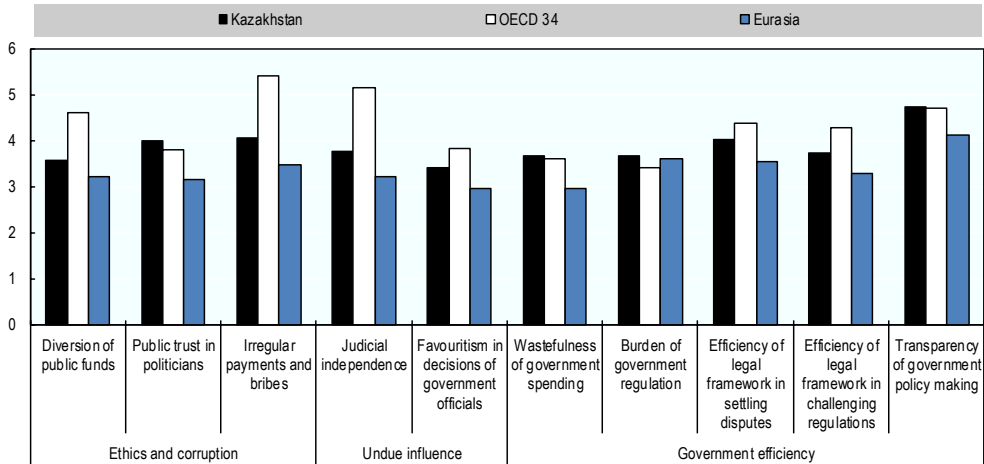


Note: Eurasia includes Azerbaijan, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and Ukraine.

Source: Based on data from World Economic Forum (2015), *The Global Competitiveness Report 2015-2016*, WEF, Geneva, http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf.

The quality of public institutions is measured by the absence of corruption and undue influence, the level of ethics in the public sector, the protection of property rights, the efficiency of the public sector, and the security provided to citizens and businesses. When looking into more detail at some of these indicators, it can be evidenced that Kazakhstan ranks below OECD countries in the diversion of public funds, irregular payments and bribes, judicial independence, favouritism in decisions of government officials, the efficiency of the legal framework in settling disputes and the efficiency of the legal framework in challenging regulations. The country ranks, however, slightly better in public trust in politicians, wastefulness of government spending, burden of government regulations and transparency of government policy making (Figure 1.8).

Figure 1.8. Selected indicators of the quality of public institutions pillar for Kazakhstan and selected countries according to the Global Competitiveness Index, 2015-16

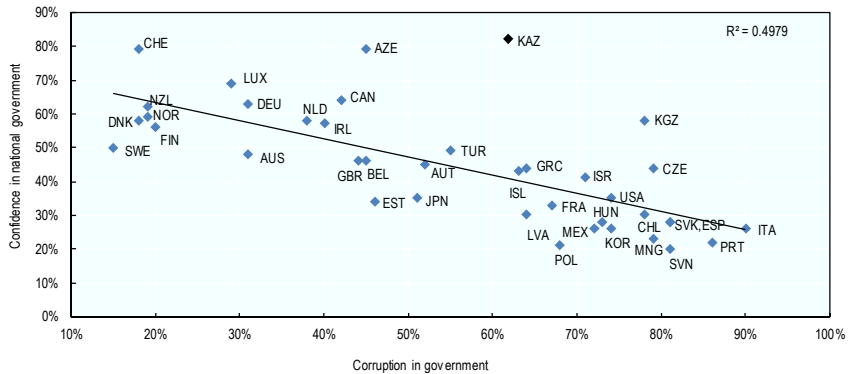


Notes: 1. Eurasia includes Azerbaijan, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and Ukraine. 2. A higher score denotes a better rank. 3. **Diversion of public funds** corresponds to: In your country, how common is illegal diversion of public funds to companies, individuals, or groups? [1 = very commonly occurs; 7 = never occurs]; **public trust in politicians** corresponds to: In your country, how do you rate the ethical standards of politicians? [1 = extremely low; 7 = extremely high], 2014-15 weighted average; **irregular payments and bribes** is the average score across the five components of the following Executive Opinion Survey question: In your country, how common is it for firms to make undocumented extra payments or bribes in connection with: 1) imports and exports; 2) public utilities; 3) annual tax payments; 4) awarding of public contracts and licenses; 5) obtaining favourable judicial decisions? In each case, the answer ranges from 1 [very common] to 7 [never occurs]; **judicial independence** corresponds to: In your country, how independent is the judicial system from influences of the government, individuals or companies? [1 = not independent at all; 7 = entirely independent]; **favouritism in decisions of government officials** is based on: In your country, to what extent do government officials show favouritism to well-connected firms and individuals when deciding upon policies and contracts? [1 = show favouritism to a great extent; 7 = do not show favouritism at all]; **wastefulness of government spending** is measured by: In your country, how efficiently does the government spend public revenue? [1 = extremely inefficient; 7 = extremely efficient in providing goods and services], 2013-14 weighted average; **burden of government regulation** is based on: In your country, how burdensome is it for companies to comply with the public administration's requirements (e.g. permits, regulations, reporting)? [1 = extremely burdensome; 7 = not burdensome at all], 2014-15 weighted average; **efficiency of the legal framework in settling disputes** corresponds to: In your country, how efficient are the legal and judicial systems for companies in settling disputes? [1 = extremely inefficient; 7 = extremely efficient], 2014-15 weighted average; **efficiency of the legal framework in challenging regulations** corresponds to: In your country, to what extent can individuals, institutions (civil society) and businesses obtain justice through the judicial system against arbitrary government decisions? [1 = not at all; 7 = to a great extent], 2014-15 weighted average; **transparency of government policy making** corresponds to: In your country, how easy is it for companies to obtain information about changes in government policies and regulations affecting their activities? [1 = extremely difficult; 7 = extremely easy], 2014-15 weighted average.

Source: Based on data from WEF (2015), *The Global Competitiveness Report 2015-2016*, WEF, Geneva, http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf.

The 2008 financial crisis and its impact have eroded trust in public institutions in most economies and countries are implementing a series of measures to restore trust. Trust in government represents citizens’ and businesses’ confidence that the actions and decisions of their governments are fair. Trust in government reflects citizens’ approval of their country’s leadership and is negatively correlated with the perceived levels of corruption in government (OECD, 2016). In fact, the misuse of public resources or inadequate behaviour by government representatives shapes public perceptions (OECD, 2015). However, as evidenced by the World Economic Forum’s above indicators and by Figure 1.9, in Kazakhstan this negative impact could not be proven.

Figure 1.9. Perceived levels of confidence in national government vs. perceived levels of corruption in government in selected countries, 2015



Source: Gallup World Poll (n.d.), *Gallup World Poll* (database), www.gallup.com/services/170945/worldpoll.aspx.

Good public governance has been widely recognised as a key factor for economic development and social well-being. Widely accepted principles of good governance include openness, transparency and accountability; respect for the rule of law; clear, transparent and applicable laws and regulations; fairness and equity in dealings with citizens, including mechanisms for consultation and participation; efficient and effective services; consistency and coherence in policy formation; and high standards of ethical behaviour (OECD, 2016). These principles constitute the basis upon which open government is built (OECD, 2003).

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Chapter 2

A national open government strategy to ensure better good governance outcomes in Kazakhstan

This chapter assesses Kazakhstan's significant steps towards advancing the open government agenda as part of the country's 2050 strategy. Building upon these achievements, the chapter examines the most important issues to be tackled to translate the reforms into tangible results, most importantly by a clear definition of open government and the elaboration of an open government whole-of-government national strategy. As the success of the implementation of such a strategy depends on the acceptance of all relevant stakeholders, the chapter assesses the role of civil society and media in the country. Finally, the chapter offers an analysis of monitoring and evaluation systems in Kazakhstan and provides actionable recommendations.

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Defining open government

The OECD is at the forefront of the global open government agenda

Open government initiatives are a driver of inclusive growth as they form the foundation for inclusive institutions that offer broad citizen participation, pluralism and a system of checks and balances, which in turn provide better access to services (OECD, 2015a). In fact, an open and transparent government serves a double objective, as it provides:

- a key vehicle to restore trust in government and to align the public sector with modern information management practices where citizens are looking for “government services in one click”
- a policy lever to facilitate capacity for change and for sustainable reform in the public sector, with increased efficiency (OECD, 2011).

Open government through openness, accountability and participation in decision making ensure that the needs, preferences and concerns of stakeholders, including underserved populations, are reflected in policy making (OECD, 2015b). Recognising that open government initiatives can lead to more effective policies, better targeted services and stronger accountability, OECD countries are increasingly mainstreaming stakeholder consultation, participation and engagement at different stages of the policy-making cycle.

Since 2001, the OECD has collected and analysed information demonstrating the importance of citizen participation in the design and implementation of better public policies and in the delivery of public services. In collaboration with senior public officials from OECD countries committed to improve government-citizen relations, a set of principles was developed to guide the implementation of open government policies and ensure their success (OECD, 2001, 2009) (Box 2.1).

Box 2.1. Guiding principles for open and inclusive policy making

1. **Commitment:** Leadership and strong commitment to open and inclusive policy making is needed at all levels – politicians, senior managers and public officials.
2. **Rights:** Citizens’ rights to information, consultation and public participation in policy making and service delivery must be firmly grounded in law or policy. Government obligations to respond to citizens must be clearly stated. Independent oversight arrangements are essential to enforcing these rights.
3. **Clarity:** Objectives for, and limits to, information, consultation and public participation should be well defined from the outset. The roles and responsibilities of all parties must be clear. Government information should be complete, objective, reliable, relevant, and easy to find and understand.
4. **Time:** Public engagement should be undertaken as early in the policy process as possible to allow a greater range of solutions and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective.
5. **Inclusion:** All citizens should have equal opportunities and multiple channels to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.
6. **Resources:** Adequate financial, human and technical resources are needed for effective public information, consultation and participation. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports both traditional and online tools.
7. **Co-ordination:** Initiatives to inform, consult and engage civil society should be co-ordinated within and across levels of government to ensure policy coherence, avoid duplication and reduce the risk of “consultation fatigue”. Co-ordination efforts should not stifle initiative and innovation but should leverage the power of knowledge networks and communities of practice within and beyond government.
8. **Accountability:** Governments have an obligation to inform participants how they use inputs received through public consultation and participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny can help increase accountability of, and trust in, government.
9. **Evaluation:** Governments need to evaluate their own performance. To do so effectively will require efforts to build the demand, capacity, culture and tools for evaluating public participation.
10. **Active citizenship:** Societies benefit from dynamic civil society, and governments can facilitate access to information, encourage participation, raise awareness, strengthen citizens’ civic education and skills, as well as support capacity building among civil society organisations (CSOs). Governments need to explore new roles to effectively support autonomous problem solving by citizens, CSOs and businesses.

Source: OECD (2001), *Citizens as Partners: Information, Consultation and Public Participation in Policy-Making*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264195561-en>, updated in OECD (2009), *Focus on Citizens: Public Engagement for Better Policy and Services*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264048874-en>.

These principles reflect the belief that governments, in order to fully reap the benefits (Box 2.2) of an active interaction with their population, should inform and consult them and actively engage with them, not merely as subjects, but as partners.

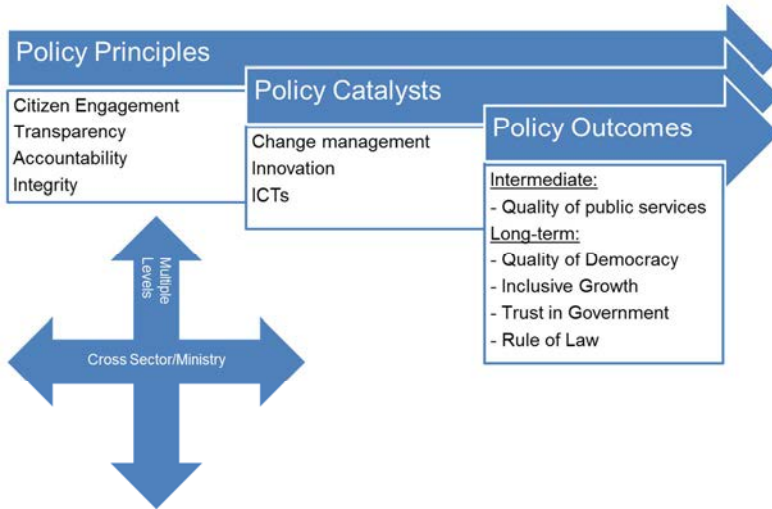
Box 2.2. Potential benefits of open government

- **Establishing greater trust in government:** Trust is an outcome of open government that can reinforce government performance in other aspects. In addition, if citizens trust the government or specific government policies, then they may be more willing to pay (fees, contributions, taxes) to support these policies.
- **Ensuring better outcomes at less cost:** Co-design and delivery of policies, programmes and services with citizens, businesses and civil society offer the potential to tap a broader reservoir of ideas and resources.
- **Raising compliance levels:** Having people participate in the process helps them understand the stakes of reform and can help ensure that the decisions reached are perceived as legitimate.
- **Ensuring equity of access to public policy making** by lowering the threshold for access to policy-making processes for people facing barriers to participation.
- **Fostering innovation and new economic activity:** Public engagement and open government are increasingly recognised as drivers of innovation and value creation in both the private and public sectors.
- **Enhancing effectiveness** by leveraging knowledge and resources of citizens who otherwise face barriers to participation. Public engagement can ensure that policies are better targeted and address the needs of citizens, eliminating potential waste.

Source: OECD (2010), “Background document for Session 1 on OECD Guiding Principles for Open and Inclusive Policy Making”, Expert meeting on “Building an open and innovative government for better policies and service delivery”, Paris, 8-9 June 2010, www.oecd.org/gov/46560128.pdf.

The implementation of open government principles has led to better policies and services, improved social well-being, quality of democracy and economic growth. These improvements are likely to happen through the use of specific policy instruments and catalysts that drive change and encourage innovative processes. Figure 2.1 illustrates the OECD’s theory of change, which it uses to frame its analysis of open government reforms.

Figure 2.1. OECD open government theory of change



Source: OECD (2015c), *Open Government in Morocco*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264226685-en>.

Towards a single definition of open government in Kazakhstan

Despite the recent resurgence of open government, over the years, the term has taken several meanings. It can be traced back to the 18th century when Thomas Jefferson declared that “in order for people to trust their own government, they need to be well informed” (Wirtz and Birkmeyer, 2015). Furthermore, in the 1950s, open government referred to the disclosure of politically sensitive government information and was used in debates that lead up to the passage of the Freedom of Information Act in the United States (Yu and Robinson, 2012). Nowadays, the meaning was conceptually extended to reflect the new opportunities in innovation, efficiency and flexibility in government brought about by the extensive use of information and communication technologies (ICTs), open data and the rise of the Internet (OECD, 2016a). Most recently, there is an increasing awareness that open government and open data can provide important opportunities for economic growth, as they can help promote business, develop cost-effective public services and create new jobs (OECD, 2014a).

Different stakeholders and policy makers have different interpretations of what open government means. Although the concept can be influenced by political, social and cultural factors, it often includes a number of high-level principles such as transparency, accountability, participation or collaboration. At the same time, open government is identified by a series of

practices or initiatives, including the publication and use of data and information, the fight against corruption, or specific public consultations and collaboration initiatives (OECD, 2016a). Even though the definition of open government may vary across countries, evidence suggests that a government is open when it is transparent, accountable, engaging and acts responsibly (OECD, 2015a).

To successfully implement open government initiatives, it is crucial to have a single definition. The definition should be fully recognised and acknowledged by the whole public sector, at all levels as well as communicated to, and accepted by, all stakeholders. (OECD, 2016a) A good definition of open government is important for the following reasons:

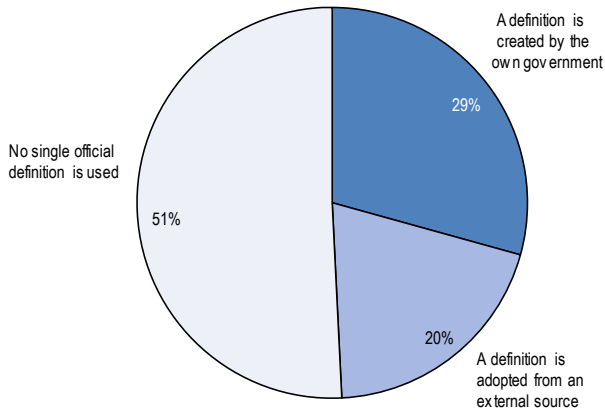
- It informs the public about the essential elements of open government, the extent and limitations of the term.
- It facilitates a common understanding and usage of open government, aligning all stakeholders and policy makers towards the same goals.
- It facilitates a robust analysis of open government policies and initiatives across different institutions and levels of government.
- It supports international comparison of open government policies and initiatives (OECD, 2016a).

Across the OECD, 49% of countries have a single definition for open government (Figure 2.2). Of that proportion, 29% have created their own definition, as is the case for Canada, which defines open government as: “a governing culture that holds that the public has the right to access the documents and proceedings of government to allow for greater openness, accountability, and engagement” (Government of Canada, 2014). Korea defines open government as:

“...a new paradigm for government operation to deliver customized public services and generate new jobs in a creative manner by opening and sharing government-owned data to the public and encouraging communication and collaboration between government departments. Open government is to make the government more service-oriented, competent, and transparent, thus pursuing the happiness of citizens.” (Government of Korea, 2015)

Furthermore, 20% of countries including Denmark, Ireland and Spain, have a definition that was adopted from an external source. In their case, it was adopted from the Open Government Partnership (OGP).

Figure 2.2. **Existence of a single official definition of open government in OECD countries, 2015**



Note: n=35 OECD countries.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Based on the responses provided by Kazakhstan to the “OECD Survey on Open Government Co-ordination and Citizen Participation” and during the fact-finding mission, there is no a single official definition of open government. However, according to Kazakhstan’s open government website (<http://open.egov.kz>), open government “is many sided, and the idea is to evolve in subsequent years in order to cover major aspects of civil rights, such as transparency of budget, participation in law making, and free access to information. The open government’s major objective is to establish transparency in government’s activities for each citizen.” To better reach its 100 Concrete Steps and the institutional reforms, Kazakhstan could develop a single definition of open government, created with, accepted by and communicated to the whole public sector and all stakeholders (citizens, civil society, private sector, etc.). Kazakhstan could create its own definition, taking into consideration the criteria in Box 2.3 and through a consultative process to ensure better buy-in and ownership by all stakeholders.

Box 2.3. Criteria of a good concept

Coherence: Differentiation, definition, clarity, boundedness. How internally coherent and externally differentiated are the attributes of the concept vis-a-vis neighbouring concepts and entities?

Operationalisation: Measurement, indicators, precision. How clear are a concept's borders? How do we know it when we see it?

Validity: Accuracy, truth, reliability. Is the concept valid? Are we measuring what we are supposed to be measuring?

Field utility: Natural kinds, classificatory utility. How useful is the concept within a field of closely related concepts?

Resonance: Familiarity, normal usage. How resonant is the concept – in ordinary and/or specialised contexts?

Contextual range: Breadth, scope, compass, reach, stretch. Across how many linguistic contexts (language regions) is a concept viable? How far can it travel?

Parsimony: How short is: (a) the term; and (b) its list of defining attributes?

Analytic/empirical utility: How useful is the concept within a particular analytic (theoretical) context or research design?

Source: Gerring, J. (1999), "What makes a good concept? A criterial framework for understanding concept formation in the social sciences", *Polity*, Vol. 31, No. 3, pp. 357-393, <http://dx.doi.org/10.2307/3235246>.

Designing a national open government strategy

Open government as one of the 100 Concrete Steps to implement the Kazakhstan 2050 Strategy

To implement the Kazakhstan 2050 Strategy, the government of Kazakhstan has developed five institutional reforms that will help the country to strengthen the state and help it achieve its aim of placing Kazakhstan among the 30 most advanced economies in the world by 2050, as expressed in the Kazakhstan 2050 Strategy. One of these five institutional reforms is transparency and accountability of the state.

During his speech at the XVI Congress of the Nur Otan Party, the President of the Republic of Kazakhstan, Nursultan Nazarbayev declared the following regarding the fifth institutional reform:

“First of all, we need to expand the practice of accountability of heads of state organs. Second, the decision-making process should be transparent. Through the mechanism of “open government”, the citizens should be actively involved in the process of decision making conducted by the state organs of all levels. A new Law on Access to Public Information that is to be elaborated and adopted would become a basis for this. The role of public councils under state organs and *Akims* (heads of a local government in Kazakhstan and Kyrgyzstan) should be strengthened. Third, we need to introduce civil budgeting. It is the participation of representatives of civil society in the allocation of funds in the regions. Fourth, the system of appeal needs to be reinforced. Opportunities for citizens to appeal state servants’ activities must be extended under the legislation. Fifth, wide introduction of self-regulation in the society should be provided. We need to reduce the areas of responsibility of state organs related to the provision of socially significant state services to the institutes of civil society when they are prepared.” (Nazarbayev, 2015)

Furthermore, these five institutional reforms are implemented by 100 Concrete Steps announced by President Nursultan Nazarbayev in 2015. The following steps were established to support a more transparent and accountable state:

- Step 94: Introduction of “open government”. Drafting law on access to information that will allow access to any information of state agencies except for highly confidential state documents and other information protected by the law.
- Step 95: Introduction of annual public statements by heads of state agencies on achieving key objectives and publication of their reports on official websites. Introduction of annual reports on the performance of heads of national higher education institutions.
- Step 96: Ensuring online access to statistical data of central state agencies. All budget, spending and consolidated financial reports, as well as results of external assessments of the quality of state services will be published.
- Step 97: Empowering citizens to participate in the decision-making process through development of local governance. Giving more powers to the private sector and self-regulated organisations, especially for activities that are not typically performed by the state.
- Step 98: Independent budgets for local government will be introduced in rural areas (*Auyuls*, villages and towns). Mechanisms

will be put in place to allow citizens to participate in discussing the best way to spend the budget.

