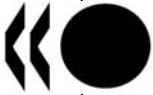


Unclassified

GOV/PGC(2004)18



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

11-Oct-2004

English - Or. English

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE**

GOV/PGC(2004)18
Unclassified

**DRAFT
PUBLIC SECTOR MODERNISATION: OPEN GOVERNMENT**

**30th Session of the Public Governance Committee
OECD Headquarters
28-29 October 2004**

This document is presented to the Committee for comment by written procedure. Please send any comments you may have to the Secretariat by 15 November 2004.

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JT00171309

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PUBLIC SECTOR MODERNISATION: OPEN GOVERNMENT

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	5
What is open government?	5
Who wants open government?	6
How is transparency achieved?	7
How to make government more accessible?	9
How to make government more responsive?	9
Who monitors open government?	10
What are the limits to open government?	11
What is the future of open government?	11

EXECUTIVE SUMMARY

An open government is now recognised to be both an essential ingredient for democratic governance, social stability and economic development. This paper looks at how OECD countries have responded to growing demands for greater openness, reviews concrete measures for achieving open government, examines the limits to openness and identifies future challenges.

What is “open” government? What exactly do we mean when we say that a government is “open”? While there are multiple meanings of the term, three dimensions appear to be most relevant when describing an “open government”, namely one which is: **transparent** or exposed to public scrutiny and challenge; **accessible** at any time, anywhere, by anyone; **responsive** to new ideas, demands and needs. As used here, “openness” both encompasses and goes beyond the more commonly used term of “transparency”. It introduces two further aspects, namely “accessibility” and “responsiveness”, in order to capture other qualities of the interface between government and the wider community it serves. While these three dimensions are closely interlinked, they remain distinct and may be present to differing degrees in practice.

Different contexts, different priorities. While all OECD countries have invested in greater government openness over the past three decades, their policy choices reflect different national priorities. Some countries privilege instruments that make government more open to public scrutiny (*i.e.* exposed) in the interest of fighting corruption (*e.g.* Korea, Mexico). Others focus on making government more user-friendly (*i.e.* accessible) in order to improve service delivery (*e.g.* Denmark) while yet others seek to enhance government interaction with external stakeholders (*i.e.* responsive) in order to foster better quality, and more inclusive, policy-making (*e.g.* Canada, Finland).

Who wants open government? In response to rising shareholder and public expectations, the standards of openness to which both private and public sector organisations are held have become far more demanding over the past 30 years – and this trend may be expected to continue in the future. Calls for greater government transparency and accountability have grown, as public and media scrutiny of government actions increases and standards in public life are codified and raised.

Key trends and challenges in building open government.

- **Transparency.** The scope, quantity and quality of government information provided to the public has increased significantly in the past 20 years and the provision of information is now an objective shared by all OECD member countries. The adoption of freedom of information (FOI) laws has gathered pace in the past two decades, and such laws are present today in 90% of OECD countries. Maintaining quality standards for government information (*i.e.* which is relevant, timely, complete and objective) given the ever-increasing quantity available online, constitutes a challenge for the future.
- **Accessibility.** Governments are more accessible and user-friendly today than they have ever been. Reducing physical, organisational and linguistic barriers; cutting through “red tape” and expanding online service delivery have all helped. The challenge will be to meet ever higher expectations from citizens and business for streamlined transactions, tailored services and ubiquitous access.

- **Responsiveness.** Public consultation for law and rule-making was once rare. Today, it is increasingly accepted as a valuable means of improving the quality of public policy while strengthening its legitimacy (*e.g.* through RIA, e-consultation). Further efforts to improve tools, mainstream procedures and integrate the results of public consultation in established decision-making processes will be needed if governments are to become more responsive and adaptive in the future.

What is the future of open government? Openness is just one of many cherished public values citizens would like to see from government. They also expect equity, efficiency, responsibility and due respect for individual privacy in the use of public power and resources. OECD countries face multiple challenges as they seek to: preserve government openness while ensuring national security and effective law enforcement; reconcile equity and openness; and ensure that standards for government openness are applied across the public-private interface.