- Step 99: Strengthening the role of public councils under state agencies and *Akims* (heads of a local government in Kazakhstan and Kyrgyzstan). These councils will discuss the implementation of strategic plans and regional development programmes, as well as budgets, reports, achieving stated objectives, draft legal acts concerning rights and freedoms of citizens, and draft programme documents. Legally establishing these public councils will enhance the transparency of state decision making.

In addition, it is worthwhile to mention that moving towards a more transparent and open state is supported by Kazakhstan’s intention to join the Open Government Partnership (Legal Policy Research Center, 2015) (Box 2.4) and its participation in other initiatives promoting transparency, such as the Extractive Industries Transparency Initiative (EITI) (see Box 2.5) and the Open Budget Index.

Box 2.4. Open Government Partnership

The Open Government Partnership (OGP) was launched in 2011 “to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens.” This initiative has grown quickly from 8 member countries to 69 in June 2016 and has attracted the participation of many of the world’s leading advocacy organisations for democracy, transparency and good governance.

By becoming members of the OGP, countries commit to four core open government principles: access to information (including government transparency); civic participation (including civic engagement); integrity (including anti-corruption measures); and access to technology to support openness and accountability. Countries are required to endorse a high-level Open Government Declaration, to develop a biennial action plan through public consultation and to prepare an annual self-assessment report. In its few years of existence, the OGP has considerably changed the dynamics of the international open government agenda and of the collaboration among key actors of national open government ecosystems.

In order to formally join the OGP, certain minimum eligibility criteria have to be met. The conditions are summarised in four major themes:

1. fiscal transparency, including budget accountability and an open budget system
2. law on access to information
3. disclosure of public officials’ assets
4. citizen engagement and basic protection of civil liberties.

Source: OGP (n.d.), “What is the Open Government Partnership”, webpage, www.opengovpartnership.org/about (accessed 20 January 2017).

Box 2.5. Kazakhstan and the Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) is the global standard to promote open and accountable management of natural resources. It has a high international, political and anti-corruption status as it aims to strengthen government and company systems, inform public debate and enhance trust.

Kazakhstan has made progress in the transparency of its national budget, particularly in the management of its natural resources. The most commendable achievement in this area is its attainment of the EITI status of a “compliant country” in October 2013, in respect of observing the international standard of transparency of revenues from extractive industries. The achievement of the compliant status put Kazakhstan on the same rank as benchmark countries such as Azerbaijan and Norway.

Kazakhstan now produces EITI reports that disclose revenues from the extraction of its natural resources. Companies disclose what they have paid in taxes and other payments and the government discloses what it has received. These two sets of figures are compared and reconciled. The attainment of EITI-compliant country status for Kazakhstan is a significant milestone.

Kazakhstan has laid the foundations to enhance transparency and accountability of the budget. In addition, stakeholders believe that the EITI may now be ready to start building bridges and creating synergies with other sustainability initiatives (such as the Green Economy in Kazakhstan) and the new EITI rules may help to make that happen.

The National Stakeholders’ Council formed of members of government, parliament, companies and civil society oversees the EITI implementation and is currently undertaking a review process with a view to identifying new activities for the EITI implementation. There is considerable interest among stakeholders in decentralising the EITI process and establishing regional multi-stakeholder forums, in particular in resource-rich provinces.

Source: EITI (2016), *Kazakhstan EITI Report*, EITI, www.eiti.org/publishers/kazakhstan-eiti.

Although Kazakhstan still needs to carry out some efforts and overcome some challenges on its open government agenda, as will be discussed later in this report, having some of the open government principles embedded in its overall country strategy is in line with OECD recommendations and practices. However, several stakeholders during the OECD fact-finding mission recognised that these are initial and necessary, but insufficient, steps.

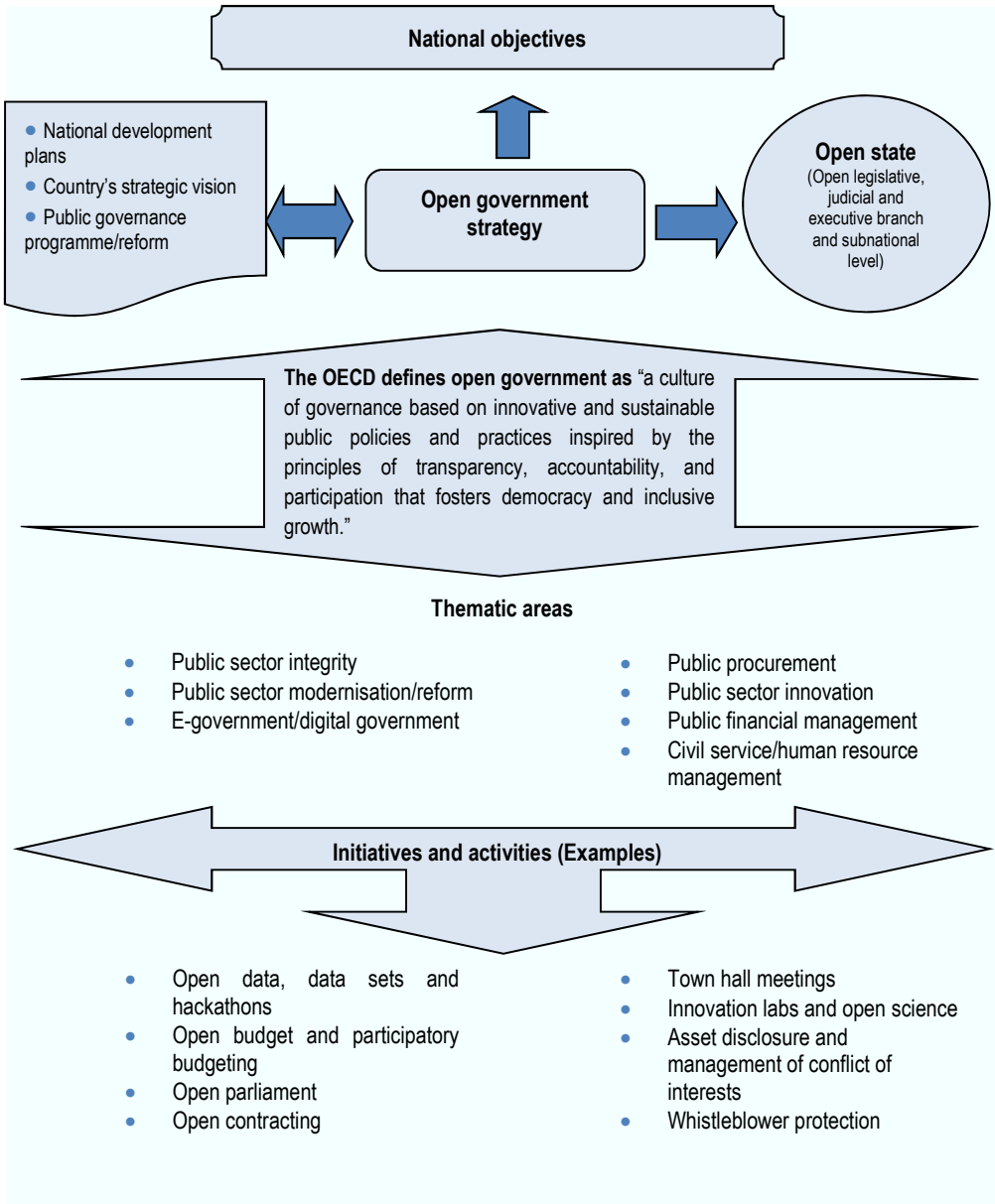
An long-term national open government strategy must be comprehensive and coherent

Open government cannot be seen in isolation as it is indeed a critical policy area for the achievement of a number of different policy outcomes in specific domains such as public sector integrity, transparency, public service delivery and public procurement, among others. Open government needs be conceived as a whole-of-government strategy to ensure the widest possible impact (OECD, 2016a) (Figure 2.3).

A long-term, comprehensive and coherent national strategy is a powerful tool for providing a clear direction to the whole public administration and is fundamental for measuring the performance of government actions on that specific area. Such a type of long-term strategy is usually based on an analysis of current and future challenges as well as opportunities, and has the primary goal of ensuring long-term policy coherence and the availability of the necessary resources and capacities (OECD, 2016a).

In many OECD countries, open government themes are simultaneously, part and parcel of countries' national strategies included in the related sectoral policies, and/or are key elements of their implementation. In addition, open government principles and practices can also inform the way the strategies, sectoral policies and implementation phases are designed and delivered (see Figure 2.3). As done by Lithuania (Box 2.6), and mentioned above, Kazakhstan has also foreseen open government principles in its long-term strategy, Kazakhstan 2050.

Figure 2.3. Framework for an open government strategy



Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Box 2.6. Defining the national vision based on open government practices in Lithuania

The government of Lithuania has engaged in an in-depth process to define its national strategy “Lithuania 2030”. The State Progress Council, led by the centre of government, was responsible for the drafting process of the strategy: government authorities, business leaders, community groups and prominent public figures participated in its development. Three working groups were set up on smart economy, smart governance and smart society. The consultation involved the national level and Lithuanians living abroad. The council also went on a road trip to discuss with mayors, municipality representatives, young people and non-governmental organisations (NGOs). Innovative approaches were developed to involve harder-to-reach groups. Since the elderly were especially seen not to believe in the strategy, the council reached out to school children, who were trained to interact with the elderly. The outcome is a national strategy that is guiding the policies of the whole country and whose implementation is monitored in an inclusive process (OECD, 2015b).

To this end, open government is an integral part of Lithuania’s public administration reform and as such it spans the different tiers of the strategic planning system, from long-term vision and strategy to medium- and short-term plans and programmes.

Lithuania 2030

The long-term strategy, Lithuania 2030, identifies national development policies on the basis of consultation with Lithuanian people, communities, NGOs, business organisations and government institutions and reflects long-term priorities for development and guidelines for their implementation by 2030. The overarching aim is to empower each and every member of society, focusing on ideas that would help Lithuania to become a modern, energetic country, embracing differences, while developing a strong sense of national identity. Openness is one of the three pillars of the strategy, along with creativity and responsibility. The strategy aims to promote “open and empowering governance” and gives significant importance to systematic and effective engagement of citizens in the political process.

The Informational Society Development Programme 2014-2020

Representing in effect the “Digital Agenda of Lithuania”, the Informational Society Development Programme 2014-2020 seeks to consolidate the role of information across the economy and society. The strategic objective of the programme is to improve the quality of life for Lithuanian residents as well as to strengthen business productivity through the use of the opportunities created by ICTs and to increase the percentage of Internet users to at least 85% by 2020 and the use of high-speed Internet to 95% of companies by 2020.

Box 2.6. Defining the national vision based on open government practices in Lithuania (*continued*)

National Development Programme 2014-2020

The National Development Programme closely reflects the main provisions and structure of the Lithuania 2030 strategy and the Europe 2020 Strategy. It consists of three main progress areas – “smart economy”, “smart society” and “smart governance” – as well as three horizontal progress areas – “culture”, “health for all” and “regional development”. Each progress area further includes several priorities along with approved financial resources and responsible actors for each of the priority areas.

National Anti-corruption Programme 2015-2025

The National Anti-corruption Programme 2015-2025 seeks to develop a long-term approach to corruption prevention and control and covers the major provisions of the national anti-corruption policy in the public and private sectors. It aims to reduce and eliminate corruption conditions and risks, as well as corruption risk management and assume liability for corruption-related offences. The programme sets out priority areas where, according to the government, the prevalence of corruption is greatest, namely: political activities and legislation; activities of judicial and law enforcement authorities; public procurement; healthcare and social protection; spatial planning; supervision of public construction and waste management; supervision of the activities of economic entities; public administration, civil service and asset management.

Public Governance Improvement Programme 2012-2020

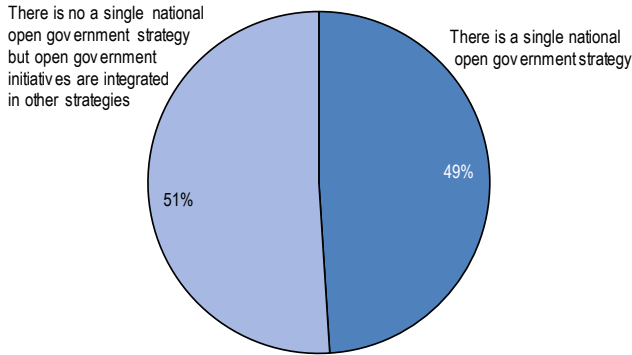
The Public Governance Improvement Programme 2012-2020 aims to achieve effective design, implementation, monitoring and evaluation of public policies and reforms in line with societal needs. It seeks to improve the process of public management openness and encourage the public to actively participate in policy making and service delivery. Specific aims include improving the quality of administrative processes and public services, enhancing strategic thinking capacity in public institutions both at the national and subnational levels, and improving human resources management.

Source: OECD (2015b), *Lithuania: Fostering Open and Inclusive Policy Making*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264235762-en>.

In order to implement long-term strategies, governments develop medium-term sectoral policies for a period of a maximum of three to five years. Accordingly, in 49% of OECD countries, there is a single national open government strategy, while in 51% there is no single national open

government strategy but rather open government initiatives are integrated in other sectoral initiatives, policies or strategies (Figure 2.4).

Figure 2.4. **Existence of a single open government strategy in OECD countries**



Note: n=35 OECD countries.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

However, most of the countries that stated that they had an open government strategy are referring to the OGP action plans,¹ which are not considered as a national strategy by the OECD (Box 2.7). The OGP action plans serve as a crucial implementation tool, however, they do not link the benefits of open government principles and practices to the overall national agenda (OECD, 2016a).

The development and implementation of these national open government strategies require an extra effort in identifying a common definition of what open government means and to prioritise which policy outcomes open government is supposed to support (transparency, integrity, accountability, citizen participation, etc.). While many OECD countries recognise the importance of such an effort, few have concretely moved in that direction for the moment (OECD, 2016a).

Box 2.7. An example of a national open government strategy

Netherlands

The central government of the Netherlands recently published its Open Government in Action (*Open overheid in actie*) Plan for 2016-17. The progressive policy document presents nine concrete commitments that touch on almost all of the elements of the OECD's definition of open government. The first three commitments call for better availability of government data to the public. Commitment 4 goes beyond the publishing of data and calls for disclosing reports of examinations, public procurement, subsidies and performance tests. Moreover, the Action Plan explicitly includes open decision making at the local level (Commitment 6). As a central element for the successful implementation of the Action Plan, the plan lists the main ministries responsible for its implementation as well as the ministries in charge for assistance. Every commitment also entails tangible and concrete indicators on how to measure progress or eventually the successful implementation of the commitment by 2017.

Source: Based on the Netherlands' response to the "OECD Open Government Survey 2015".

Some OECD countries are pioneering the streamlining of open government strategies even beyond the executive and are moving towards a truly holistic and integrated approach that also includes the legislative and the judiciary, as well as subnational governments and independent institutions. Countries are building what the OECD has termed an "open state" which means that 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 (Box 2.8).

Box 2.8. Whole-of-government frameworks in Costa Rica and Ontario (Canada)

On 7 December 2015, the President of the Republic of Costa Rica presented the country's new National Strategy for Open Government (*Estrategia Nacional de Gobierno Abierto*). Costa Rica is the first country to develop a national open government strategy that not only includes the executive, but is also co-ordinated with the legislative and the judiciary and that brings together, under a single overarching document, all streams of the national open government agenda.

Box 2.8. Whole-of-government frameworks in Costa Rica and Ontario (Canada) (continued)

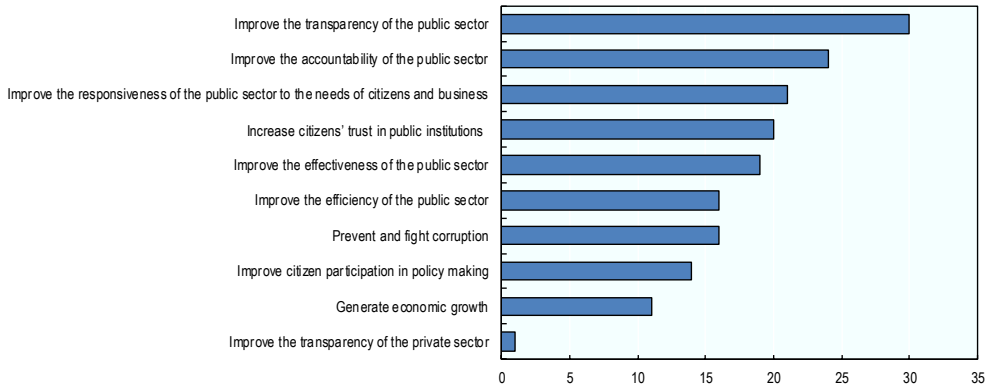
In Canada, the government of Ontario has launched an Open Government Strategy. The purpose is to give citizens new opportunities to participate in and strengthen public policy. Through its Open Dialogue component, the government is developing a Public Engagement Framework to help it engage a broader, more diverse range of Ontarians more meaningfully. The framework will be tested across government in a number of pilot projects.

Sources: OECD (2016b), *Open Government in Costa Rica*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264265424-en>; OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Kazakhstan’s responses to the “OECD Open Government Survey” noted that Step 94 “Introduction of the open government” of the Plan of the Nation (i.e. the 100 Concrete Steps to implement the “Five Institutional Reforms”) constitutes its national open government strategy. This step foresees the: “drafting of a law on access to information that will allow access to any information of state agencies except for highly confidential state documents and other information protected by the law.” Yet, despite the importance of these legal commitments and the emphasis on transparency and accountability in the 100 Concrete Steps Plan of the Nation, there does not appear to be any comprehensive national strategy for open government. Indeed, the lack of a national strategy on open government was noted as one of the five challenges for the implementation of open government initiatives as part of the OECD Survey on Open Government Co-ordination. Therefore, to further support the implementation of the presidential agenda, it would be important for Kazakhstan to consider the development of a full-fledged open government strategy that includes principles, long-term outcomes, medium-term outputs and concrete initiatives to be carried out in collaboration with citizens, civil society organisations and the private sector.

To develop its single and national open government strategy, Kazakhstan needs to take into account that such a strategy is intended to be one document that applies to the whole public sector and that highlights the **principles, policy objectives, and policy instruments or initiatives** of the county’s open government reform agenda. Policy objectives correspond to the “ends” of the strategy and reflect the overall purpose or medium-term aim(s), which eventually a strategy is intended to achieve (OECD, 2016a). OECD experience in this field could guide Kazakhstan along this path. Figure 2.5 shows the main objectives of OECD countries when implementing an open government strategy.

Figure 2.5. Objectives of OECD countries when implementing an open government strategy



Note: n=35 OECD countries.

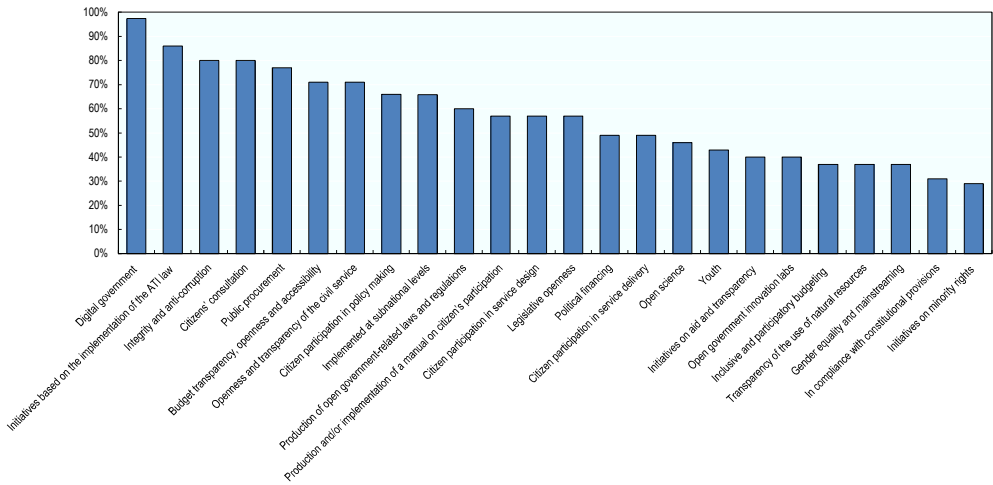
Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

The objectives stated in the president's speech and in the main national policy objectives that the government of Kazakhstan intends to achieve by implementing an open government strategy are in line with those of most OECD countries:

- improve the transparency of the public sector
- improve the accountability of the public sector
- improve the efficiency of the public sector
- prevent and fight corruption
- increase citizens' trust in public institutions.