Questions for Discussion

How has open government changed the behavior of public officials, elected or appointed, in your country?

How can governments be made open in a way that does not just further empower special interest groups?

How can government legislation be managed so that it is complied with in the spirit as well as the letter of the law?

INTRODUCTION

1. Governments are under increasing pressure to open up to public scrutiny, to be more accessible to the people who elected them and more responsive to their demands and needs. Indeed, an open government that meets all these requirements is increasingly recognised as an essential ingredient for democratic governance, social stability and economic development.

2. From the public's point of view, an open government is one where businesses, civil society organisations (CSOs) and citizens can “know things” – obtain relevant and understandable information; “get things” – obtain services from and undertake transactions with the government; and “create things” – take part in decision-making processes.

3. The principles of good governance – transparency and accountability; fairness and equity; efficiency and effectiveness; respect for the rule of law; and high standards of ethical behaviour – represent the basis upon which to build open government.

4. This Policy Brief looks at how OECD countries have responded to growing demands for greater openness, reviews concrete measures for achieving open government, examines the limits to openness and identifies future challenges.

What is open government?

5. Over the past two decades, all OECD countries have invested in building open government but what exactly does it mean? Basically it covers three main elements:

- *transparency*, in other words being exposed to public scrutiny;
- *accessibility* to anyone, anytime, anywhere; and
- *responsiveness* to new ideas and demands.

6. As used here, “openness” both encompasses and goes beyond the more commonly used term of “transparency”. It introduces two further aspects, namely “accessibility” and “responsiveness”, in order to capture other qualities of the interface between government and the wider community it serves.

7. The definition may be simple, but implementing it is a major challenge for OECD countries, because open government is not something that can simply be grafted on to existing systems; it requires a fundamental change within the government system. While building open government is now an objective shared by all OECD countries, their reasons for wanting open government, and their policy choices for achieving it vary considerably.

8. Some countries, such as Korea and Mexico, have focussed on making government more open to public scrutiny in the interest of fighting corruption and improving accountability. Others, such as Denmark, have concentrated on making government more user-friendly in order to improve service delivery, while Canada and Finland have been more interested in increasing government interaction with external stakeholders, such as civil society organisations (CSOs), to foster better quality, and more

inclusive, policy-making. Whatever the reasons behind them, all such measures may ultimately be regarded as contributing to the broader goal of strengthening public trust in government as a necessary precondition for effective public policy.

9. Governments in OECD countries have two main reasons for building open government. One is the fundamental desire to underpin the legitimacy and credibility of democracy as a form of government. The other is to achieve other important policy goals such as economic growth or social cohesion.

10. Open government strengthens democracy by enabling public scrutiny, by providing a bulwark against any accumulation of wealth or power in the hands of a few and by providing greater opportunities for public participation. Many government policies for greater openness explicitly acknowledge the contribution such measures make to enhancing democratic governance. Some countries have gone further still, recognising that more open government alone is not enough to strengthen good governance, and that achieving this goal also requires measures to boost civil society's capacity to take advantage of open government (*e.g.* Finland's Civil Participation Policy Programme, see: www.valtioneuvosto.fi).

11. In terms of the economic benefits of open government, comparative research by the World Bank has found that countries with high levels of transparency and effective parliamentary oversight showed a higher rate of economic growth than countries with lower standards.

12. The OECD's own work on public governance shows that greater openness has a positive impact on performance in several key areas of government operations, including: regulatory governance, budgeting and expenditure management, and public sector integrity. These policy lessons have been incorporated into a number of OECD recommendations and guidelines which cover all three dimensions of government openness.

13. But open government also carries potential dangers. Greater openness may allow those pursuing illegitimate goals, such as special interest groups or terrorist cells, to operate more freely by making it easier for them to obtain and misuse information, or undermine other important social values such as equity. An open market for government information may simply mean that those with more education or resources benefit disproportionately.

Who wants open government?

14. Increasingly well-educated, informed and critical citizens expect high quality services, streamlined administrative procedures and a government that takes their views and knowledge into account in public decision making. But their expectations are often not met. In a recent UK public opinion survey, 40% of those interviewed found local public services "bureaucratic" and only 5% regarded them as "open". The same survey revealed a demand for more information in areas such as why decisions are taken, how public money is spent and how to make a complaint. A similar picture holds in many other OECD countries.

15. The steady erosion of voter turnout in elections, falling membership in political parties and surveys showing declining confidence in key public institutions in the majority of OECD countries give scant grounds for complacency. In the 2004 Eurobarometer survey of public opinion in the 25 EU member states, 19 of which are also OECD member countries, two-thirds of the respondents said they tend *not* to trust national governments. Trust in government is a fundamental element of the democratic "contract" and its decline may have a significant impact on how people perceive, comply and interact with the public bodies that exercise power in their name.

16. The standards of openness to which both private and public sector organisations are held have become far more demanding over the past 30 years – and this trend may be expected to continue in the future. Calls for greater government transparency and accountability have grown, as public and media scrutiny of government actions increases. In many OECD countries, business associations have been among the most vocal supporters of government reforms introducing greater openness and in some cases have even become partners in their implementation (*e.g.* in running one-stop shops for small businesses). As governments contract out public services and pursue privatisation, the boundary between the public and private sectors is increasingly blurred – posing new challenges in deciding where and how to apply government standards of openness. Over two-thirds of OECD countries have adopted legislation setting out the standards of behaviour expected of public servants, while many countries also use codes of conduct and guidelines.

17. The rapid rise of civil society organisations (CSOs) has also contributed to independent monitoring of open government. This is reflected in the number of such bodies having consultative status with the UN Economic and Social Council, which has more than tripled in the past decade (from 784 in 1994 to 2531 in 2004). Many CSOs have an interest in ensuring government openness, either in a particular sector, such as the environment, or the field of good governance. Their capacity for monitoring government action is enhanced by participation in global networks which can mobilise diverse sources of expertise; and an innovative use of new information and communication technologies (ICTs) to collect, share, analyse and disseminate publicly available information. Their adoption of methods used by governments themselves (*e.g.* audits, benchmarking) and their capacity to raise public awareness via the media (*e.g.* by “naming and shaming” or awards for good performance) makes them a force to be reckoned with. But their very importance implies that the principle of openness should extend to their management as well.

18. While public pressure for open government may be strong, there is a risk of resistance from those with a stake in the current system, both inside and outside government. Government officials may resist greater openness given that, in the absence of freely available information, they may use their knowledge to win power or influence, for example by selectively releasing information in their possession. Opponents outside government may range from private businesses, such as established government suppliers fearing greater competition, to professional CSOs concerned to maintain their privileged access to policy makers. The history of openness in government is recent, while the history of secrecy is centuries old. Balancing the need to protect legitimate national security concerns and to ensure public scrutiny of government activities has always been a challenge and is even more so today.

How is transparency achieved?