Furthermore, the open government strategy should also include policy instruments/initiatives, which are the “means” of a strategy – the actions used to carry it out – and the methods by which its objectives are to be achieved (OECD, 2016a). All OECD countries are currently implementing, or have implemented, open government initiatives, with a focus on initiatives on digital government/open data and access to information (Figure 2.6).

Figure 2.6. **Initiatives on open government currently being implemented, or already implemented, by OECD member and accession countries**



Note: n=38 (35 OECD member countries plus accession countries to the OECD: Colombia, Costa Rica and Lithuania).

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

This is in line with Kazakhstan's approach towards open government, as it has been mostly driven by an open data agenda. The Kazakhstan government set the development of e-government as a priority, being the first country in Central Asia to develop an e-government initiative (World Bank, n.d.). The subsequent development of an open data initiative was reflected in the "Information Kazakhstan – 2020"² State Programme. The country's "electronic government" portal (www.e-gov.kz) inaugurated in 2006 was the first and virtually the only outcome of that project. Today there are more than 2.6 million users registered on www.e-gov.kz (Box 2.9), accounting for almost 30% of Kazakhstan's economically active population. On 29 January 2016, by Government Decree No. 39, the existing Centres for Public Services, Centres for Real Estate, Scientific-Production Centre of Land Register, and the State Centre for Pensions Payment were reorganised into the State Corporation "Government for the Citizens" responsible for providing various public services to the citizens.

On average, Kazakhstani people have access to roughly 1 million different services a year electronically. As a growing number of citizens own smartphones, e-government expects to switch to mobile format within the next three years. All of these and many other successes through

information and communication technologies over the past decade have enabled Kazakhstan to place 28th out of 198 countries in the UN E-government Development Index in 2014 (Figure 2.7).

Box 2.9. E-government public services and information on line in Kazakhstan

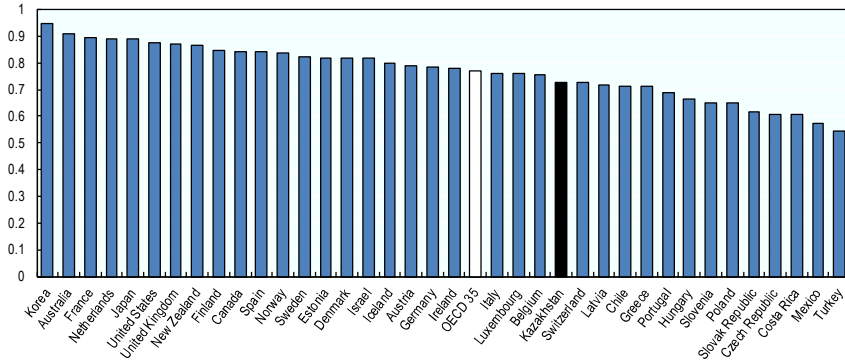
The government of Kazakhstan introduced the platform <http://egov.kz/> to provide public services and information on line. It targets different inquiries for citizens as well as business. Citizens can obtain information on, for example, family, public health, legal assistance or taxes. Since the 12 sections cover almost all the relevant aspects of state services for citizens, the platform provides a sound point of departure to find the necessary information or document. On the user-friendly platform, citizens can make payments on line or download important legal documents. Should the information that is desired or required not be available, the platform offers additional web links or contact points to the institution in charge.

The platform moreover offers tailored information for businesses in the country. The different sections are directed towards a variety of sectors, such as agriculture, medicine, or transport and communications. In addition, businesses are able to receive the licenses or accreditation or legal advice on real estate.

For a better understanding of the aims of the government to make services, documents and information publicly available, it integrated a link to the open government webpage of the government of Kazakhstan (<http://open.egov.kz>). In order to further enhance citizen participation, the portal can also be used through an app, and citizens can express their opinion on how to further improve the services. Should all of these approaches of interaction be exhausted and the citizen is still not able to obtain the desired information, a number to an integrated call centre is provided. Offering citizens such a great variety of interaction and ways to obtain documents, information or licenses avoids additional bureaucracy for citizens and thus increases trust and citizens' satisfaction with public services.

Source: Government of Kazakhstan (n.d. a), "eGov public services and information online", <http://egov.kz/wps/portal/index> (accessed 20 January 2017).

Figure 2.7. E-government Development Index, 2014



Source: United Nations (2014), “UN E-government Survey”, <https://publicadministration.un.org/egovkb/en-us/Data/Compare-Countries>.

Recently the Government of Kazakhstan has developed a more structured approach to the development of open government in the country. According to <http://open.egov.kz>, it includes four main components (Box 2.10). However, as for the 100 Concrete Steps, without a more articulated document that describes which activities are going to be carried out, how they are going to be achieved, by when and who will be responsible for them, it is difficult to make an assessment of its programmatic value. For each of these components, Kazakhstan could develop a more extensive plan in co-operation with civil society and in line with the elements contained in the national open government strategy suggested above.

Box 2.10. Plans for open government development in Kazakhstan

Open data: To ensure transparency of activity through the publication of datasets in machine-readable forms in a free access for Kazakhstan citizens.

- Accessibility: Ensuring accessibility of data sets provided by government agencies.
- Timeliness: Ensuring up-to-date information is captured in various areas of government activities: statistical data, topographic information, social information.
- Development of interest: Ensuring public interest in further popularisation of data sets.
- Authenticity: Ensuring the correctness and authenticity of public data.

Box 2.10. Plans for open government development in Kazakhstan (continued)

- User-friendliness: Ensuring the convenience for citizens to use the data.

Open legal acts: Participate in the legislative process of the state.

- Accessibility: Ensuring accessibility of draft legal acts to users.
- Taking into consideration each citizen’s opinion: Enabling user feedback: commenting, voting.
- Involvement of citizens: Enabling a public vision to be generated on innovations in the field of laws and regulations.
- Transparency: Ensuring preparation and submission of final reports for further analysis.

Open dialogue: Establishing effective feedback between government agencies and civil society.

- Accessibility: Open dialogue between citizens and government.
- Development of interest: citizens’ capability to have an impact on government authorities.
- Taking into consideration each citizen’s opinion: Public polling, voting, questionnaires and surveys.

Open budgets: Ensuring the transparency of preparation and distribution of budget funds through citizens’ participation in the budget process.

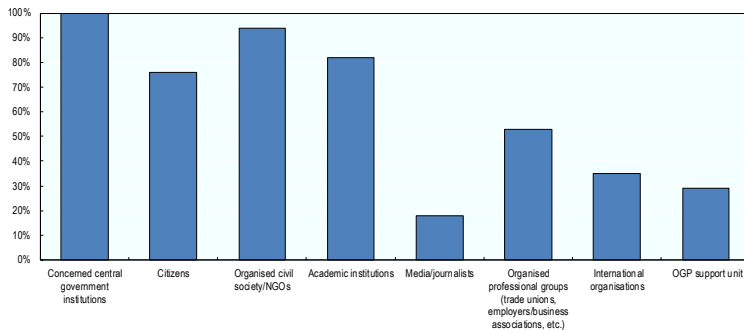
- Reliability and timeliness of published documents.
- Transparency: Creating and budget allocation.
- Civic engagement: Public discussion of the draft budget programmes and reports on the implementation of budget programmes. Vote “for” or “against” the draft budget programme.
- Availability: Single access window to the budget, the consolidated financial statements, as well as the results of the state audit and financial control.

Source: Government of Kazakhstan (n.d. b), “Open government”, website, <http://open.egov.kz> (accessed 20 January 2017).

Building an open-government-wide national strategy requires an inclusive process

The process to build an open government strategy must involve as many non-governmental actors as possible to ensure that the resulting document reflects stakeholders’ needs and to increase “buy-in” from them as it is crucial to ensure a good implementation and to reach its full potential. According to the OECD report, *Open Government: The Global Context and the Way Forward*, all of the countries that have developed an open government strategy did so through an inclusive and participative process by including relevant central government institutions, organised civil society and NGOs. Furthermore, others such as Mexico, the Netherlands and Spain, also involved media associations or journalists, while only Finland and Japan involved local governments (Figure 2.8). According to Kazakhstan’s responses to the survey, relevant central government institutions, citizens, civil society organisations/NGOs, academic institutions, media/journalists and organised professional groups, such as trade unions, employers/business associations, as well as international organisations were involved in the development of the 100 Concrete Steps. However, during the fact-finding missions for the preparation of this report, respondents challenged this statement. For the development of its national open government strategy, Kazakhstan could include a greater number of relevant actors, with a focus on civil society and the media as well as regional and local governments.

Figure 2.8. Actors involved in the development of the open government strategy in selected OECD countries, 2015



Notes: n=17 OECD countries. Only countries that replied that they had an open government strategy were asked this question.

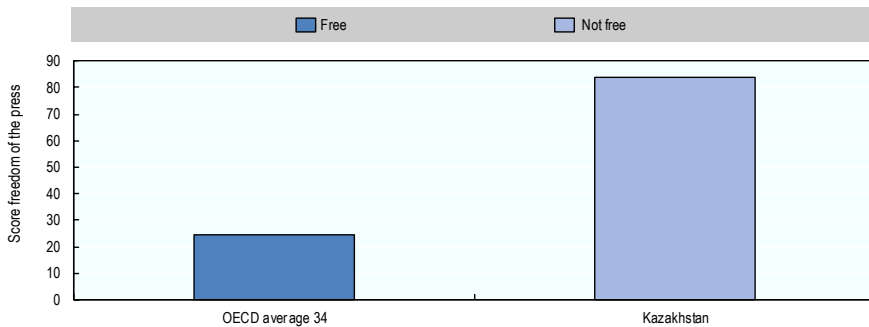
Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Media

In well-functioning democracies, governments provide reliable, credible and timely information to their citizens, as they have the right to know their governments' policies and activities. Effective communication between the government and the public is especially important in countries in transition such as Kazakhstan, where major changes in state institutions affect the citizenry by leaving them uncertain about the new roles of the government, its public administration as well as the role of civil society (OECD, 1996). To reach a larger number of people, OECD countries have acknowledged the importance of relying on the media to disseminate information to the public. In this sense, the media is an important player in open government as it acts as a channel of communication, as a watchdog and as a participant in the reform processes. OECD countries continuously work to encourage and guarantee the role of independent media.

The Constitution adopted on 30 August 1995 guarantees freedom of speech and of the press in Kazakhstan. However, according to Freedom House, there are important restrictions on the media that remain in Kazakhstan (Freedom House, 2015a; Figure 2.9).

Figure 2.9. Freedom of the press indicator for Kazakhstan and OECD countries, 2016



Source: Based on Freedom House (2016), “Freedom of the Press 2016”, <https://freedomhouse.org/report/freedom-press/freedom-press-2016>.

The Law of the Republic of Kazakhstan on Mass Media provides the rights and obligations of journalists. Article 20 establishes that:

“... journalists have the right to accomplish research, request, receive and disseminate information; to visit government agencies, organizations with all forms of ownership and to be received by their officials in relation to maintenance of their business responsibilities, be present at all events held by the agency that accredited the journalist

excluding events when a decision was made to hold a private event; to make recordings including the use of audio-visual equipment, cinema and photo shooting except events prohibited by legislative acts of the Republic of Kazakhstan; to be allowed upon presentation of the journalist's credentials in the regions of natural disasters, at meetings and demonstrations and at events of other forms of expressing public, group and personal interests and protest; to have access to documents and materials except their fragments containing data that is a state secret; to check the trustworthiness of received information; to address specialists when checking received information materials; to disseminate his/her messages and materials under his/her signature and conditional name (pseudonym); to refuse to publish material under his/her signature if its contents after editing contradicts his/her personal beliefs; to keep the secret of copyright and information sources except for events when these secrets are published at court's demand."

However, some provisions of this law³ as well as recent changes to the criminal code may limit the role of free media and journalists' freedom of expression if they are taken to the extreme.

Indeed, in July 2014, the criminal code was amended and the penalties for defamation increased. Article 130 establishes that:

"1. Slander, that is, dissemination of information that is known to be false and that smears the honour and dignity of another person or undermines his reputation, shall be punished by a fine of up to 1 000 monthly calculation indices⁴ or equivalent correctional labour or by restriction of freedom or imprisonment for a term of up to one year.

2. The same acts, if committed publicly or using the mass media or information communication networks, shall be punished by a fine of up to 2 000 monthly calculation indices or equivalent correctional labour or by restriction of freedom or imprisonment for a term of up to two years."

Furthermore, Article 131 establishes that:

"1. Insult, that is, abasement of the honour and dignity of another person expressed in an indecent form, shall be punished by a fine of up to 100 monthly calculation indices or equivalent correctional labour, by assignment to public work for a period of up to 120 hours.

2. The same act, if committed publicly or using the mass media or information communication networks, shall be punished by a fine of up to 200 monthly calculation indices or equivalent correctional labour, by assignment to public work for a period of up to 180 hours."

As a consequence, recent reports from various international organisations have expressed their concerns regarding the climate for the media and freedom of speech in Kazakhstan.⁵

Civil society organisations and non-governmental organisations

Another key characteristic of a democratic country is the presence of an organised civil society through NGOs or CSOs that actively play an important role in the promotion of democratic principles, in defence of civil freedoms and rights, as well as in national socio-economic development. In fact, today, all across the globe, NGOs are helping to establish and strengthen democracy in three key ways:

1. “First, NGOs are working to establish awareness of and respect for the right of individuals to exercise freedoms of expression, assembly and association, which is crucial to participatory democracy.
2. Second, NGOs are working to ensure that there is a level playing field upon which candidates for elective office can compete and that the entire election process is free and fair.
3. Third, NGOs are working to build and strengthen the rule of just laws and responsive and accountable institutions of government so that the rights of individuals are protected regardless of which persons or parties may be in office at any given time” (Lowenkron, 2006).

CSOs and NGOs are particularly important actors in shaping the national agenda on open government. Including them in the drafting, implementation and monitoring of policies, strategies and initiatives related to open government yields a number of benefits such as: better including citizens’ needs and concerns into the national policy-making cycle, co-design and co-delivery of public services with the state, and holding the government accountable for its actions. Experiences in OECD countries have shown that including the needs and demands of citizens in the policy cycle allows for more efficient and sustainable policies (OECD, 2001). In nearly all of the cases (94% of OECD countries), NGOs are involved in the development of the open government strategy. Yet the role of NGOs is not only restricted to the initial steps of the policy cycle. When it comes to the evaluation of open government activities, NGOs are involved in nearly a third (26%) of the countries (OECD, 2016a).

In Kazakhstan, the non-profit sector is regulated mainly through five pieces of legislation:

1. The Constitution of Kazakhstan outlines the role of public associations in Articles 5 and 23. Article 5 states that public associations must be

equal before the law and that unlawful interference in the affairs of public associations is prohibited, whereas Article 23 allows citizens of Kazakhstan the right to form associations.

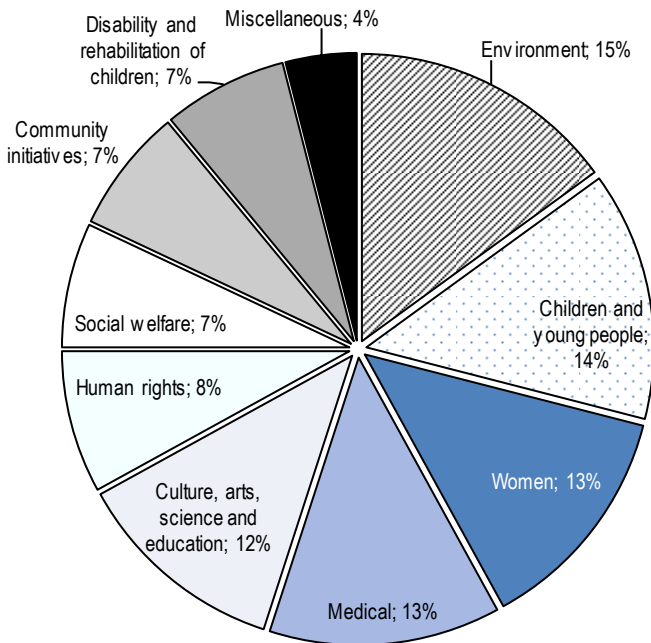
2. The Civil Code of the Republic of Kazakhstan provides for the legal basis of functioning of non-profit organisations and contains a list of unclassified non-profit organisations (Articles 34 and 35 and Chapter 7).
3. The Law on Public Association (1996) regulates the status of non-governmental associations and organisations, such as political parties, trade unions, professional associations, cultural societies and other associations formed by citizens in the exercise of their right to freedom of association with others; establishes the rules governing the creation, operation and dissolution of non-governmental associations and organisations; as well as their rights and responsibilities.
4. The Law on Non-commercial Organisations (2001) sets the concept of a non-profit organisation; its activity goals, rights and duties; organisational-legal forms of non-profit organisations; establishment, restructuring and liquidation of a non-profit organisation; and activities of non-profit organisations.
5. The recently approved Law on State Social Order, Grants and Awards for Non-governmental Organizations (2015) has raised some concerns that will be detailed below.

Civil society in Kazakhstan has progressively become more diverse, visible and robust since the fall of the Soviet Union. During the early 1990s, more than 400 CSOs were established, focusing primarily on human rights issues and the democratic reforms agenda. In the late 1990s, the number of CSOs grew by 300% and reached 1 600. Between 2002 and 2011, the government directed two programmes towards the development of civil society representation – the Concept of State Support for Non-Commercial Organisations (2002-06) and the Concept of Civil Society Development (2006-11). These two initiatives included formal rules regarding relations between the government and CSOs, as well as various forms of support, including contractual relations (OECD, 2014b). The growth continued to increase in the 2000s, reaching over 30 000 non-profit organisations in 2013, including around 18 000 NGOs.

CSOs and NGOs cover a wide range of activities in Kazakhstan, from mutual benefit organisations such as homeowners' associations, to organisations promoting human rights, protecting the interests of vulnerable groups, engaging in the delivery of social services, and supporting environmental causes (ICNL, 2016) (see Figure 2.10).

In fact, the highly diverse categorisation of areas of work of NGOs in Kazakhstan is primarily due to the lack, until recently, of a specific definition for NGOs. The new Law on the State Social Order, Grants, and Premiums for the Non-Governmental Organizations in the Republic of Kazakhstan provides that non-profit organisations can be created in the form of “the institution, public union, joint-stock company, consumer cooperative, fund, religious union, union of the legal entities in the form of the association, or in some other form, approved by the legislative acts created by the citizens and (or) non-state legal entities on a voluntary basis to attain common goals in accordance with the legislation of Kazakhstan.”

Figure 2.10. **Functional activities undertaken by non-governmental organisations, 2014**



Source: Based on data from Knox, C. and S. Yessimova (2015), “State-society relations: NGOs in Kazakhstan”, *Journal of Civil Society*, Vol. 11, Issue 3, <http://dx.doi.org/10.1080/17448689.2015.1058322>.

Clearly defining and disseminating the role of civil society in Kazakhstan is not easy and sometimes it does not fit the traditional definition used in most OECD countries. Kazakhstan’s context needs to be taken into account. According to Knox and Yessimova (2015), Kazakhstan’s civil society is characterised to be less prone to contest and more

co-operative than in western countries.⁶ This, however, can also possibly be the result of an environment that is often considered restrictive of free expression of opinions and of – legitimate and legal – forms of peaceful confrontations, which are the norm in all OECD countries. According to the World Justice Project, only one-third of the people interviewed believe that civil society organisations can freely express opinions against government policies and actions (World Justice Project, 2015). In addition, the recent changes to the criminal code discussed above that have made defamation a criminal offense – with specific provisions for defaming the President, members of parliament and other state officials – also apply to members of NGOs.

The 100 Concrete Steps have demonstrated the government’s intention to increase the participation of civil society, particularly through the pledge to strengthen the role of the public council under government ministries and *Akims* (heads of a local government in Kazakhstan and Kyrgyzstan). The public councils are mandatorily consulted in the process of development of the draft legislation and regulations affecting the rights, freedoms and responsibilities of the citizens. Recommendations of the public councils, as well as the responses of the government agencies, have to be attached to the draft legislation under consideration. However, in December 2015, Kazakhstan passed a law that is seen as imposing onerous reporting requirements on NGOs. The new regulation requires NGOs to provide the government with extensive details about their activities, assets, funding sources, personnel, and past and present projects, all of which could subject them to politically motivated enforcement (US Department of State, 2016a). If the government deems that an organisation has failed to comply with the law’s requirements, the organisation would face penalties, including fines and temporary suspension of its activities (US Department of State, 2016b).

According to the Kazakh government, the Law on State Social Order, Grants and Awards for Non-governmental Organizations was developed in response to the president’s instructions on the need to improve the interaction between the government and NGOs. The Deputy Minister of Culture and Sports, Marat Azilkhanov, stated that “the main purpose of the bill is to support non-governmental organizations, improve and develop these organizations. It is offered to introduce the prize system for NGOs in addition to grants. Grants will be distributed competitively by the new rules specifically adapted to the NGOs which do not fall under the requirements of the Law on Public Procurement” (Government of Kazakhstan, 2015; US Department of State, 2016b). While these grants have the potential to support building the capacity of civil society, a number of local NGOs and international stakeholders have expressed concerns that the law in its current

form may lead to a state monopoly in determining the types of NGOs and their activities to be supported (Freedom House, 2015b).