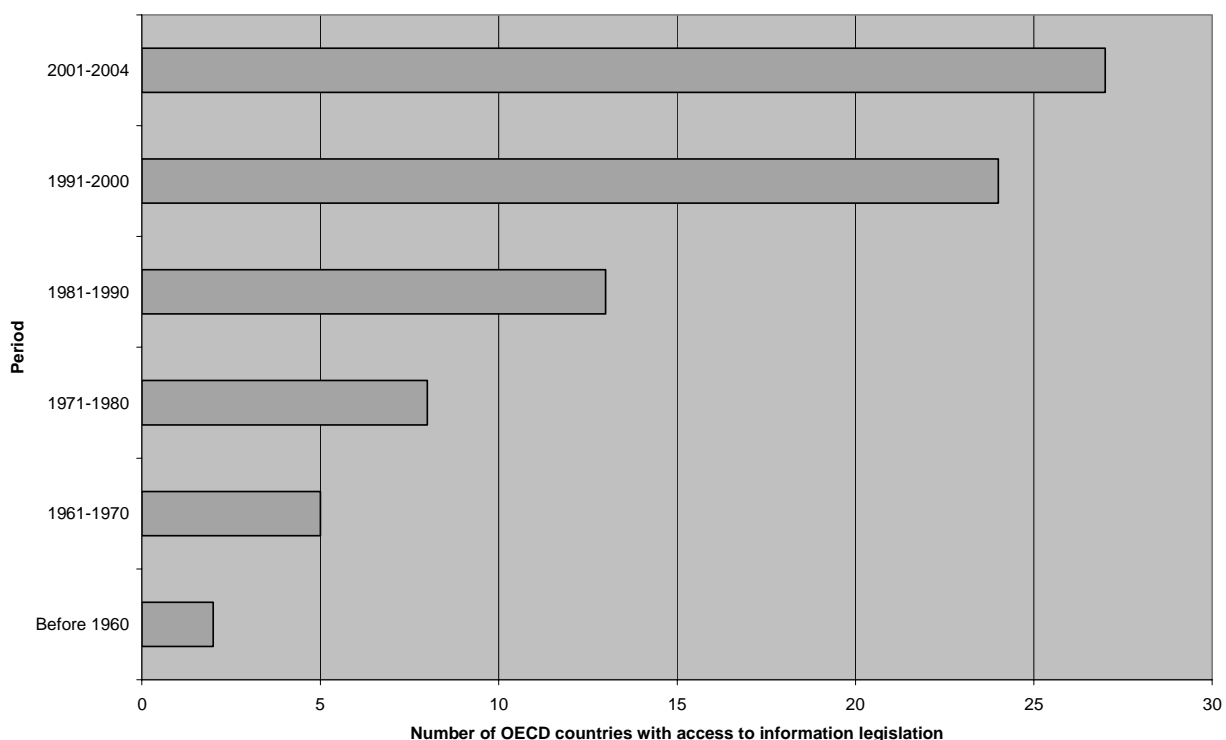
19. The scope, quantity and quality of government information provided to the public has increased significantly in the past 20 years and the provision of information is now a goal shared by all OECD member countries. But making sure that government information remains relevant, timely, complete and objective is a challenge for the future, given the ever-increasing quantity available online.

20. Access to information is a precondition for public scrutiny and a basic building block for open government and is enshrined in the constitutions of some OECD countries such as Austria, Hungary, and Poland. Freedom of information laws are the single most important means of giving substance to such basic rights and their adoption has gathered pace in the past two decades. In 1980 only a third of the (then 24) OECD member countries had legislation on access to information, by 2004 it had reached 90% or 27 of the current 30 members (see Table 1). As these laws are very recent in historical terms, their full impact as levers for systemic change in government openness has yet to be felt in many OECD countries.

21. Openness in the public realm should not endanger individual rights to privacy. All governments hold significant amounts of information on individual citizens, often of a sensitive nature such as health records. So any legislation promoting freedom of information requires equally strong provisions setting out limits to access in the interests of individual privacy and data protection. Over 90% of OECD countries have passed legislation in this field.

22. But efforts to provide greater access to more information will not on their own make government more open or ensure the quality of the information on offer. More information is of little practical value without effective systems to allow people to identify and retrieve the specific information they want. Centralised registers of current laws and regulations are an important tool for enhancing access to information on statutory obligations and, by the end of 2000, had been adopted in 18 OECD countries.

Figure 1. Date of first introduction of laws on access to information in OECD countries



23. The spread of Internet access at home, school and work has increased the importance of online tools for access to government information. The Internet is the medium of choice for all OECD countries when providing a potentially vast number of stakeholders with an unprecedented degree of access to government information at marginal cost and high speed. In addition, electronic systems can offer powerful tools for searching, selecting, and integrating the vast amounts of information held by the public administration as well as presenting the results in a form that can be readily used by citizens and businesses. As e-government advances, some OECD governments have issued standards for public authorities to ensure the quality, consistency and coherence of online information.

24. The publication of annual reports, performance data and public accounts are an important tool for ensuring public scrutiny of past government actions. But they do not enable stakeholders outside government to monitor government actions today nor examine their plans for the future. The publication of strategic plans, legislative timetables, forthcoming projects and upcoming consultations are all important features of government openness and provide the conditions for key public stakeholders to prepare, and hence contribute more effectively to, policy-making by government.

How to make government more accessible?

25. Governments are more accessible and user-friendly today than they have been at any point in history. Measures to reduce physical, organisational and linguistic barriers; cut through “red tape” and expand online service delivery have all helped. The challenge for all OECD countries now will be to meet ever higher demands from citizens and business for streamlined transactions, tailored services and ubiquitous access.

26. Building open government that is accessible to anyone requires, at a minimum, provisions to ensure equal treatment. Administrative laws do so by defining the basic conditions for citizens’ access and establishing mechanisms for holding administrative powers accountable for their decisions. They provide guarantees for citizens in their interactions with government, uphold the rule of law and give substance to constitutional rights. More than 70% of OECD countries have such laws and codes, which generally predate freedom of information legislation. They often include provisions to ensure that citizens who are potentially affected by administrative actions and decisions have the possibility to receive prior notice of, and defend their interests in, a given decision-making processes.

27. Today’s users of public services expect them to meet their individual needs, offer choice and provide means for seeking redress. More than half of OECD member countries have introduced citizens’ charters with the aim of providing high quality, easily accessed and customer-centred public services. By introducing service charters, and providing redress mechanisms, governments have provided citizens and businesses with a means of assessing their own experience as users of public services against declared standards of service.

28. Cutting through “red tape” to make it easier and less costly to do business with government is a key concern for governments and businesses alike. Policy measures to reduce administrative burdens can also contribute to improving access through one-stop shops (both physical and electronic), providing assistance and advice in complying with regulations (*e.g.* to small and medium-sized enterprises) and Web-based portals and electronic forms. In 2000, out of 28 OECD countries surveyed, 26 stated that they had a government programme to cut red tape.

29. E-government can significantly lower barriers for citizens and businesses by reducing costs and providing access to government information and online services for all, whether in the capital or a remote rural area, 24 hours a day, 7 days a week. Where e-government initiatives currently fail is in ensuring access to all since not everyone has access to the Internet nor the skills to use it. All OECD countries’ e-government strategies recognise that all stakeholders and users must continue to have the choice of online or ‘offline’ information, transactions and services for the foreseeable future.

How to make government more responsive?

30. Public consultation for law and rule-making was once rare. Today, it is increasingly accepted as a valuable means of improving the quality of public policy while strengthening its legitimacy. Further efforts to improve tools, mainstream procedures and integrate the results of public consultation in established decision-making processes will be needed if governments are to become more responsive and adaptive in the future.

31. Almost a decade ago, in a 1995 Council Recommendation, OECD member countries pledged to ensure that regulations are: “...developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.” The systematic assessment of positive and negative impacts of regulations and their alternatives has helped many governments to reduce regulatory costs to

business, while maximising the effectiveness of government action in protecting public interests. Consultation procedures are central to this process. In 2000, just over a third of OECD countries required regulatory impact assessment (RIA) documents to be publicly released for consultation. Consultation on draft regulations has proven to be an effective way of obtaining information on the nature, size and distribution of costs and benefits directly from those most likely to be affected.

32. Governments increasingly realise that they will not be able to effectively implement policies, however good they are, if citizens and business do not understand and support them. Thus, governments are looking for new ways of engaging a wider range of actors throughout the policy-making process. While in some OECD countries such as Canada, Iceland, the Netherlands and Norway public consultation is a long-established practice, in most it has only recently been recognised as a key element of modern policy-making.

33. Initial experience has shown that, to be effective, consultation must have clear goals and rules defining the limits of the exercise and government's obligation to account for its use of the input received. The place held by laws and regulations governing public consultations vary considerably among OECD countries – from those such as Switzerland where it is a fundamental feature of the constitutional system to those where it is relatively limited in scope, application and impact. Some countries have legal requirements to consult with specific interest groups, such as trade unions and professional associations, or with indigenous peoples in order to safeguard constitutionally protected rights during policy-making. Several have adopted guidelines which require ministries to provide a summary of the consultations they have undertaken when submitting draft laws or policies to the Council of Ministers.