Indeed, on 15 October 2015, the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, called the Kazakh authorities to repeal the law (United Nations, 2015). This was followed by a declaration by Dunja Mijatović, OSCE Representative on Freedom of the Media, who “call[ed] on the members of the Senate to carefully review the provisions of the bill, in close co-operation with civil society, in order to avoid its arbitrary application and ensure an enabling legal, regulatory and policy environment for NGO activities, including those working on free media matters” (OSCE, 2015). Furthermore, over 60 NGOs signed a petition also calling on President Nazarbayev to reject the law (Eurasianet, 2015).

Evidence from OECD countries suggests that the extent of the engagement of civil society will depend on the imposed constraints and leverage that government can exert on citizens and NGOs. These can have multiple origins, ranging from excessive regulations and bureaucracy to laws that can undermine the role of the civil society in a democracy. NGOs are essential actors to help governments to draft, implement and monitor their initiatives while at the same time holding it accountable. In 2014, the *Kazakhstan: Review of the Central Administration* (OECD, 2014b) found that:

“...civil society organisations need to gain more independence, consolidate their financial situation, develop specialised competences in the policy fields where they intervene, in short to become more professional. There are, however, few chances to see such positive developments if these organisations, at least the better structured and most professional among them, are not considered and involved as real partners in policy making.” (OECD, 2014b)

Therefore, Kazakhstan could consider clarifying the reporting requirements and removing any area of misunderstanding or misinterpretation. It could also ensure that funding decisions are based solely on objective and transparent criteria and make the decisions public. Finally, Kazakhstan could reconsider the conditions by which opinions can be considered as criminal acts of defamation, libel and insult. These are necessary actions to bring civil society on board when developing, implementing and monitoring its national policies, and its open government strategy and initiatives in particular. Tunisia could be an interesting example, as civil society plays an important role (Box 2.11).

Box 2.11. Tunisia’s Open Government Steering Committee

Tunisia’s Open Government Steering Committee (OGSC), which was replaced later by the Open Government Consultative Joint Committee, was established on 15 April 2013. The steering committee was created to co-ordinate the Tunisian open government agenda and the co-operation with the OECD Open Government Project. The steering committee’s membership comprises representatives of the Tunisian government, civil society and the Assembly.

After becoming an Open Government Partnership (OGP) member in early 2014, the primary task of Tunisia’s governing body for the OGP process, the Open Government Joint Advisory Committee, was the formulation of Tunisia’s OGP Action Plan over the coming months, including the organisation of active stakeholder consultations and the follow-up of its implementation. This committee is an advisory organism that gathers five members of the civil society and five members of the government.

The following government representatives form part of the committee:

- three representatives of the presidency (the E-government Unit, the Legal Advisory Department and the General Directorate for Administrative Reforms)
- one representative of the Ministry of Finance
- one representative of the Ministry of Interior.

Each of the following civil society groups are represented by one member on the committee:

- private sector
- education and scientific research
- the association “Touensa”
- the association “Elbawsla”
- the movement “Open Gov tn”.

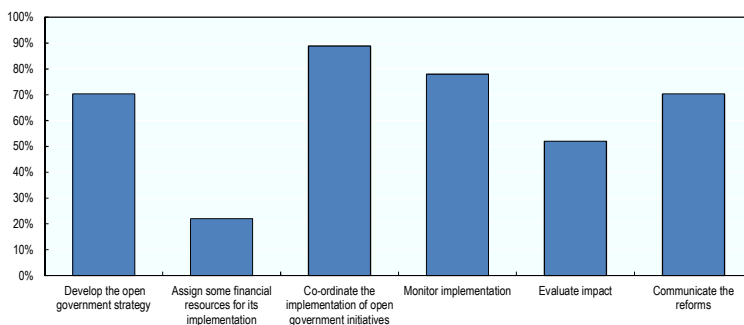
Source: OECD (2016c), *Open Government in Tunisia*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264227118-en>.

Steering and co-ordination of an open government strategy

The open government strategy and its initiatives are at the core of the achievement of a number of different policy outcomes and it constitutes a transversal axe of different, but interrelated, policy areas (OECD, 2016a). Although it is a necessary step, it is not enough; the real test for strategies developed by the government is the implementation phase. In order to ensure a proper implementation, the open government strategy needs to remain linked with the activities of what the OECD calls the centre of government (CoG; see below) and that proper monitoring and evaluation mechanisms are in place throughout the whole policy cycle (OECD, 2016a).

Effective and efficient implementation of an open government strategy requires having in place the appropriate legal, policy and institutional frameworks, as well as the related human and financial resources. In this sense, policy co-ordination is key, and it requires horizontal and vertical mechanisms of collaboration to develop enough capacities to sustain the implementation of open government strategies. Evidence shows that a single office, in charge of the co-ordination, implementation and monitoring of responsibilities of this strategy, has more chances to achieve positive results, especially if it is placed at the highest level of the government (OECD, 2016a). The offices in charge of open government policies in OECD countries typically have different functions, from developing the open government strategy to evaluating its impact. Only in Estonia, Hungary and Japan the office carries out all six of the functions presented in Figure 2.11.

Figure 2.11. **Functions carried out by the office in charge of open government in OECD countries**

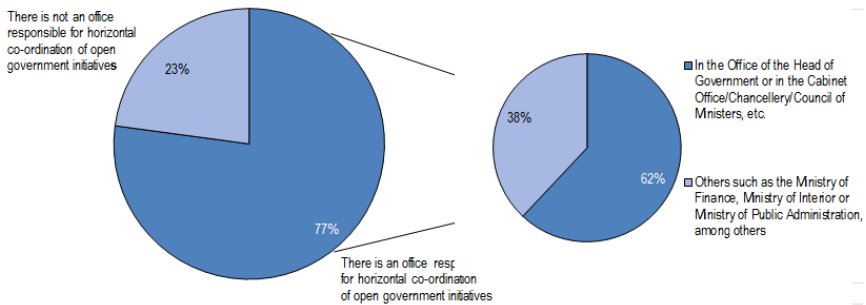


Notes: n=27 OECD countries. Only countries that answered having an office in charge of the horizontal co-ordination of open government initiatives were asked this question.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Experience from OECD countries shows that public bodies in the CoG have been identified as the leading institutions in charge of open government strategy co-ordination. According to the OECD report, *Open Government: The Global Context and the Way Forward*, in 77% of OECD countries there is an office responsible for horizontal co-ordination of open government initiatives and in 62% of these countries that office is placed in the Office of the Head of Government or in the Cabinet Office/Chancellery/ Council of Ministers. For instance, in Austria the office is at the Federal Chancellery and in Iceland it is a division within the Prime Minister’s Office (Figure 2.12).

Figure 2.12. Existence and location of an office responsible for horizontal co-ordination of open government initiatives in OECD countries



Note: n= 35 OECD countries.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

The centre of government is defined as the body or group of bodies that provides direct support and advice to the head of government and the Council of Ministers (OECD, 2015a). In general, it supports the quality decision making by the head of government, ensures policy co-ordination across government and monitors the implementation of government policies (OECD, 2015a). The functions of the CoG include: 1) strategic vision; 2) accountability; 3) strategic planning, policy coherence and collective commitment; and 4) communication (Box 2.12).

Box 2.12. The functions of the centre of government

The key function of the centre of government (CoG) is to act as a central leadership hub in order to facilitate co-ordination, collaboration and co-operation across the public administration, with the objective of securing a strong, coherent and collective strategic vision of where the country needs to go and how it will get there. Leadership is needed to champion and promote reforms, and to generate and manage interdependencies across the administration so that collaboration is the default option, not the exception. Leadership is also needed to change the way in which the public administration conceives its role and to encourage widespread “buy in”, so that the strategic vision for a country is implemented. An effective CoG is critical for:

1. **Strategic vision:** The CoG needs to be able to pull together long-term, big picture objectives for the economy and society. Examples might be an objective to minimise poverty and unemployment, to promote a sustainable environment, or to diversify the basis of economic activity in support of growth. These objectives both shape and reflect public sector and societal values. Constitutional requirements and objectives are likely to be relevant. The vision needs to be owned and promoted by all parts of the public sector, as a “whole-of-government” vision.
2. **Accountability:** The CoG is the steward of the strategic vision. It is accountable for overall results and oversight of delegated responsibilities. It is important, however, to avoid overly rigid “command and control” structures and micro-management, and instead to work toward a system where the centre of government can exert effective oversight and clarify lines of accountability. Line ministries also need to exercise leadership for the actions and policies for which they are responsible, within the overall framework of a shared or collective commitment.
3. **Strategic planning, policy coherence and collective commitment:** The CoG needs the capacity to give the strategic vision specific shape, to secure its coherence and to make it operational. A starting point is likely to be the government programme or equivalent, giving effect to the political manifesto of the party or parties in power. Making the strategic vision operational is key, otherwise the vision is a “dead letter”. The doctrine of collective responsibility is crucial to bind line ministries as well as the CoG to a course of action. Collective commitment is also, crucially, built, developed, discussed and agreed by the whole range of actors that are engaged in public policy making, implementation and service delivery.
4. **Communication:** The CoG needs the capacity to communicate the strategic vision, how it is being taken forward and its implementation. Transparency and openness help to promote a shared sense of purpose, for stakeholders outside as well as inside the government. Clarity of communication within the administration is important, so that, for example, local governments can understand the vision and share in its construction and so that all parts of the public sector understand their role, responsibility and accountability for results.

Box 2.12. The functions of the centre of government (*continued*)

The first line of engagement of an effective CoG is to project and share policy priorities in key areas with the relevant ministries, and to ensure that these policy priorities are coherent and joined up. “Joined-up government” – the capacity to ensure that complex policy objectives can be met, and that the achievement of high-level policy goals are not undermined by a failure to deal with this complexity – is often weak. Ensuring policy coherence is a major public governance challenge across all OECD countries. A united position on cross-cutting policy goals is essential if governments are to sustain their credibility, meet their strategic objectives and if goals are to be achieved without wasting resources. It does not serve the public interest if one part of government fails in its role in policy delivery; and it is directly contrary to the public interest if one action of government is counteracted or undermined by an action taken by another part of government.

Source: OECD (2014b), *Kazakhstan: Review of the Central Administration*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264224605-en>.

The CoG structures across OECD countries vary depending on the historical and cultural context as well as the legal framework of a country. While it is rare to find just one institution covering all of these functions, it is common that a small set of key players share the task and carry out key strategic functions for the government as a whole (Box 2.13).

Box 2.13. The structures of the centre of government

It is rare to find just one institution covering all of these functions in OECD countries. It is far more common that a small set of key players share the task. In many countries, however, they can be identified in a combination of those units of the central administration that:

- **Provide direct support to the head of the government** (Prime Minister/President/Chancellor’s Office). In many countries, however, these offices are not equipped, and do not seek, to cover the whole of the centre-of-government (CoG) function. They need the capacity to protect the authority and reputation of the Prime Minister/President “above the fray”, without becoming too involved in the day-to-day management of specific policies. They may also consider their role to be more political than technocratic. They are often, however, the communication hub for government policy, and their usual role in managing the agenda of the Cabinet provides them with the key authority to set priorities for the attention of the Prime Minister/President.

Box 2.13. The structures of the centre of government (continued)

- **Manage the budget.** This is normally vested in the Ministry of Finance. The budget can be viewed as key to understanding the government’s fiscal framework and its financial operating systems. It is a key allocative document affecting a significant share of a country’s gross domestic product – over half in some OECD countries. It is an important policy tool used by governments to establish policy priorities in concrete terms through the allocation of funding. It is an important management document, in that the basic operational costs of government ministries and agencies are established. In short, the budget provides the basic operational architecture for the work of government. In some countries such as the United States, this function is located within the President’s Office.
- **Responsible for key horizontal policies,** including public administration reform and central human resources policy, co-ordination of law drafting and better regulation policy, and e-government. This usually involves ministries such as the Ministry of Public Administration Reform, the Ministry of Finance, the Ministry of the Interior and the Ministry of Justice, although in a number of countries parts or all of these functions are located in the Prime Minister’s Office.
- For EU member countries, the participation of any dedicated **EU oversight unit for the negotiation and implementation (transposition) of EU directives** is essential, since these play a major part in shaping the legislative and policy landscape of member countries.
- **Emergency and crisis management.** In most countries, a crisis management cell exists within the centre of government, and the functions of co-ordinating emergency measures are often located within a Cabinet Office or its equivalent for major crises.

Some of these units or institutions need to co-ordinate especially closely (or be the same unit):

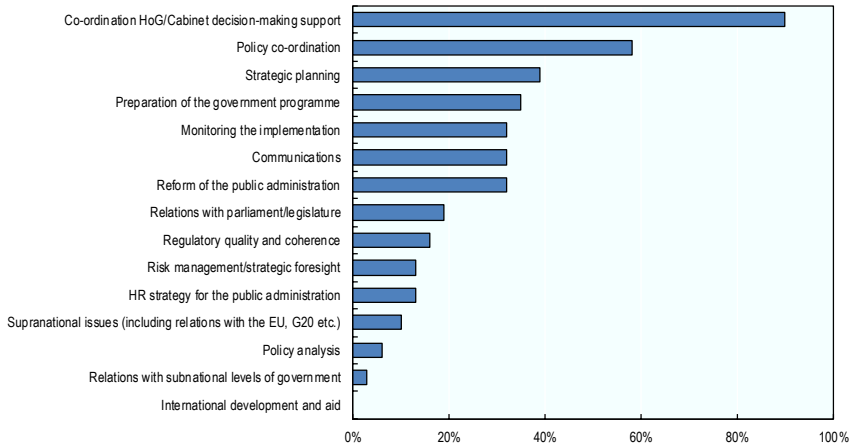
- There is a crucial interface between **regulatory policy and the management of the Cabinet agenda**, since a well-functioning regulatory policy implies the development of regulatory impact assessments (RIAs) on draft legislation. In countries where policies are usually synonymous with laws, the unit responsible for RIAs needs to work closely with (or be the same unit as) the unit that sets the Cabinet agenda.
- There is also a crucial interface between **human resources (HR) management and budget management**, in that performance budgeting and staying within fiscal targets implies staying within budget for HR managers.

Source: Based on the findings from OECD Public Governance Reviews.

The OECD Survey on Centres of Government (OECD, 2013) also shows that a majority of countries (59%) confirms that the number of cross-ministerial policy initiatives increased between 2008 and 2012, and almost all respondents reported that leading policy co-ordination has now become one of the priority tasks of the centre. As pointed out by the OECD (2014b) review, *Kazakhstan: Review of the Central Administration*, the centre can lead such cross-ministerial co-ordination by: 1) integrating cross-disciplinary perspectives (including its own perspective – the centre is not “policy neutral”) into policy advice for the head of government and/or Cabinet; 2) leading policy co-ordination via both traditional committee architectures and more innovative and informal channels; 3) facilitating resource sharing through a closer partnership with ministries of finance; and 4) supporting experimentation and testing of new delivery systems, many of which are based on shared service models (Figure 2.13).

Figure 2.13. **Varied responsibilities but clear priorities for centre of government**

Percentage of countries identifying the function as one of the top four tasks of the centre



Source: OECD (2014a), “Centre stage: Driving better policies from the centre of government”, OECD, www.oecd.org/gov/Centre-Stage-Report.pdf.

Kazakhstan’s central government is composed of 15 ministries. However, there are also state-owned corporations, commissions and other organisations that play an important role in policy development and implementation. The Presidential Administration and the Office of the Prime Minister serve as the main institutions in the central government of Kazakhstan. Other line ministries and agencies, such as the Ministry of National Economy, the

Ministry of Investment and Development, the Ministry of Finance, the Ministry of Justice, and the Agency for Civil Service and Corruption Prevention perform some functions on a whole-of-government basis (e.g. e-government and regulatory reform), and could be categorised as central agencies in regard to those functions. These ministries have a dual role within the policy system, both as line ministries in their areas of competence and as central agencies with regard to horizontal functions (OECD, 2014b).

Within the Presidential Administration, there is a unit called Internal Policy Division, which is responsible for the issues related to open government development, among other issues. Responsibilities of this unit include:

1. introduction of the proposals on formation and improvement of the internal policy of the state, including the state information and youth policy, civil society and human rights policy, inter-confessional relations, education, social and humanitarian sciences, healthcare (except for financial and economic aspects), demography, culture, language policy and sports
2. ensuring interaction of the head of the state and leadership of the administration with the institutions of the civil society, including political parties, religious and social associations, funds, etc.

Within the Prime Minister Office there is also the unit responsible for the issues of civil society development, media, etc.

Today, the responsible ministry for the open government issues is the Ministry of Information and Communications. The ministry was created in May 2016. According to its Statute,⁷ the Ministry is responsible for regulating several spheres: communications, informatisation, e-government, and information. At the same time, the Statute does not mention the open government development among the tasks of the ministry. It states the mission of the ministry to be “formation and implementation of the effective government policy in the regulated spheres, as well as development and ensuring sustainable functioning and safety of the united information space and infrastructure of communications.”

An important role is played by the National Information Technologies Joint-stock Company. This body was founded on 3 July 2000 to create, implement and operate the basic components of e-government and government agencies’ information systems. Although it is not entirely unusual that during the first stages of open government reforms in a country, the office is located in the unit or ministry in charge of ICT development, evidence from the OECD suggests that once a mature ICT infrastructure is developed, responsibility for designing and co-ordinating the open

government strategy and initiatives could move to an office at the centre of government. To enhance the strategic leverage of open government, Kazakhstan could ensure that the open government agenda is both officially and practically one of the key priorities of the newly established Ministry for Information and Communications and that there are necessary mechanisms, human and financial resources to support this task and ensure the co-ordination of the new Ministry of Information and Communications with the presidency and CoG (see Box 2.14).

Box 2.14. Key central agencies in Kazakhstan related to open government

The Presidential Administration in Kazakhstan: The presidency has, among others, the role of defining the Vision 2013 and 2050 and preparing the annual speech of the President, which is the basis for all strategic documents and priorities during the year, in which open government plays an important role. The Presidential Administration ensures the exercise of the presidential functions with respect to the parliament, government and central executive bodies, Constitutional Council, courts and judges, Central Election Commission, local legislative and executive bodies, and public bodies reporting directly to the president.

The Chancellery of the Prime Minister: As in several OECD countries, the Chancellery conducts many of the general functions of the Government Office and Prime Minister's Office, including logistical and technical support of the government and the Prime Minister; monitoring the implementation of the main policy priorities, decisions, decrees and assignments of the government, the Prime Minister and the President; providing policy advice and preparing expert assessments of documents submitted to the government; co-ordinating responses to parliamentary inquiries; and reviewing draft laws and policies prepared by executive bodies; providing a liaison with and ensuring representation of the government in the Constitutional Court, Higher Court of Arbitration, Supreme Court and the *Majilis*. It is also responsible for the protection of state secrets and ensuring information security.

The Ministry of National Economy is an institution with wide-ranging powers in the area of public management, and reports to the Prime Minister. To support the implementation of the high-level documents, the ministry is responsible for the development, implementation, monitoring and evaluation of the National Strategy 2020, developed in support of the Kazakhstan 2030 and Kazakhstan 2050 strategies where open government plays an important role. The ministry carries out activities, among others, in the areas of strategic planning, tax and budget policy, as well as policy in the field of customs, public-private partnerships, public investment projects, public administration, public policy development in the provision of public services and training.

Box 2.14. Key central agencies in Kazakhstan related to open government (continued)

The Ministry of Information and Communication is the central executive body of the country in charge of developing the communication, informatisation and “e-government” in the country.

The recently established **Ministry for the Affairs of Religions and Civil Society** is responsible for the relations between the state and civil society organisations, among other tasks.

The National Commission on Modernization is an advisory body to the president. Its main objectives are to develop and implement measures aimed at the implementation of institutional reforms. The National Commission on Modernization is headed by a chair, appointed by the president.

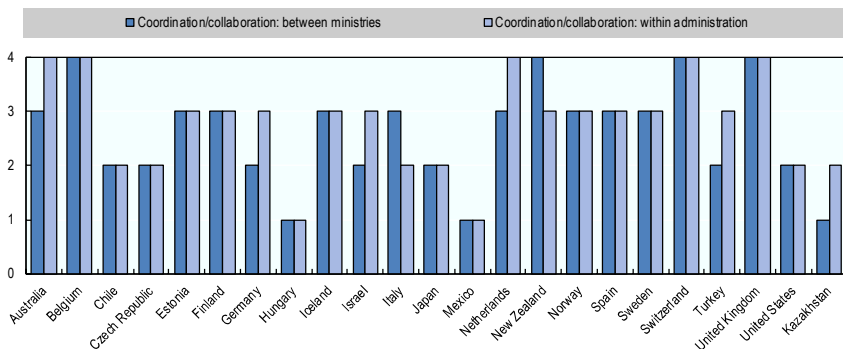
Sources: OECD (2014b), *Kazakhstan: Review of the Central Administration*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264224605-en>; Government of Kazakhstan (n.d. c), “Statute of the Ministry of Information and Communications”, <http://mic.gov.kz/en/>.

However, in addition to the institutional placement of these offices, other considerations matter, of which three are crucial for an efficient and effective CoG-led implementation of an open government strategy. The CoG institution(s) in charge of open government policies must have strong **leadership and vision-setting** capacities to change the culture in the public sector. This includes having the capacity to ensure the translation of the country’s distinctive vision of open government into practices that are horizontally and vertically coherent and integrated and facilitate co-ordination, co-operation and collaboration among all the institutions. It is critical to activate **high-level political support**, and have the capacity to mobilise the **necessary human and financial resources** (OECD, 2016d). According to the experience of OECD countries, the lack of, or insufficient, human and financial resources for the co-ordinating institution have been mentioned as the main challenges in co-ordinating the open government strategy and initiatives. In addition, general resistance to change or to reforms in the public sector have been identified as one the main challenges in implementing open government initiatives (OECD, 2016a). The culture of secrecy and the lack of an open government culture in the public sector are Kazakhstan’s main challenges. The CoG, through its leadership, will need to carry out activities to overcome these challenges.

The CoG institutions must further have the ability, and be recognised as having the related function, to successfully **co-ordinate** whole-of-government

(or whole-of-state) open government efforts, horizontally (across line ministries) and vertically (across levels of government), as well as outside of government (i.e. with civil society and the private sector). However, according to the 2014 OECD review, *Kazakhstan: Review of the Central Administration*, there is a need to improve horizontal co-ordination at the central level. Even though co-ordination mechanisms do exist in Kazakhstan, both at the central and ministerial levels, they appear to be too formal and operating primarily at a high level of government. Currently, the relations between ministries are confined by their strategic plans, yet many other issues require cross-ministry co-operation, for which co-ordination mechanisms are still insufficiently developed. Inter-ministerial and central agency co-ordination and collaboration could be strengthened by promoting informal and working level co-ordination, as well as by introducing horizontal accountability (OECD, 2014b). In addition, data from the *Institutional Profiles Database* (CEPII, 2012) show that in 2012, the level of co-ordination/collaboration between ministries and within the administration was low in Kazakhstan (Figure 2.14). Vertical policy co-ordination across levels of government is extremely important, as local and regional governments are closer to citizens to identify their needs and to evaluate the impact of the initiatives carried out to implement the open government strategy.

Figure 2.14. **Level of co-ordination/collaboration between ministries and within administrations in selected OECD countries**



Notes: The indicator measures the “degree of co-ordination/collaboration between ministries; degree of co-ordination/collaboration between administrations” (scores range from 0 [very little co-ordination] to 4 [strong co-ordination]).

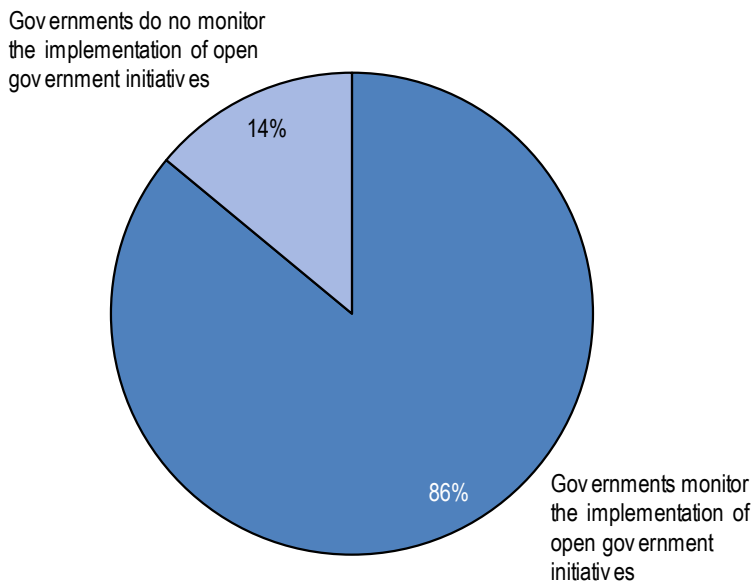
Source: CEPII (2012), *Institutional Profiles Database*, www.cepii.fr/institutions/EN/ipd.asp.

In order for the implementation of open government strategy to be successful and sustainable in the long term, leadership, vision-setting and co-ordination must be accompanied by the necessary institutions, mechanisms, human and financial resources to ensure that these qualities and functions of the CoG are properly operationalised.

Monitoring and evaluation of the open government strategy

Monitoring and evaluating policy impact is essential to ensure that the strategy is achieving its goals. Developing robust monitoring and evaluation frameworks provides the necessary data for evidence-based decision making. However, despite its recognised importance, while some governments do monitor the implementation of their national open government agendas (Figure 2.15), just over half specifically evaluate their impacts (Figure 2.16).

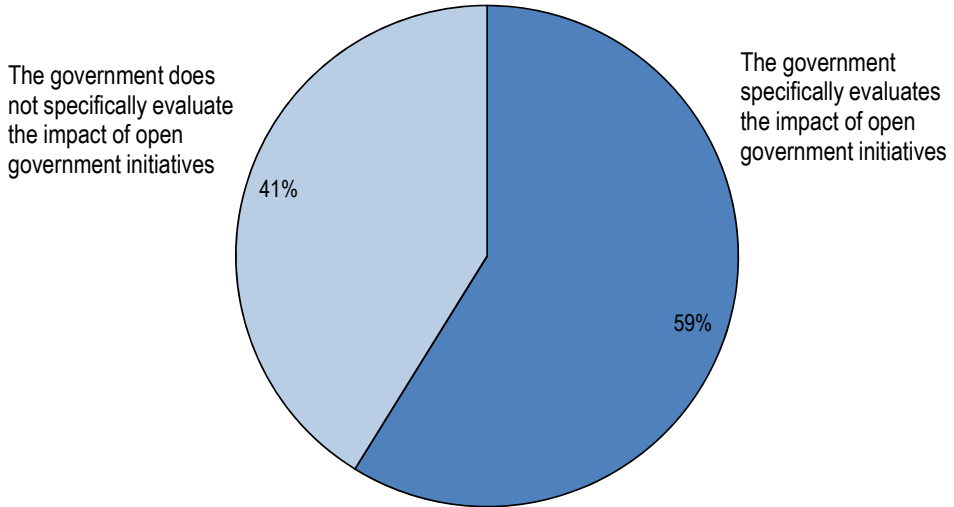
Figure 2.15. **Monitoring the implementation of open government initiatives in OECD countries**



Note: N=35 OECD countries.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Figure 2.16. Evaluating the impact of open government initiatives in OECD countries



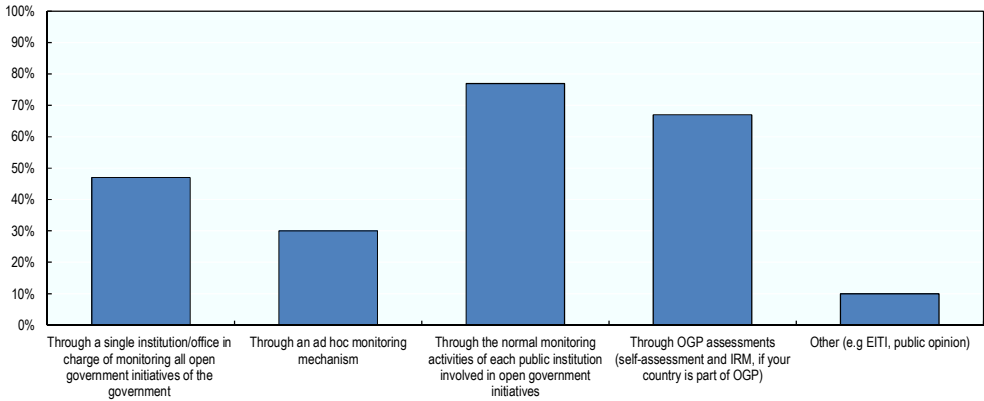
Notes: N=34 OECD countries. Luxembourg did not provide an answer to this question.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

According to Figure 2.17, in 78% of the cases, the office in charge of open government is also entitled to monitor the implementation of the strategy and related initiatives. In fact, as is the case for any other public realm, monitoring the implementation of the open government policies is critical to ensure that the strategy is achieving its objectives, to identify challenges, define adjustments and communicate changes in a timely fashion. In this sense, through different ways, including ad hoc mechanisms or regular monitoring activities of each public institution involved in open government initiatives, 86% of OECD countries do monitor the implementation of open government activities (Figure 2.15).

According to Kazakhstan’s responses to the survey, the country monitors open government initiatives, especially those related to e-government. Furthermore, the monitoring is done through a system of annual assessment of government agencies in various areas carried out by the Centre for Government Performance and Evaluation, as is the case in 77% of OECD countries (Figure 2.17).

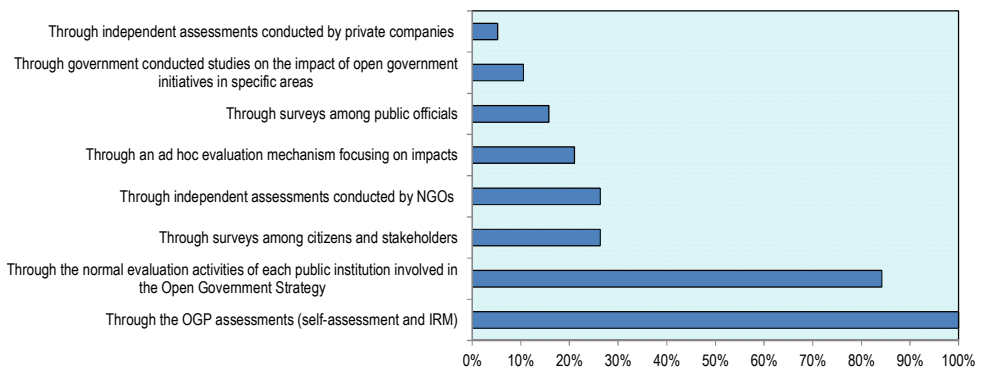
Figure 2.17. Mechanisms to monitor open government initiatives across OECD countries



Notes: N=30 OECD countries. Only countries that answered that they monitor open government initiatives were asked this question. IRM: Independent Reporting Mechanism.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Figure 2.18. Mechanisms to measure the impact of open government initiatives across OECD countries



Notes: N=19 OECD countries. Only countries that answered that they evaluate open government initiatives were asked this question.

Source: OECD (2016a), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Figure 2.18 shows that the most common instruments to measure impact include the monitoring activities of relevant public institutions, the OGP assessment process, surveys (of public officials or of citizens and stakeholders) and through independent assessments.

Recommendations and proposals for action

Kazakhstan has taken important steps towards implementing open government reforms and has expressed strong interest in enhancing transparency, openness, accountability and participation in policy making in order to further develop public trust in government and improve the quality of public services. However, Kazakhstan still needs to carry out additional efforts and overcome different challenges to ensure the success and long-term sustainability of its open government agenda.

With regard to positioning open government as a national strategy, the government of Kazakhstan may wish to consider:

- Developing a **single definition of open government**, in order to better achieve its 100 Concrete Steps and the Five Institutional Reforms. This definition needs to be created with, accepted by and communicated to the whole public sector and all stakeholders (citizens, civil society, private sector, etc.). Having a well-defined understanding of what open government entails contributes to a more efficient and sustainable implementation of the major pillars of the President’s fifth institutional reform. This definition could take the criteria of a good concept/definition into account and should be elaborated through a consultative process to ensure better buy-in and ownership by all stakeholders.
- Developing a **full-fledged open government strategy** (a single document) that includes principles, long-term goals, medium-term objectives, strategy instruments or initiatives to be carried out to achieve the goals. The strategy could also include the challenges, risks and threats that the country may face when implementing an open government strategy. For instance, Kazakhstan could use the elements contained in the national open government strategy **for each of the components** (open data, open legal acts, open dialogue and open budgets) of the new structured approach to the development of open government.
- Developing a **more extensive open government strategy** in co-operation with civil society. To this end, it could include more non-governmental actors, including citizens, civil society and the media,

as well as regional and local governments, in the development and communication of the strategy.

- **Reviewing its legal provisions** with regard to the restrictions on journalists and ensure that their implementation does not undermine the freedom and independence of the media, in order to promote the participation of the media in the open government strategy and initiatives, and promote open and accountable government.
- **Clarifying the reporting requirements** and to remove any area of misunderstanding or misinterpretation, in order to promote the participation of NGOs in the open government strategy and initiatives. It could also ensure that funding decisions are based solely on objective and transparent criteria and make the decisions public.
- **Reconsidering the conditions by which opinions can be considered as criminal acts of defamation, libel and insult.**

To improve the institutional basis of open government, the government of Kazakhstan may wish to consider:

- Ensuring that the open government agenda is both **officially and practically one of the key priorities** of the newly established Ministry for Information and Communications and that there are necessary mechanisms, human and financial resources to support this task and ensure the co-ordination of the new Ministry of Information and Communications with the presidency and the CoG.
- **Strengthening** the necessary institutions, mechanisms and provide the necessary human and financial resources to ensure that the qualities and functions of the CoG are properly operationalised in order to ensure that open government strategy is successful and sustainable in the long term.

Notes

1. See www.opengovpartnership.org/how-it-works/develop-a-national-action-plan for more information.

2. For more information, see <http://ortcom.kz/en/program/program-infokaz/text/show>.
3. For example, Article 21 states that a “journalist shall be obliged to implement the program of a mass medium activity, which he/she has contract relations with, in accordance with the legislation of the Republic of Kazakhstan; not to disseminate information that does not comply with reality; to satisfy requests of persons that granted information to mention their authorship; to respect legal rights and interests of natural persons and legal entities; to carry out other responsibilities laid upon him/her in accordance with legislation of the Republic of Kazakhstan.”
4. The monthly calculation index (MCI) is an index used in Kazakhstan for calculating pensions, allowances and other social payments and also for incrementing fines and calculating taxes and other payments. It is set annually by the Law of the Republic on the Budget.
5. For example, in 2016, a number of international voices expressed concerns with regard to freedom of the press and free speech, including the European Parliament, which stated “Members of the European Parliament are deeply concerned about the climate for the media and free speech in Kazakhstan, where strong pressure on independent media outlets includes some being closed down, and news agency directors and journalists being detained, placed under criminal investigation and sentenced to prison” (European Parliament, 2016). In addition, Dunja Mijatović, the Organization for Security and Co-operation in Europe representative on Freedom of the Media declared: “Considering previous and ongoing persecution targeting journalists and bloggers, the situation for freedom of expression and media freedom in Kazakhstan is deeply worrying.” (OSCE, 2016)
6. “Kazakhstan’s civil society is less willing to confront the state [...] Few civic organizations have the resources to sustain their activities without state backing, so civil society has evolved into a mix of grass-roots organizations and groups sponsored and supported by the state [...] While contestative elements are not entirely absent in Kazakhstan’s civil society, they have at least for now been implicitly subordinated (or sacrificed) in return for effective governance.” (Knox and Yessimova, 2015)
7. The Statute of the Ministry of Information and Communications as of 24 June 2016 is available at: <http://mic.gov.kz/ru/pages/polozhenie-o-ministerstve-informacii-i-kommunikaciy-respubliki-kazahstan>.

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Chapter 3

Towards effective citizen participation in policy making and service delivery in Kazakhstan

Good decision making requires the knowledge, experience, views and values of the public. This chapter analyses the environment for effective citizen participation and its potential to improve service delivery and policy making in Kazakhstan. The country's Access to Information Law constitutes the backbone of open government reforms and is an important first step towards participation on the basis of an informed public. The chapter examines Kazakhstan's endeavours to go beyond just providing information to stakeholders and the government's efforts for effective consultation and engagement with its citizens as partners.

This document, as well as any [statistical] data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

The benefits of stakeholder participation in policy making and service delivery

The evolving context for government action, marked among other factors by the explosion of technology, fiscal consolidation efforts, socio-political changes and declining levels of trust, has called renewed attention to the mechanisms through which executives can not only become more transparent and accountable, but can also move beyond a role as a simple provider of services toward greater partnership with citizens and the private sector (OECD, 2015a).

Good decision making requires the knowledge, experience, views and values of the public. Effective approaches to citizen participation throughout the entire policy cycle can moreover direct government action to better fulfil society's priorities and deliver policies in a more accountable, innovative and cost-effective manner. Efficient participation can lead to higher levels of policy compliance and improved service delivery. Governments that face decreasing levels of trust and legitimacy can counter these trends in many countries by more frequently engaging citizens (OECD, 2016a).

OECD work has identified the driving forces that have led governments to strengthen their relations with citizens, including:

- improving the quality of policies by allowing governments to tap wider sources of information, perspectives and potential solutions
- meeting the challenges of the emerging information society
- integrating public input into the policy-making process to meet citizens' expectations
- responding to calls for greater government transparency and accountability
- strengthening public trust in government (OECD, 2016b).

Informing, consulting and engaging citizens are core elements of good governance. They allow government to tap new sources of policy-relevant ideas, information and resources when making decisions. Equally important, they contribute to building public trust in government, raising the quality of democracy and strengthening civic capacity (OECD, 2003). As pinpointed by one of the advisors on public engagement to the government of New Brunswick, Canada, "Public engagement is not just desirable; it is a condition of effective governance" (OECD, 2009). Therefore, open government strategies and initiatives can only be successful if they count on the involvement and participation of citizens (OECD, 2003).

Effective participation can be instrumental to shape the purpose of government action and decisions to better fulfil society's preferences and priorities. It can also inform and support the delivery of outcomes that matter to stakeholders in an accountable, innovative and cost-effective manner¹ leading to higher levels of policy compliance and implementation as well as to better service delivery. Last but not least, participation can be an important driver of legitimacy and trust in government,² with direct implications on the discussions regarding the opportunities and challenges of direct and representative democratic practices due to the widespread use of information technologies, social media and open data by both citizens and policy makers (OECD, 2016a).

Open government implies three different, but complementary and increasing, levels of citizen-government relationships (Figure 3.1):

1. **Information is a one-way relationship** in which government produces and delivers information for use by citizens. It covers both “passive” access to information upon demand by citizens and “active” measures by government to disseminate information to citizens. Examples include: access to public records, official gazettes and government websites.
2. **Consultation is a two-way relationship** in which citizens provide feedback to government. It is based on the prior definition by government of the issue on which citizens' views are being sought and requires the provision of information. Governments define the issues for consultation, set the questions and manage the process, while citizens are invited to contribute their views and opinions. Examples include: public opinion surveys, comments on draft legislation.
3. **Engagement or active participation is a relationship based on partnership** with government, in which citizens actively engage in defining the process and content of policy making. It acknowledges equal standing for citizens in setting the agenda, proposing policy options and shaping the policy dialogue – although the responsibility for the final decision or policy formulation rests with the government. Examples include: consensus conferences, citizens' juries (OECD, 2011a).

Figure 3.1. Ladder of participation practices: Levels of stakeholder participation



Source: OECD (2016c), Open Government: The Global Context and the Way Forward, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Governments are responsible for encouraging stakeholder participation by creating an enabling environment and establishing an appropriate legal framework to help removing possible obstacles for the participation of everyone, and especially of those that are frequently excluded, for example youth, women or marginalised groups of society. Furthermore, political and cultural attitudes, supporting legislative frameworks and adequate institutional co-ordination mechanisms, capacities and incentives are also enabling conditions for effective participation.

Furthermore, to avoid consultation fatigue and to create a coherent and systematic approach the co-ordination of initiatives across the whole government is needed. It is important that these initiatives are accompanied by accountability mechanisms, which implies reporting back to citizens (feedback loop) about the impact of their inputs. As shown in Table 3.1, information, consultation and active participation should and can be present in different stages of the policy cycle: design, implementation and evaluation.

Table 3.1. Information, consultation and active participation throughout the policy cycle

Stage of policy cycle	Information	Consultation	Engagement or active participation
Design	<ul style="list-style-type: none"> – White papers, policy documents – Legislative programmes – Draft laws and regulation 	<ul style="list-style-type: none"> – Large-scale opinion surveys – Use of discussion groups or citizens' panels – Invitation of comments on draft legislation 	<ul style="list-style-type: none"> – Submission of alternative draft laws or policy proposals – Public dialogue on policy issues and options
Implementation	<ul style="list-style-type: none"> – New policy or regulations and their provisions 	<ul style="list-style-type: none"> – Use of focus groups to develop secondary legislation 	<ul style="list-style-type: none"> – Partnership with civil society organisations to disseminate information on compliance with new laws
Evaluation	<ul style="list-style-type: none"> – Public notice of evaluation exercises and opportunities to participate 	<ul style="list-style-type: none"> – Inclusion of stakeholders in reviews of government evaluation programmes and results 	<ul style="list-style-type: none"> – Independent evaluation conducted by civil society organisations

Source: OECD (2015b), *OECD Regulatory Policy Outlook*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264238770-en>.

Findings from the OECD report, *Open Government: The Global Context and the Way Forward*, hint at the common challenges in effectively implementing new innovative approaches for citizen participation. When asked for the main challenges in implementing open government initiatives, about two-thirds of OECD countries highlighted the “lack of or insufficient communication/awareness of the benefits of open government reforms among public officials” (OECD, 2016c). This result relates to the third most frequent answer by OECD countries on the same question. “General resistance to change or to the reforms in the public sector” was mentioned by 18 of the 34 countries (OECD, 2016c).

In this sense, to enable citizens and public officials to participate, it is important that all of them acquire basic knowledge of, and skills in, the citizen participation process. Awareness campaigns and dissemination programmes need to be carried out in a permanent manner to create active and knowledgeable citizens and public officials. Kazakhstan could also develop an ad hoc strategy or general standards of public participation to help public servants conduct high-quality participation processes, like in the case of Austria (Box 3.1).

Box 3.1. Standards for Public Participation in Austria

The government of Austria has developed a strategy to strengthen public involvement in decision making. The Austrian government believes that effective public involvement in decision making needs to be underpinned by being well organised, and has developed Standards of Public Participation to help public servants conduct high-quality participation processes.

Non-governmental organisations and other stakeholders were involved in drawing up the standards, which include elements such as: making information available; fostering open and inclusive policy making; fostering integrity and transparency; and improving service delivery. In addition, two e-government applications have been created to facilitate public participation, one for public employees and one for citizens. In order to mobilise citizens, businesses and civil society, there have been several public-private dialogues on reform concerning important issues like education or science involving different civil society organisations.

Source: OECD (2011a), *The Call for Innovative and Open Government: An Overview of Country Initiatives*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264107052-en>.

Access to information, the necessary first step for citizen participation

The right to access public sector information is broadly recognised as a necessary legal foundation for transparency, accountability and citizens' participation in policy making. It is key for an open and inclusive government. As pinpointed by Thomas Jefferson, "I know of no safe depository of the ultimate powers of the society but the people themselves: and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education" (Crittenden, 2002).

Furthermore, access to public information allows citizens to better understand the role of governments, and how the decisions have been taken on their behalf; hold governments accountable for their decisions, actions and policies; and help them choose their representatives more effectively and better informed. Moreover, it is essential that citizens know about their rights and are willing and able to act on them. For governments, access to information helps to improve the lives of citizens and service delivery by addressing the most common requests for information in relation to public services such as healthcare, education and other public services.

According to Article 18 of Kazakhstan's Constitution, "State bodies, public associations, officials, and the mass media must provide every citizen with the possibility to become familiar with the documents, decisions and other sources of information concerning his rights and interests." Article 20 states, "Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law."

In this sense, freedom of information (FOI) laws or access to information (ATI) regulations constitute a fundamental pillar of open and inclusive government and as recognition of a basic democratic principle and right: governments represent the people and must act on their behalf; thus their actions must be open to scrutiny. These laws aim to allow citizens access to information and data held by public entities in order to:

- guarantee maximum transparency of government operations
- encourage the reuse of information
- generate economic value by private individuals and companies. (OECD, 2016c)

Comprehensive regulations need to be passed, followed by adequate implementation that considers the relevance and "usability" of the information provided in relation to its potential users and a proper enforcement mechanism of the law should be guaranteed. Regulations and the implementation of the right to access to information have advanced significantly in the world since 1980, when only 20% of OECD countries had legislation on access to information. Nowadays, 97% of OECD countries have set an FOI law (OECD, 2003).

A law on access to information was included as one of the "100 Concrete Steps" of Kazakhstan's President to implement the "Five Institutional Reforms". Kazakhstan had been trying to issue its FOI law since 2010; drafts were created in 2010 and in 2012, with the final one in 2015. Although the process to draft the law was inclusive and benefited from the participation of local non-governmental organisations (NGOs), international NGOs such as Article 19 and international organisations such as the Organization for Security and Co-operation in Europe (OSCE), the law passed in 2015 received some criticism. In April 2015, the OSCE mentioned that "the new draft law, which constitutes an improvement to earlier draft versions... need[s] for greater clarity on both sides of the balance between the free access to information on the one hand and legitimate and necessary restrictions on the other" (OSCE, 2015a). Discussions with civil society organisations noted that although they were

consulted in the draft preparations, the majority of their suggestions were not taken into consideration. Civil society organisations stated that, in principle, the law itself was a positive step towards more openness; however, the resulting government decrees after the law was passed have weakened its impact.

Although every access to information or freedom of information law is different and must respond to the specificities of each country, they all generally contain the following elements:

- objectives and principles
- scope
- proactive disclosure
- procedure to request information (how and where to request information, response to the request, denials)
- exemptions
- appeals procedures. (OECD, 2016c)

Objectives, principles and scope

Although access to information laws establish the presumption that citizens can have access to, or request, public information from all public institutions, this is not always the case. For example, some laws do not apply to all levels of government, nor to the legislative or state-owned enterprises. Among OECD countries, Estonia, Finland, Hungary, Italy, Korea, Poland, the Slovak Republic and Sweden extend their law vertically to all levels of government and horizontally to all branches of the central government. As shown in Table 3.2, OECD access to information laws differ in the coverage of the various levels of government. While nearly all governments ensure access to information generated by the central government and the executive, 25 countries ensure access to information generated by subnational units – such as provinces – and only half provide access to information at the legislative, judicial and other branches. For example, Greece’s Administrative Procedural Code grants access to documents “drawn up by public services”, which may include all central, regional and local administrations, but does not apply to archives, the executive branch or the Cabinet of Ministers.

Table 3.2. **Breadth of freedom of information laws in OECD countries, 2010**

Level of government		
Central	31	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States
Subnational	25	Austria, Belgium, Canada (provincial/territorial legislation), Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Korea, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Turkey and United Kingdom
Branches of power at the central level		
Executive	31	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States
Legislative	16	Belgium, Chile, Estonia, Finland, Hungary, Ireland, Israel, Italy, Korea, Mexico, Poland, Slovak Republic, Slovenia, Sweden, Turkey and United Kingdom
Judicial	16	Australia, Belgium, Chile, Estonia, Finland, France, Hungary, Israel, Italy, Korea, Mexico, Norway, Poland, Slovak Republic, Slovenia and Sweden
Other bodies		
Private entities managing public funds	18	Australia, Belgium, Czech Republic, Estonia, Finland, France, Hungary, Iceland, Italy, Korea, Netherlands, Poland, Portugal, Slovak Republic, Sweden, Switzerland, Turkey and United Kingdom

Source: OECD (2011b), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

In some OECD countries, the constitutionally autonomous state/provincial legislatures also have access to information laws in force. In Canada, ten provincial and three territorial legislatures have all passed such legislation. In some cases, such as for Quebec, the provincial/territorial access to information legislation was enacted before the national one. (OECD, 2016c)

In Kazakhstan, the law³ applies to:

- bodies and institutions of the legislative, executive branches of state power and the court system, as well as local state administration and self-administration
- state institutions that are not state bodies
- subjects of the quasi-state sector

- legal entities – that receive budget funds, in respect to information concerning the usage of the funds received from state budgets
- legal entities – subjects of the market that enjoy a dominant or monopoly status in the market, in respect to information concerning prices for goods (works, services) produced (sold) by them
- legal entities possessing information concerning environmental issues, emergency situations, natural and technogenic catastrophes, their forecast and consequences, fire security, sanitary-epidemiological and radiation conditions and food security, and other factors which create a negative impact on the health and security of people, settlements and industrial objects.

However, the law also makes explicit that it does not apply to information of the National Archive Foundation. The law establishes that the information of this institution must be requested according to the legislation of the Republic of Kazakhstan on National Archive Foundation and Archives. The reasons for excluding such inquiries from the scope of the law remain unclear. Kazakhstan could, throughout the Access to Information Law, make the references in the text of the laws and articles very specific.

This recommendation is also applicable to other laws cross-referenced in the Access to Information Law. For instance, Article 5 on the limitation of the right for access to information establishes that “the right for access to information may be limited only by laws and only to the extent necessary in order to protect constitutional and public order, human rights and freedoms, health and human morals” and Article 9.3 states that access to information can be denied “in cases and only on the basis of the laws of the Republic of Kazakhstan.” To increase the clarity of the Access to Information Law and eliminate any doubt on its applicability, Kazakhstan could make explicit all the different pieces of legislation that the law refers to and the impact they have on its applicability. Along the same lines, Article 1.8 defines information with limited access as “information that is classified as state secrets, personal, family, medical, banking, commercial and other types of secrets protected by law, and also official information noted as ‘for official use only.’” It is presumed that more detailed guidance on how and which information has to be classified is provided by the law on “State Secrets” (1999) and the Regulations for Development of the Line (Sectoral) Lists of Data to be Classified, as approved by the Government Decree #389 as of 14 March 2000.

Proactive disclosure

Proactive disclosure (i.e. information that must be publicly available prior to public request) ensures that information seekers get immediate access to public information and avoid the costs associated with filing a request or engaging in administrative procedures contributing to greater transparency and openness in government. For government entities, proactive disclosure can reduce the burden of complying with access to information requests.

Normally, every access to information law provides a list of information that must be published by each institution. For instance, all OECD countries are proactively publishing public information, and in 72% of them, proactive disclosure is required by access to information laws for certain categories of information. The type of information proactively disclosed varies across countries. While a majority of countries proactively disclose budget documents (94%), annual ministry reports (84%) and audit reports (72%), only a smaller number (28%) (including Chile, Estonia, Iceland, Israel, Italy, Mexico, the Netherlands, Turkey and the United Kingdom) proactively publish the list of public servants and their salaries (OECD, 2011b) (see Table 3.3).

Table 3.3. Proactive disclosure of information by central government across OECD countries, 2010

Country	Budget documents	Annual ministry reports, including accounts	Audit reports	All government policy reports	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Administrative data sets	Information describing the types of records systems and their contents and uses	Information on internal procedures, manuals and guidelines	Description of the structure and function of government institutions	Annual report on freedom of information law	Freedom of information procedural information
Australia	○	●	○	○	○	○	○	●	●	●	○	●
Austria	○	○	○	○	○	○	○	○	○	○	○	○
Belgium	○	○	○	○	○	○	○	○	○	●	○	○
Canada	●	●	●	○	●	○	○	●	●	●	●	○
Chile	●	○	●	○	●	●	○	○	○	●	○	○
Czech Republic	●	●	○	○	○	○	○	○	●	●	●	●
Denmark	○	○	○	○	○	○	○	○	○	○	○	○
Estonia	●	●	●	●	●	●	●	●	●	●	●	●
Finland	●	●	●	●	●	○	●	●	○	○	○	●
France	●	●	○	○	○	○	○	○	○	●	○	●
Hungary	●	●	●	●	●	○	●	●	●	●	●	●
Iceland	○	○	○	○	○	○	○	○	○	○	○	○
Ireland	○	○	○	○	○	○	○	○	○	●	●	○
Israel	●	●	○	○	○	○	○	○	●	●	●	●
Italy	●	●	●	●	●	●	○	○	○	●	●	●

Table 3.3. **Proactive disclosure of information by central government across OECD countries, 2010** (continued)

Country	Budget documents	Annual ministry reports, including accounts	Audit reports	All government policy reports	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Administrative data sets	Information describing the types of records systems and their contents and uses	Information on internal procedures, manuals and guidelines	Description of the structure and function of government institutions	Annual report on freedom of information law	Freedom of information procedural information
Japan	○	○	○	○	○	○	○	○	○	○	○	○
Korea	●	●	●	●	●	○	●	●	●	●	●	●
Luxembourg	○	○	○	○	○	○	○	○	○	○	○	○
Mexico	●	●	●	●	●	●	○	●	●	●	●	○
Netherlands	○	○	○	○	○	○	○	○	○	○	○	○
New Zealand	●	●	○	○	●	○	○	○	○	○	●	●
Norway	○	○	○	○	○	○	○	○	○	○	○	○
Poland	○	●	○	○	○	○	●	○	○	●	○	●
Portugal	●	○	●	○	●	○	○	●	●	●	○	○
Slovak Republic	●	○	○	●	○	○	○	○	○	●	○	●
Slovenia	●	●	●	●	○	○	●	●	●	●	●	●
Spain	●	●	●	○	●	○	○	○	●	●	○	○
Sweden	○	○	○	○	○	○	○	○	○	○	○	○
Switzerland	○	○	○	○	○	○	○	○	○	○	○	○
Turkey	●	●	●	○	○	●	○	●	○	●	●	●
United Kingdom	○	○	○	○	○	○	○	○	○	○	●	●
United States	○	○	○	○	○	○	○	●	●	●	●	●
● Required to be proactively published by the FOI law	17	17	12	8	11	5	6	11	12	19	16	16
○ Not required by the FOI law, but routinely published	13	10	11	10	5	4	15	11	10	11	7	12
○ Neither required nor routinely published	2	5	9	14	16	23	11	10	10	2	9	4

Notes: Data are not available for Germany and Greece. Brazil and Luxembourg are currently drafting laws on access to information. Some categories of information are required to be disclosed by laws other than freedom of information. Austria: Freedom of information procedures are required to be published by the General Law for Administrative Procedures (Allgemeines Verwaltungsverfahrensgesetz, AVG). Chile, Estonia and Israel publish information on the salaries of all public servants, whereas Hungary, Italy, Mexico, the Netherlands, Turkey and the United Kingdom publish salary information for some public servants, such as managers who earn at the top of salary scales.

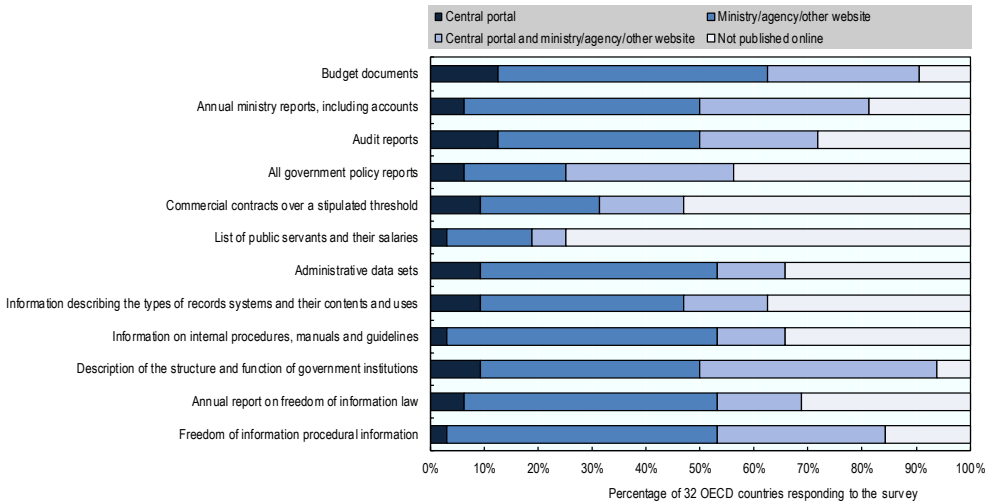
Source: OECD (2011b), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

The list of information that must be proactively published by Kazakh authorities is extensive. According to the law, the following information must be published on each public body's website:

- general information about activities, including organisational structure, official news, official calendars of forthcoming activities, texts of official speeches, reports and presentations about the work done
- a list of departments within the organisational structure of an information holder and its subordinate organisations, their tasks and functions
- a list of territorial bodies, their tasks and functions, as well as data about their heads
- normative legal acts regulating the competence, responsibilities, tasks and functions of an information holder
- statistical information
- analytical reports and surveys
- information about public procurement procedures
- information on budgetary funds.

The law specifies that each public body must create a website that is connected to the unified platform of state bodies. In 81% of OECD countries, proactive information is published either in a single location such as a central portal or on each ministry's or institution's website or both (Figure 3.2). Providing the location where the information will be available is important to guide citizens in their search for information. In addition, how the information is published is equally important, as information must be timely, up to date, reliable, easy to understand and reusable. Kazakhstan has recently developed a series of regulations providing how information must be published; however, this is focused on advanced machine-readable formats to facilitate data analysis, reuse and mashing-up by more advanced users. It is important to bear in mind that proprietary formats such as XLS and basic formats such as CSV files enable less advanced data users to understand and reuse the data. The majority of OECD countries have established provisions in laws or policies requiring electronic information to be published in formats that allow for the reuse and manipulation of the information (e.g. open formats). Countries like Australia, New Zealand, the United Kingdom and the United States are providing access to public data in a reusable format through a central website (e.g. data.gov) (OECD, 2011b).

Figure 3.2. Location of information proactively disclosed by the central government across OECD countries



Notes: Data are not available for Germany and Greece.

Source: OECD (2011b), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

Procedure to request information

Ease of filing requests

The right to information depends largely on the degree of accessibility of the information; that is, the ease of filing requests and the individual protection granted to those requesting information. Narrow eligibility conditions to file a request, long response times, or unjustifiably and incoherent high fees among institutions are factors that can limit or undermine the right to know.

As for 71% of OECD countries (OECD, 2011a), the law in Kazakhstan does not provide legal restrictions concerning the status of applicants. In addition, the request can be done in writing or verbally, electronically, by phone or by any other similar means. However, the law does not provide where the information can be requested, if done through a central portal, hotline or directly to the entity. For instance, to homogenise the request for information on line, Kazakhstan could develop a common request form to be used by all entities.

The law on the “Procedure for Consideration of the Requests of the Individuals and Legal Entities” provides detailed information on the required content of the requests. According to the law, the request must include the following information:

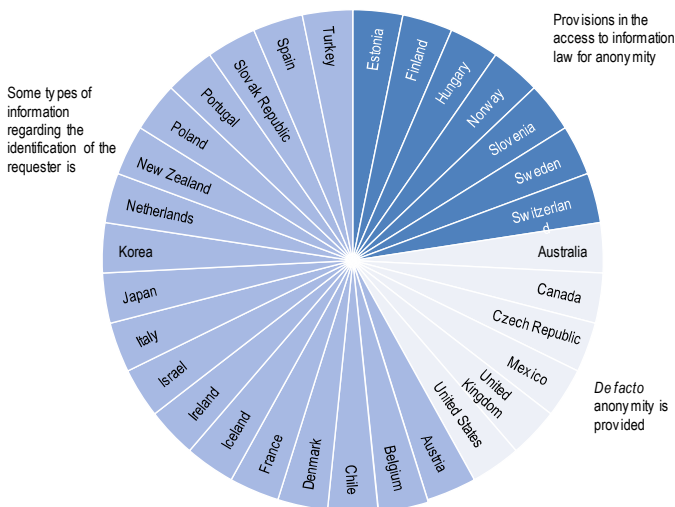
- Last name, name, patronymic (not mandatory), the ID number, postal address, and if applying on behalf of a legal entity, the full name of the legal entity, postal address, business identification number. The request is to be signed by the individual or the authorised representative of the legal entity.
- In case of complaint, it is necessary to indicate the government body or the title, name and initials of the official, whose actions formed the basis for the complaint, motives of the complaint, and the requirements.
- Upon receiving the request, the government agency is obliged to provide the confirmation indicating the date, time, and name of the person who has received the request.
- The request can be done via video-conference or just video in the order prescribed by the Ministry of Information and Communications.

If all of the information requested is not provided, the request for information is not processed. This means that the procedure does not permit anonymous information requests, “Written requests made according to the order established by this law, except for anonymous requests, must be accepted, registered, accounted for and considered in a mandatory way.” The only exception are the anonymous requests containing the warnings against committed crimes or the crimes under preparation, threats to the state or public safety (Article 5 of the law on the “Procedure for Consideration of the Requests of the Individuals and Legal Entities”).

Article 4.2 of the Council of Europe’s Convention on Access to Official Documents provides that “member states may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request” (OECD, 2010). Yet, in this regard, few OECD countries have enacted strong provisions to protect the privacy and integrity of parties and individuals requesting information. For instance, access to information laws in seven countries contain a provision that provides anonymity for requestors. In Finland, the person requesting information does not need to identify himself/herself nor provide reasons for the request, unless this is necessary for the exercise of the authority’s discretion or for determining if the person requesting information has the right of access to the document. Other countries, such as Australia, the Czech Republic,

Ireland, Mexico, the United Kingdom and the United States provide *de facto* anonymity because they do not require applicants to provide proof of identity. In Canada, the identity of the applicant is protected by federal law (Figure 3.3). Kazakhstan could consider granting the possibility of filing anonymous requests and to protect the privacy and integrity of parties and individuals requesting information, thus positioning itself ahead of most OECD countries.

Figure 3.3. **Individual protection granted to those requesting information across OECD countries, 2010**



Source: Based on OECD (2011b), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

The regulatory provisions concerning the requests are complicated and contradictory. For example, according to the law on the “Procedure for Consideration of the Requests of the Individuals and Legal Entities” (Article 6), a request must be addressed to the official (entity) having responsibility for the decision making on the issues in question. At the same time, the Access to Information Law provides that the written request addressed to the body not having the competence for the providing the requested information, within three days has to be readdressed to the body having the information with simultaneous notification of the author of the request.

This legal contradiction can create confusion and be used for denial of the wrongly addressed requests. It is advisable to eliminate the duplicative, contradictory provisions in the legislation.

Furthermore, the timeframe to provide information is key. Information needs to be provided within a reasonable period of time. OECD good practice shows that almost all countries have established standards for timely responses to requests for information in their laws or in related legal documents, usually within 20 working days or less. It is, for instance, 5 days in Estonia; 10 days in Portugal; 15 days in the Czech Republic, Finland and Poland; and 20 days in Slovenia and the United Kingdom (OECD, 2010). Kazakh law provides that “response to a written request should be given within 15 days from the moment it was received by an information holder.” In case the “the requested information is within the competence of several information holders and in order to give a response it’s necessary to receive information from other information holders, the period of time for consideration can be once extended for another 15 days by the head of an information holder. An information user should be informed about it within three working days from the moment of extension.”

When the access to information request is refused, it is important that the requester receive the reason and legal provision of the refusal as well as about the possibility to appeal the decision. The law provides that access to information is denied:

- if the content of a request does not allow it to be determined which information is being requested
- if a request does not comply with the requirements of the law
- if requested information is considered to be information with limited access
- if a request contains questions of legal evaluation of acts adopted by an information holder, analysis of activities of an information holder or its subordinate bodies and organizations, or conducting any other type of analytical work before its completion
- before a decision is made on the results of check-ups, conducted in the framework of the state control and supervision
- before a final decision is taken on the basis of interdepartmental and interagency correspondence or on the basis of discussions held in state bodies

- before reaching a mutual agreement about conditions of releasing documents received from foreign states or international organizations.” (Law on Access to Information, Articles 11-16)

The law on the “Procedure for Consideration of the Requests of the Individuals and Legal Entities” states that individuals and legal entities have the right to respond to the decision taken in written or oral form. The answer should be reasonable and motivated, be provided in the official language or the language of the request, contain the reference(s) to the legislation of the Republic of Kazakhstan, specific facts confirming or denying the arguments of the request, and clarification on the possibility for appealing on the decision taken (Articles 10 and 14).

According to the Access to Information Law, in the case of written requests submitted, except for anonymous requests, it is compulsory to admit them, register, count and review. The answer to written inquiry must be given within 15 days from the date of receipt by the information holder.

Fees

According to the Common European legal standards it is generally admitted that administrative authorities may charge a reasonable fee for a request. A distinction should be made between access to documents that are already available and access to information that involves research, elaboration or processing on the part of the administration. In this regard, all OECD countries with the exception of Iceland and Poland apply fees at one or more stages of the information request process, most often to cover the cost of reproduction. In about half of OECD countries, fees are also related to the cost of sending the documents, although several countries (such as Australia and Finland) waive these fees if the information is sent electronically. Most fees are variable, meaning that they depend on the number of pages to be reproduced or the amount of time to process the request (for example). When a variable fee can be charged, a cap on the size of this fee is applied only in a limited number of countries (Austria, Finland, France, Italy, Norway and Portugal) (OECD, 2011a).

According to the law in Kazakhstan, the request for information is free of charge but fees apply for the cost of reproduction.

Exceptions

Although access to information legislation provides the right to access all public information, all access to information legislation identifies a list of exemptions to this right, which means in layman’s terms that by law some institutions are permitted to withhold certain types of information. It is

common for countries to establish a series of exceptions that are clearly defined in the law (Table 3.4). Article 5 of the Kazakh Access to Information Law provides that “Right for access to information may be limited only by law, and only to the extent as necessary in order to protect constitutional and public order, human rights and freedoms, health and human morals.” While it is not clear what is considered limited or for official use in this law, Kazakhstan does provide a complete list of information attributed to state secrets (Law of 15 March 1999 on State Secrets). However, Kazakhstan could clearly specify the exceptions for denying access to certain information in its law. Furthermore, policies or guidelines for the classification and declassification of information need to be developed to guide the public official during her/his interpretation to decide what information can or cannot be provided.

Table 3.4. Most common exceptions in freedom of information laws across OECD countries, 2010

	Class test							Harm test				
	National security	International relations	Personal data	Commercial confidentiality	Law enforcement and public order information received in confidence	Internal discussions	Health and safety	Harm to persons	Harm to international relations, or to defence of state	Harm to commercial competitiveness	Harm to the economic interests of the state	Harm to law enforcement agencies
Australia	○	○	○	○	○	○	○	○	○	○	○	○
Austria	●	●	●	●	○	○	●	●	●	○	●	○
Belgium	●	○	○	○	○	○	○	●	●	●	●	○
Canada	○	○	●	●	○	○	○	○	○	●	○	○
Chile	○	○	○	○	○	○	○	○	○	○	○	○
Czech Republic	●	○	●	●	●	○	○	●	●	●	●	●
Denmark	○	○	○	○	○	○	○	○	○	○	○	○
Estonia	●	●	●	●	●	○	●	●	●	●	○	●
Finland	○	○	○	○	○	○	○	○	○	○	○	○
France	○	○	○	○	○	○	○	○	○	○	○	○
Hungary	●	●	●	○	●	○	○	○	○	○	○	○
Iceland	●	●	●	●	○	○	○	●	●	●	●	○
Ireland	●	●	●	○	●	○	●	●	●	●	○	●
Israel	●	●	●	○	○	○	○	●	●	○	○	○
Italy	●	●	○	○	●	○	●	○	●	○	●	●
Japan	○	○	○	○	○	○	○	●	●	●	●	●
Korea	○	○	○	○	○	○	○	○	○	○	○	○

	Class test							Harm test				
	National security	International relations	Personal data	Commercial confidentiality	Law enforcement and public order information received in confidence	Internal discussions	Health and safety	Harm to persons	Harm to international relations, or to defence of state	Harm to commercial competitiveness	Harm to the economic interests of the state	Harm to law enforcement agencies
Mexico	○	○	●	○	○	○	○	●	●	○	●	○
Netherlands	●	○	●	●	○	○	○	○	○	○	○	○
New Zealand	○	○	○	○	○	○	○	○	○	○	○	○
Norway	○	○	●	●	○	○	○	○	○	●	○	○
Poland	○	○	○	○	○	●	○	○	○	○	○	○
Portugal	●	●	●	●	●	○	●	●	●	●	○	○
Slovak Republic	●	●	○	●	○	○	○	○	○	○	○	○
Slovenia	○	○	○	○	○	○	○	○	○	○	○	○
Spain	●	○	○	●	●	○	○	○	○	○	○	○
Sweden	○	○	○	○	○	●	○	●	●	●	●	●
Switzerland	●	●	●	●	●	●	●	●	●	●	●	●
Turkey	●	○	●	●	○	○	○	●	●	●	●	○
United Kingdom	○	○	○	○	○	○	○	○	○	○	○	○
United States	○	○	○	○	○	○	○	○	○	○	○	○
							□					□
Russian Federation	●	●	●	●	●	○	●	●	●	●	●	●
Ukraine	○	○	○	○	●	○	●	○	○	○	○	○
Total OECD 31							□					□
● Mandatory	15	10	14	12	8	3	6	13	14	12	10	7
○ Discretionary	15	18	13	16	18	20	15	16	15	16	15	17
○ Not applicable	1	3	4	3	5	8	10	2	2	3	6	7

Source: OECD (2011b), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

Information officer

To ensure the proper implementation of the Access to Information Law, public entities must have at their disposal the proper financial and human resources, as well as the necessary equipment to carry out this task. Some access to information laws provide for the appointment of specialised officers. It can be worthwhile to establish background and experience profiles for public officials responsible for access to information in order to improve the quality of service and access to information. In addition,

specialised officers should be continuously trained and their capacities strengthened on a regular basis to reflect the challenges of dealing with requests for access to information.

In addition to the roles and responsibilities of the public official designated as information officer, the law should clearly state the sanctions for impeding access to information. Kazakhstan could clearly provide in the law that each public body designates a group of public officials in charge of receiving and resolving access to information requests or make reference to the specific laws and articles where this is stated.

Furthermore, access can be impeded by the destruction, falsification or alteration of information or by delaying arbitrarily the disclosure of information. In most countries, there are civil penalties for this administrative offense, although increasingly countries are providing for some kind of criminal penalties. Article 20 in Kazakhstan's law provides that "[v]iolation of the legislation of the Republic of Kazakhstan on access to information results in responsibility established by laws of the Republic of Kazakhstan." In addition, Article 456-1 of the Code of Administrative Offences provides for administrative penalties for officials, small businesses and non-profit organisations for unlawful restriction of the right of access to information. However, good practices from OECD countries show that comprehensive access to information laws should also specify to whom such a violation (Article 20) is applied and what sanctions are provided for the offender. In addition, it is recommended to look in more detail at the different types of violations and possible sanctions and penalties. In sum, Kazakhstan could better specify the different types of violation and the sanctions allocated to them in its Access to Information Law or make the references in the text of the applicable laws and articles very specific.

Appeals

When information is denied, most commonly there is the possibility to appeal the decision. Three approaches can be normally found (World Bank, 2009):

- Individuals are given a right to make an "administrative appeal" to another official within the institution to which the request was made. If the administrative appeal fails, individuals may appeal to a court or tribunal, which may order the disclosure of the information.
- Individuals are given a right of appeal to an independent ombudsman or information commissioner, who makes a recommendation about disclosure. If the institution ignores the recommendation, an appeal to a court is permitted.

- Individuals are given the right of appeal to an information commissioner who has the power to order the disclosure of the information. No further appeal is provided for in the Access to Information Law, although the commissioner’s actions remain subject to judicial review for reasonableness.

Article 18 of the Kazakh law provides that “Appealing unlawful limitation of the right for access to information:

- Unlawful limitation of the right for access to information may be appealed to a higher state body (a higher rank official) or to a court.
- An appeal of actions (inactions) of state officials and also state bodies’ decisions is to be addressed to a higher rank official or a body or a court no later than three months from the day when a person learnt that an action was done or decision taken by a relevant state official or body.”

In accordance with OECD country practices, Kazakhstan may consider including a fuller description of the procedure for appealing a decision and specify which courts will handle the procedure. In some countries, the entity in charge of monitoring and overseeing the implementation of the Access to Information Law is in charge of managing the appeals.

At a global level, there are four main types of oversight bodies for access to information laws, with some assigning the role to existing entities and others having established a specialised entity.

- Creation of specialised entities:
 - information commissioner (Hungary, Scotland, Serbia, Slovenia, United Kingdom)
 - commission/institute (France, Mexico, Portugal).
- Assignment of responsibility to an existing organisation:
 - ombudsman given oversight upon the right (Bosnia and Herzegovina, New Zealand, Norway, Sweden)
 - other body given oversight upon the right (South Africa, Turkey) (Box 3.2).

Box 3.2. Information commissioners and other oversight bodies and mechanisms

The global trend tends towards one of the first approaches, that is, the establishment of either information commissioners or information commissions (indeed, there is very little difference between the two; essentially it is a question of whether one or more individuals are charged with the role of commissioner, but apart from that the functions of these offices remain the same).

Typical powers and functions

There are a number of functions which are common to the information commissioners surveyed and to other information commissioners. These include:

- receiving and reviewing complaints from requestors
- reviewing contested information
- consulting on matters of public interest
- conducting on-site inspections
- ordering the release of information (binding)
- monitoring compliance with the law, including proactive disclosure
- training public officials
- guiding public authorities on interpreting and implementing the law
- raising awareness among the public and giving advice
- recommending how to strengthen access through existing and proposed legislation.

Other powers

Other powers that information commissioners and information commissioners possess include:

- submitting *amicus curiae* briefs and appearing as an expert in other court processes
- exercising free rein in co-ordinating with other state bodies to ensure that administrative procedures and structures maximise compliance with the right to information
- engaging in international co-operation to remain up to date on the latest global developments in the law and practice of the right to information.

Source: OECD (2016b), *Open Government in Costa Rica*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264265424-en>.

Article 19 of Kazakhstan’s Access to Information Law provides that “in order to account for and defend public interests in the field of access to information, and also in order to satisfy the demands of information users, a consultative-advisory body or commission on issues of access to information is formed within the structure of a designated body, determined by the Government of the Republic of Kazakhstan.” The commission was established on 31 December 2015 as an advisory body under the Ministry of Information and Communications. It is composed of more than 40 members, including the Minister of Information and Communications (who acts as the chair of the commission), members of other ministries, members of the Parliament (both chambers), representatives of state bodies and other organisations such as the National Chamber of Entrepreneurs or the Legal Policy Research Center. The main objectives of the commission are:

- developing proposals on access to information
- considering proposals and summarising the implementation of Kazakhstan’s legislation related to access to information, excluding information with limited access
- developing recommendations for better implementing legislation related to access to information, excluding that which has restricted access.

According to the Resolution on Approval of the Procedure of the Commission on Access to Information (Resolution No. 1 175 of 31 December 2015), the commission shall meet as necessary, but not more often than once every six months, and its decisions are advisory in nature. Although it is a positive step to monitor the implementation of the law and provide solutions to reduce the gap between the law and practice, OECD experience suggests that to promote the effective implementation of the Access to Information Law, the commission should have a legal personality and operative, budgetary and decision-making autonomy and shall report to the legislature. It can be comprised of three or more commissioners, reflecting a diversity of skills and backgrounds. Specific duties and powers for the information commission need to be set, such as:

- review any information held by a public authority, including on site
- *sua sponte* authorisation to monitor, investigate and enforce compliance with the law
- issue recommendations to public authorities.

This was also already advised by the OSCE:

“...it is once more recommended to introduce an independent Information Commissioner into the draft Law. Such an Information Commissioner should be an independent administrative body accountable only to the Parliament, but otherwise not attached to any government or executive body. He/she should be able to examine appeals against administrative decisions on non-disclosure, and should thus have access to all information materials and documents relevant to the case in order to take an informed decision on the matter. The decisions of the Information Commissioner should be binding on all administrative bodies, and at the same time appealable to the competent courts. Next to his/her role as an appeals body, the Information Commissioner could supervise the implementation of the draft Law in general, and conduct awareness-raising activities in this respect. The Commissioner would be obliged to produce an annual report which would include, inter alia, statistical information on requests and appeals received. Such annual reports would be useful tools to identify remaining constraints to the free flow of information and measures for improvement.” (OSCE, 2015b)

Kazakhstan may follow the approach that best suits its own institutional framework for the establishment of mechanisms to promote the effective implementation of the ATI, but OECD practice suggests that to promote the effective implementation of the ATI, the entity in charge should have legal personality and operative, budgetary and decision-making autonomy and shall report to the legislature. It could follow the examples of Chile, Mexico or the United States, as described in Box 3.3.

Box 3.3. Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States

Chile

The Council for Transparency is an autonomous public body with its own legal personality, created by the Law on Transparency of Public Service and Access to Information of the State’s Administration. Its main task is to ensure proper enforcement of the law, which was enacted on 20 August 2008 and became effective on 20 April 2009.

The boards’ direction falls under four designated counsellors appointed by the president, with the agreement of the Senate and adopted by two-thirds of its members. The board is entrusted with the management and administration of the Council for Transparency. Counsellors serve six years in office, may be appointed only for one additional period and may be removed by the Supreme Court at the request of the president or the Chamber of Deputies.

Box 3.3. Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States (*continued*)

The council has the main following functions:

- monitor compliance with the provisions of the Law on Transparency and apply sanctions in case of infringement
- solve challenges for denial of access to information
- promote transparency in the public service by advertising information from the state administration bodies
- issue general instructions for the enforcement of legislation on transparency and access to information by the bodies of the state administration, and require them to adjust their procedures and systems to such legislation
- make recommendations to the bodies of the state administration aimed at improving the transparency of its management and to facilitate access to the information they possess
- propose to the president and to the Congress, where appropriate, rules, instructions and other regulatory improvements to ensure transparency and access to information
- train directly or through third parties, public officials in matters of transparency and access to information
- carry out statistics and reports on transparency and access to information of the organs of the state administration and compliance of this law.

Mexico

The National Institute on Transparency, Access to Information and Protection of Personal Data was established by the Federal Law on Transparency and Access to Public Governmental Information in 2002. The institute is composed of a commissioner president and six commissioners, who are appointed by the federal executive for six years, without the possibility of renewal. As laid down in the law, the institute shall be fully independent and report annually to the Congress. Its threefold mandate can be summarised as guaranteeing the access of governmental information to the public, fostering accountability and defending the right to privacy. In addition, the institute aims to:

- assist in the organisation of the national archives
- promote a culture of transparency in public expenditures
- promote accountability within the government to raise trust among its citizens
- contribute to the processes of analysis, deliberation, design and issuance of judicial norms of relevance to the archives and personal data

Box 3.3. Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States (continued)

- enhance the legislative processes targeted to improve and strengthen the normative and institutional framework for transparency and access to public information.

United States

In the United States, the Office of Government Information Services, known as “the federal FOIA (Freedom of Information Act) ombudsman”, was created within the National Archives and Records Administration. The Office of Government Information Services was created when the OPEN Government Act of 2007 amended the Freedom of Information Act. It is responsible for:

- Mediating disputes: Offer mediation services to resolve disputes between persons making access to information requests and agencies (non-exclusive alternative to litigation). May issue advisory opinions if mediation has not resolved the issue.
- Serving as ombudsman: Solicit and receive comments and questions from federal agencies and the public regarding the administration of the Freedom of Information Act to improve its processes and facilitate communication between agencies and those requesting information.
- In addition to these responsibilities, the Office of Government Information Services also provides dispute resolution training for the FOIA staff of federal agencies, works closely with key stakeholders like the requester, community and open government advocates, and more.

The National Archives and Records Administration is seen as an independent arbitrator distanced from the White House. According to its statute, it shall be an independent establishment in the executive branch of the government. It shall be administered under the supervision and direction of the archivist. The archivist of the United States shall be appointed by the president and with the advice and consent of the state. He/she shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the Office of Archivist. The archivist may be removed from office by the president. The president communicates the reasons for any such removal to each House of the Congress.

Source: OGIS (n.d.), “About OGIS”, webpage, <https://ogis.archives.gov/about-ogis.htm> (accessed 17 September 2016); INAI (n.d.), “Misión visión y objetivos, Instituto Nacional de Transparencia”, <http://inicio.inai.org.mx/SitePages/misionViosionObjetivos.aspx> (accessed 20 January 2017); Consejo para la Transparencia (n.d.), “Qué es el Consejo para la Transparencia?”, www.consejotransparencia.cl/que-es-el-cplt/consejo/2012-12-18/190048.html (accessed 20 January 2017); Biblioteca del Congreso Nacional de Chile/BCN (2008), “Sobre acceso a la información pública”, www.leychile.cl/Navegar?idNorma=276363.

Consultation must go beyond legislation

The second step towards increasing the level of citizen participation is consultation. In contrast to the initial step of the disclosure of public information, this second step constitutes a two-way relationship in which citizens and government representatives work together to improve policies in the country. OECD experience shows that consultation on laws and regulations improves the quality of rules and programmes, increases compliance, and reduces the enforcement costs for both governments and citizens subject to the rules. It also increases the information available to governments on which policy decisions can be based, making empirical information available for analytical purposes, and helps to assess the impacts and minimise costs of all parts involved (OECD, 2003). In order for consultation and citizen participation to be successful, OECD experience shows that the following five preconditions should be defined:

1. The selection process: who selects whom? Who should be invited to participate?
2. The legal framework, e.g. the use of soft law such as codes or guidelines can complement the robust legal norm, which specifies the consultation and public participation mechanisms.
3. The existence of civic culture, e.g. by ensuring youth participation.
4. The commitment of politicians and civil servants: to which an awareness-raising campaign among civil servants on the benefits and value added of consultation can contribute.
5. The strength of civil society organisations: obstacles to the effective engagement of civil society and its organisations include the abstract bureaucratic language used; citizen information centres and citizen advisory committees can provide to facilitate public consultation and participation (OECD, 2003).

In times of increasing political fatigue, consultation can, however, also contribute to growing citizen disenchantment, who demand better services in a shorter period of time. The consultation process should thus be carried out in a thorough, sound and timely manner in order to avoid the potentially negative impacts that consultation processes undeniably bear. Nevertheless, if carried out successfully, the process of making citizens' opinions heard offers a valuable chance to empower the population and showcase results based on prior inclusion of the population (OECD, 2003).

The OECD (2014a) review, *Kazakhstan: Review of the Central Administration*, found that ministries are mandated to publish their draft legislation on their websites and to provide updates each time the draft is

modified. However, they have no obligation to formally invite the public to provide feedback, to give it guidance and additional documentation, or to define a timeline for the consultation; nor do they have to respond to the comments they receive. There is also no online system for monitoring the movement of the draft law or regulation (e.g. in different stages of consideration, consultation or approval). In terms of internal consultation, the drafts of legal acts should be submitted for agreement to the relevant government organisations, which should prepare and provide their comments within 30 days, and within 10 working days in the case of legal acts introduced by the President. In case of diverging opinions among executive authorities, the lead ministry must organise a joint meeting with concerned stakeholders to resolve disagreements. The minutes of a joint meeting, including dissenting opinions and proposals for addressing the identified gaps, should accompany the draft documents throughout the approval stage. If agreement on a proposal is not reached, the government may decide to return the draft to the lead ministry for further development and agreement with the necessary stakeholders.

While these rules provide clear instructions and guidance, they tend to be somewhat formalistic and may encourage formal submission of comments instead of debate and resolution of substantive policy issues. During the OECD fact-finding mission for this review, stakeholders mentioned that ministries still do not have an obligation to formally invite the public to provide feedback, to give it guidance and additional documentation, or to define a timeline for the consultation; nor do they have to respond to the comments they receive.

In the majority of OECD countries, in the area of regulatory policy, feedback is made public, while consultation inputs are formally required to be considered in the development of final regulation and in the regulatory impact assessment in a majority of countries. This provides two important anchors for participation. First, it may help address a key barrier to engagement: a lack of confidence among stakeholders that their input will be used by policy makers, which discourages them from engaging. Second, it helps the government to fully capitalise on the value of participation and consultation exercises: the use of stakeholder input to inform, and hopefully improve, decisions (OECD, 2016a).

The government of Kazakhstan could consider the guidelines created by the OECD in terms of public consultation and OECD good practices in order to better channel its efforts to include citizens in drafting laws and regulations more efficiently. One example of such guidelines is presented in Box 3.4.

Box 3.4. Guidelines on Regulatory Consultation

Below is an extract of the Guidelines on Regulatory Consultation that focuses on evaluation methods when developing a monitoring mechanism:

- Is there a monitoring mechanism in place to evaluate the quality of the consultation process and outcomes of the consultation?
- Does the monitoring process include a tracking document that reports when/how stakeholders' comments are taken into account?
- Is there a mechanism in place that makes sure to adequately use the input received?
- Is feedback provided to the stakeholders?
- When issuing the final regulation, have policy makers indicated whether or not they agree with the comments received?
- Is the protection of confidential information and personal data received from stakeholders during consultation guaranteed?
- How many stakeholders have been reached?
- Have the tools and methods to reach out to stakeholders been appropriate?
- Was there an equal opportunity for all stakeholders to take part, and was the process easily understood by stakeholders?
- Was the timetable respected?
- How much time and resources have been spent; did the costs exceed the initial expectations?

Source: OECD (2012), “Regulatory consultation: A MENA-OECD practitioners’ guide for engaging stakeholders in the rule-making process”, OECD.

As illustrated in Box 3.5, the government of Belgium provides a concrete example of how citizens can be involved in the design, creation and formulation of legislation and regulations through advisory councils, roundtables and websites.

Box 3.5. Citizen consultation for laws and regulation

In Belgium, public consultations regarding particular policy proposals have become increasingly common. Both Flanders and Wallonia have launched initiatives to strengthen citizen participation.

The Flemish practice of policy making traditionally comprises a lot of consultation. The creation of new strategic advisory councils has further formalised this approach. These councils, which include academic experts, civil society stakeholder groups and private sector organisations, formulate advice on policy proposals and draft legislation. This is a transparent way to address their concerns regarding policy initiatives and proposals.

In Wallonia, relevant initiatives include roundtables with companies to discuss ways to cut red tape for business. Another notable initiative is the Ensemble Simplifions (“Let’s Simplify Together”) Plan, dedicated to cutting red tape across the board. The public was consulted in the design of the plan and during its implementation, particularly through a special website: www.ensemblesimplifions.be.

Source: OECD (2011a), *The Call for Innovative and Open Government: An Overview of Country Initiatives*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264107052-en>.

To motivate citizens to take part in consultation processes it is important to encourage them by showing them the impact that the process has produced. It is then important to carry out and publish reports on the performance of consultation practices on draft regulations. Such reports usually include quantitative information on the number of consultation procedures, the nature and number of comments received, and the length of consultation periods. The focus thus is on the process, rather than on the results or impact. Kazakhstan could develop an evaluation process to assess its consultation practices as done by the European Commission (Box 3.6).

Box 3.6. European Commission evaluation of its consultation practices

The 2012 review of the European Commission’s consultation policy is a comprehensive report describing and reviewing current consultation practices. It addresses issues such as the openness and reach of consultation and the use of input received during consultation. The review draws upon different sources. First, it contains an analysis of international standards, among them the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance. Second, an open consultation of external stakeholders was used to gather a wide range of opinions. Third, input from different Commission services was sought, including data on consultations and impact assessments carried out between January 2010 and August 2012.

The report provides indicators concerning the Commission’s consultation practices, for example on the type of consultation, consultation tools, languages and length, as well as the availability of consultation outputs and percentage of consultations with external parties in which the minimum consultation period was respected. The report also identifies measures that could be taken to enhance the quality of consultation, for example:

- adjusting the minimum standards
- improving planning, for example by publishing a rolling calendar of planned consultations on line
- improving follow-up and feedback, for example through developing alert systems to notify respondents at key stages throughout the policy-making cycle.

The European Commission’s consultation practices were further refined in the Better Regulation Guidelines and accompanying Better Regulation “Toolbox”, which were adopted by the European Commission in May 2015 as part of a “Better Regulation Package”. Reforms include new opportunities for the general public to participate in consultations on inception impact assessments for new regulatory initiatives with major impacts, on regulatory proposals after adoption by the European Commission, and on draft texts of delegated acts before adoption by the Commission. In addition, new methods of engaging stakeholders in the *ex post* evaluation of regulations were also introduced, including public consultations on roadmaps for evaluations and fitness checks, and a website collecting the public’s views on existing EU legislation and suggestions for burden reduction and regulatory improvements.

Source: OECD (2014b), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214453-en>; European Commission (2015), “Better regulation for better results: An EU agenda”, http://ec.europa.eu/smart-regulation/better-regulation/documents/com_2015_215_en.pdf.

The OECD (2014a) review, *Kazakhstan: Review of the Central Administration*, also found that, “it requires pro-active targeting of various groups of population and stakeholders, explicit call for comments, clear timelines, consultation periods and guidance, which is currently missing in Kazakhstan” (OECD, 2014a). In addition, *Regulatory Policy in Kazakhstan: Towards Improved Implementation* (OECD, 2014c) concludes that the consultation processes of ministries with advisory councils should be enhanced. The current approach under which NGOs are required to periodically reapply to keep their status and membership in the ministries’ council could moreover potentially undermine their ability to openly voice their concerns. Kazakhstan has taken further steps in advancing its consultation process through the creation of public councils, which will be discussed in the next section.

Citizen participation

Active participation recognises the capacity of citizens to discuss and generate policy options together with the government. It requires governments to share the agenda setting and their commitment that policy proposals generated jointly will be taken into account when reaching a final decision. Last but not least, it requires citizens to accept the higher degree of responsibility for their role in policy making that accompanies their greater rights of participation (OECD, 2003) (see Box 3.7).

Box 3.7. Understanding key factors in citizen participation

Citizen participation can take a wide variety of forms depending on the presence and extent of many key features:

Size. The size of a process can range from a few participants to hundreds or thousands, and online processes potentially involve millions.

Purpose. Processes are used for many reasons: to explore an issue and generate understanding, to resolve disagreements, to foster collaborative action or to help take decisions, among others.

Goals. Objectives can include informing participants, generating ideas, collecting data, gathering feedback, identifying problems or taking decisions, among others.

Participants. Some processes involve only expert administrators or professional or lay stakeholders, while others involve selected or diffuse members of the public.

Box 3.7. Understanding key factors in citizen participation

(continued)

Participant recruitment. Processes may use self-selection, random selection, targeted recruitment and incentives to bring people to the table.

Communication mode. Processes may use one-way, two-way and/or deliberative communication.

Participation mechanisms. Processes may occur face to face, on line and/or remotely.

Named methodology. Some processes have official names and may even be trademarked; others do not employ named methodologies.

Locus of action. Some processes are conducted with intended actions or outcomes at the organisational or network level, whereas others seek actions and outcomes at the neighbourhood or community level, the municipal level, the state level, the national level or even the international level.

Connection to policy process. Some processes are designed with explicit connections to policy and decision makers (at any of the loci listed above), while others have little or no connection to policy and decision makers, instead seeking to invoke individual or group action or change.

Source: Nabatchi, T. (2012), “A manager’s guide to evaluating citizen participation”, www.businessofgovernment.org/sites/default/files/A%20Managers%20Guide%20to%20Evaluating%20Citizen%20Participation.pdf.

Countries are increasingly exploring news ways to actively engage citizens in policy making through various mechanisms, such as participatory budgets, public hearings or public councils.

Public councils

Public councils have been largely used by transition or developing countries such as former Soviet countries, sub-Saharan countries, south Asia countries and Latin America as a mechanism for government-citizen co-operation. Generally, public councils gather different sectors of civil society, such as academics, civil or community-based organisations and the private sector, and local political authorities in a single body. They contribute to the development and implementation of public policies or programmes at the local level. All stakeholders share a common goal of strengthening democracy and the quality and responsiveness of public policies at the local level.

The existence of a legal framework mandating the creation of public councils is fundamental for developing and strengthening government-citizen co-operation. In this sense, Kazakhstan has achieved an important step with the passage of the Law on Public Councils in December 2015. Public councils were a priority for the government of Kazakhstan as they were stated in Step 99, “Strengthening the role of public councils under state agencies and *Akims* [heads of a local government in Kazakhstan and Kyrgyzstan]. They will discuss the implementation of strategic plans and regional development programs, as well as budgets, reports, achieving stated objectives, draft legal acts concerning the rights and freedoms of citizens and draft program documents. Legally establishing these public councils will enhance the transparency of state decision making.”

According to the Law on Public Councils, public councils are “advisory and supervisory entities established by ministries, central executive bodies not part of the Government of the Republic of Kazakhstan, bodies immediately subordinate and accountable to the President of the Republic of Kazakhstan, as well as local governance bodies.”⁴ The public council is meant to voice the opinion of civil society and represent its interest. According to the law, public council recommendations are obligatory for consideration of state bodies that take decisions pursuant to the legislation of Kazakhstan and issue substantiated responses.

The law also states that public councils are supposed to:

- discuss draft budget programmes, draft strategic plans or regional development programmes, draft state and governmental programmes
- discuss budget programme performance, strategic plans or regional development programmes, state and governmental programmes
- discuss executive bodies’ reports on progress against target indicators
- discuss reports of the budget programme administrator in regard to the implementation of budget programmes, implementation of revenue and expenditure plans in connection with the selling of goods (works, services), on the revenue and expenditure in connection with charity
- participate in the development and discussion of draft regulatory legal acts regarding the rights, liberties and duties of citizens
- consider appeals lodged by natural and legal persons regarding the improvement of public administration and ensure the transparency of the state machinery operations, including the observance of the regulations of service ethics

- develop and lodge with state bodies proposals on the improvement of the legislation
- arrange public control in other forms as prescribed by this law
- discuss draft public council provision on its first meeting and its submission to the state body for approval
- establish commissions for individual fields of activities.

Public councils are composed of two-thirds civil society and one-third public officials. This mixed composition of actors that are both internal and external to the administration is in line with most OECD countries related to consultative and participative functions of the councils, as well as for the identification of the needs and design of public policies and services. However, Kazakhstan's system assigns public councils a control role over the public administration. Control bodies or institutions are usually either independent from the entity that they are supposed to control or solely composed of members of the entity (e.g. an internal control unit). The validity of Kazakhstan's hybrid system is to be monitored in order to ensure that the councils can effectively perform their role of control, as foreseen by the law.

Furthermore, the law provides that public councils are autonomous and independent (Article 4), but the fact that one-third of its members are public officials and that the composition of the working group that will select the civil society representatives "shall be approved by the decision of the head of the state body" (Article 8) and that the "complete composition of a public council shall be approved by the decision of the state body or the decision of a local executive body" (Article 9) seems to undermine this.

Moreover, the law fails to standardise the way public councils are formed and perform their duties. In fact, each entity's working group can decide the provisions of each public council, which include, among others, the terms and procedure for the arrangement of public council meetings and for the decision-making process (Article 13), the procedure for the selection of the civil society members of the public council, timeframe of the selection, list of documents, powers, etc. Kazakhstan could develop specific guidelines to cover all the relevant procedures pertaining to the functioning of public councils in order to reduce the level of discretion of each entity.

Participatory budgeting

As one specific aspect of public councils is participation in budget decisions, it is important to look into more detail at the practice of participatory budgeting or citizen budget as a way to involve citizens in

decision making. Participatory budgeting or citizen budget is increasingly used in OECD countries to enhance citizen participation, fiscal openness, accountability and efficiency (OECD, 2015c). While the allocation of financial resources from the state to the different areas and scales of power has traditionally been a top-down process, governments increasingly recognise that innovative budgetary approaches are needed to meet the increasing demands from citizens for better quality services. The participatory budgeting approach grants citizens the chance to make their voices heard in the formulation of state expenditures in their communities. In 1989, the Brazilian city of Porto Alegre developed a new model of democratic participation, which has become known internationally as “participatory budgeting”. Through this process, community members directly decide how to spend part of a public budget. In layman’s terms, the people who pay taxes decide how those taxes are spent.

Respecting and incorporating the expressed desires and needs of citizens has the potential to regain trust in the state institutions at the national and subnational level. Through online platforms, town hall meetings or other public events, local authorities can manage and allocate their funds in a more needs-tailored manner. Especially in times of ever-tighter budgets of municipalities and regions, participatory budgeting could constitute an approach of upholding and enhancing high-quality services for the benefit of all citizens.

Participatory budgeting has been implemented at the local level in different municipalities in OECD member and partner countries. The city of Paris, among others, (Box 3.8) offers citizens easy-to-use access to information as well as different possibilities to engage. Citizens are encouraged to submit project proposals, whose feasibility is examined by the city. Subsequently, citizens can vote on these projects to inform a decision on about 5% of the city’s investment budget (OECD, 2015c).

Box 3.8. Examples of participatory budgeting

The 2015 OECD Recommendation on Budgetary Governance explicitly calls on governments to “ensure that budget documents and data are open, transparent and accessible” and to “provide for an inclusive, participative and realistic debate on budgetary choices.”

Over recent years, the trend towards participative budgeting has extended internationally and has been taken up with success in a number of OECD countries. In practice, progress at national level has been limited to date, with more activities and innovations emerging at the level of cities and municipalities.

Porto Alegre, Brazil

Participative budgeting began more than a decade ago in Porto Alegre, the capital of the state of Rio Grande do Sul, one of the most populated cities in south Brazil. Participatory budgeting is a process through which citizens present their demands and priorities for civic improvement, and influence the budget allocations made by their municipalities through discussions and negotiations. Since 1989, budget allocations for public welfare works in Porto Alegre have been made only after the recommendations of public delegates and approval by the city council. Participatory budgeting has resulted in improved facilities for the people of Porto Alegre. The participative budget has proved that the democratic and transparent administration of resources is the only way to avoid corruption and mishandling of public funds. Despite certain technocratic opinions, the popular participation has provided efficient spending, effective where it has to be and with results in public works and actions of great importance for the population. Since its beginning, the projects decided by the participative budget represent investments over USD 700 million, mainly in urban infrastructure and in upgrading the quality level of the population.

Paris, France

Since 2014 the municipality of Paris gives its citizens the opportunity to decide on the use of 5% of its investment budget, which amounts to EUR 0.5 billion in 2014-20. The aim is to involve citizens in municipal politics to promote social cohesion and to learn their preferences. It builds on the principles of open government and promotes a stronger relation between citizens, their representatives and the public institutions. In the 2015 edition of the *budget participatif*, participation was deepened by providing citizens with the opportunity to propose projects that would then be voted on (Mairie de Paris, n.d.). The project tries to harness creative ideas of Parisians, and the process is as follows: 1) Parisians propose their ideas for investment projects on a website; 2) the municipality evaluates the feasibility of the proposals; and 3) project proposals are submitted to vote by Parisians.

Box 3.8. Examples of participatory budgeting (continued)

New York City

New York City is host to the largest participative budget in the United States in terms of participants and budget amount. First introduced in 4 council districts in 2011, the annual participative budget process now spans 24 council districts and lets residents directly decide how to spend USD 25 million in capital discretionary funds. It counts 18 000 participants each year.

Newcastle, United Kingdom

In 2008, Newcastle launched a participatory budget process in which 450 young people helped decide how to allocate the city's GBP 2.25 million Children's Fund. After months of preparation, youth aged 5-13 attended a participatory budget event at which they voted electronically for services targeted at young people. Their votes were incorporated into the fund's complex procurement process, weighted to count for 20% of the final spending decisions.

Toronto, Canada

Since 2001, Toronto's public housing authority has engaged tenants in allocating CAD 5-9 million of capital funding per year. Tenants identify local infrastructure priorities in building meetings, then budget delegates from each building meet to vote for which priorities receive funding.

Source: OECD (2015c), "Recommendation of the Council on Budgetary Governance", www.oecd.org/gov/budgeting/Recommendation-of-the-Council-on-Budgetary-Governance.pdf; OECD (2016d), *Integrity Framework for Public Investment*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264251762-en>; Participatory Budgeting Project (2006), "Examples of PB", webpage, www.participatorybudgeting.org/examples-of-pb/ (accessed 20 January 2017).

As expressed during President Nazarbayev's speech, in which he presented the major pillars for his fifth institutional reform, participatory budgeting was among the top priorities for the administration. However, as participatory budgeting is implemented in the framework of the decentralisation process of Kazakhstan, it is important to bear in mind the need to enhance the capacity of local authorities and local citizens to fully understand the potential of this activity and become active participants in its process. Kazakhstan could develop clear and simple procedures and guidelines for both public servants and citizens. It is important that this material also be accompanied by training to ensure full and successful implementation. The success and continuity of this type of activity rely on the positive perception that citizens have about the process and the results.

Kazakhstan could evaluate the process and communicate the results. It could also build a database with good practices and share it with the different levels of government.

Recommendations and proposals for action

Civil society in Kazakhstan has progressively become more diverse, visible, and robust since the fall of the Soviet Union. Kazakhstan recently passed an Access to Information Law that represents the necessary first step for citizen participation and the country has taken further steps in advancing its consultation process through the creation of public councils. However, to further enhance effective citizen participation in policy making and service delivery, the government may wish to consider the following recommendations.

To ensure proper implementation of its Access to Information Law:

- Throughout the Access to Information Law there are references to other laws or legislation of the Republic of Kazakhstan. Kazakhstan could make the references in the text of the laws and articles very specific.
- Kazakhstan could clearly specify the exceptions for denying access to certain information in the law. It could moreover establish clear criteria for determining which information is “for official use only” and include these criteria in the law.
- The government could develop the methodology for the classification and declassification of information, to guide public officials during their interpretation to decide what information can or cannot be provided. Kazakhstan may consider including a fuller description or could clarify the procedure to appeal a decision and precise the courts that will handle the procedure. Kazakhstan could provide in the law that each public body designate a group of public officials in charge of receiving and resolving access to information requests or make reference to the specific laws and articles where this is stated.
- Kazakhstan could better specify the different types of violations and the sanctions allocated to them in its Access to Information Law or make the references in the text of the applicable laws and articles very specific.
- Kazakhstan may follow the approach that best suits its own institutional framework for the establishment of mechanisms to promote the effective implementation of the ATI, but OECD

practice suggests that to promote the effective implementation of the ATI, the entity in charge should have legal personality and operative, budgetary and decision-making autonomy and shall report to the legislature.

To effectively engage with citizens:

- The government of Kazakhstan could consider the OECD Guidelines for Public Consultation and OECD good practices to better channel its efforts to include citizens in drafting laws and regulations more efficiently. The country could benefit in this regard from developing clear and simple procedures and guidelines for both public servants and citizens. It is important that this material be accompanied by regular training of local officials and citizens to ensure full and successful implementation. The success and continuity of this type of activity rely on the positive perception that citizens have about the process and the results. Kazakhstan could evaluate the process and communicate the results.
- Awareness-raising campaigns and dissemination programmes need to be carried out in a permanent manner to create active and knowledgeable public officials and citizens. Kazakhstan could also build a database with good practices and share it with the different levels of government. Also, Kazakhstan could develop an ad hoc strategy or general standards of public participation to help public servants conduct high-quality participation processes, like in the case of Austria.
- Kazakhstan could develop specific guidelines that will cover all the relevant procedures pertaining to the functioning of public councils in order to reduce the level of discretion of each entity in addition to the Law on Public Councils.

Notes

1. For the purposes of this chapter, effective participation can be understood as the interaction, formal or informal, between government and society (citizens and the private sector), at the initiative of either party, that is used to inform a specific policy outcome (whether the identification of policy priorities or the design, implementation, delivery and/or evaluation of government policies, services or actions) in a manner that represents a broad set of interests and concerns and avoids capture.
2. For further discussion and references, please see, among others, OECD (2015a; 2015b; 2015c; 2013, 2009).
3. The analysis of the law is based on an unofficial English translation provided by the Legal Policy Research Center (LPRC). The LPRC is a non-political, independent think tank established by a group of Kazakhstan lawyers in April 2008. It is based in Almaty and operates in the region of Central Asia. The LPRC conducts policy research, proposes alternative policy solutions, and provides resources and support to policy makers and researchers. Specifically, the LPRC evaluates programmes and pilot projects to inform policy debates and influence policy; promotes open, informed and inclusive dialogue in decision making; identifies and creates effective instruments of interaction with political and business elites aimed at promoting the rule of law and liberal values; promotes a holistic approach to the implementation of policy; and supports strengthening the role of the expert community in informing policy debates and influencing legal policy (Legal Policy Research Center, n.d.).
4. The analyses of the law are based on an unofficial English translation.

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Towards an Open Government in Kazakhstan

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The government of Kazakhstan has shown a strong commitment to enhancing transparency, accountability and participation in the policy-making process, and has taken important steps towards implementing open government. However, further efforts are need to ensure the success and long-term sustainability of Kazakhstan's open government reforms. This review provides an overview of the cultural, economic, historical and political context for open government reforms. It examines ongoing efforts, identifies the remaining challenges and assesses the measures put in place by Kazakhstan's authorities to address them in order to translate the reforms into tangible results. Finally, the report looks at the environment for effective citizen engagement and its potential to improve service delivery and policy making. It provides recommendations for concrete actions Kazakhstan can take to fully implement open government reforms.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264279384-en>.

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