34. The unprecedented degree of interactivity offered by the Internet has the potential to expand the scope, breadth and depth of government consultations with citizens and other key stakeholders during policy-making. Despite its promise, online consultation for policy-making is new and examples of good practice are scarce. Few expect new tools to replace traditional methods in the foreseeable future. Initial experience indicates that they are most effective when integrated with “offline” tools for consultation, such as combining online discussion groups and “face-to-face” consultations.

Who monitors open government?

35. As open government standards and public expectations have risen over the past two decades, existing institutions for ensuring oversight such as Supreme Audit Institutions (SAIs) have evolved and new ones, such as Ombudsman offices, have appeared. When coupled with the growing role of civil society organisations and the media, public scrutiny of government has reached unprecedented levels – and shows no signs of abating in the future.

36. Supreme Audit Institutions are of central importance in exercising oversight of the executive branch and ensuring accountability for the use of public funds. All OECD countries have an SAI, in most cases an independent authority whose head is appointed by the legislature and which reports directly to it. SAIs provide independent review of public accounts, as well as of the execution of government programmes and projects. While SAIs in most OECD countries date back to the 19th century, or earlier, their functions, tools and scope of action have evolved considerably to meet the oversight challenges posed by modern government.

37. Ombudsman offices are of far more recent introduction in most OECD countries. In 1960, only Sweden, Finland and Denmark had such institutions; today, 90% of them do. Ombudsman offices are generally appointed by legislatures and offer an important point of contact for citizens' complaints, appeals, and claims for redress in their dealings with the public administration. While their recommendations are rarely binding, they have proven to be a powerful source of pressure on governments to take remedial action.

38. Of an even more fundamental nature, the constitutional separation of powers ensures that the executive is held to account for its actions and that government business is conducted in the open. This is reinforced by ministers' obligation to respond to questions by members of parliament, either orally or in writing. Many legislatures have established special organs of control to track budget execution (*e.g.* budget and/or audit committees) and the actions of the public administration. In most OECD countries the legislature has the power to launch parliamentary inquiries, although the extent of their powers of investigation varies. The effectiveness of parliamentary oversight depends upon the legislature's formal powers, willingness to act and – as the ultimate sanction – exercise their power to dismiss the government.

39. While traditional institutions for public oversight, such as Supreme Audit Institutions (SAIs) and Ombudsman offices, continue to shoulder the main responsibility for ensuring adherence to such standards – new and highly vocal private watchdogs in the form of CSOs have emerged in the past decade. When taken together with traditional sources of independent monitoring of government performance (*e.g.* media, international organisations, rating agencies), the modern version of the “fourth estate” exercises powerful pressures, and advances vocal demands, for openness. As governments scramble to respond, what at first sight appear to be piecemeal reforms do, over time, produce a cumulative effect and once standards for openness have been raised, there is no uncontroversial way of going back.

What are the limits to open government?

40. Openness is just one of many cherished public values citizens would like to see from government. They also expect equity, efficiency, responsibility and due respect for individual privacy in the use of public power and resources. A key challenge for all OECD countries is to preserve government openness while ensuring national security and effective law enforcement. Since the events of 11 September 2001, several OECD countries have issued new guidelines or legislation setting limits to existing statutory provisions for access to information. In many countries, the lack of a precise definition of “national security” together with a greater degree of discretion for public officials when deciding whether to withhold information has meant that secrecy, rather than disclosure, is now the default position. But any attempt to dilute or reverse previously declared standards will be perceived as a step backwards by many sectors of public opinion – even if it may support other cherished policy goals such as the fight against terrorism. Parliamentary oversight, judicial review, independent scrutiny and vigorous public debate remain the most effective means of reconciling these conflicting goals while preserving established standards of open government.

What is the future of open government?

41. Today, there is substantial convergence between OECD countries in terms of their formal institutional arrangements for open government (see Table 1). As in many areas of public governance, however, context matters. When it comes to the implementation of open government measures, the differences between OECD countries still remain greater than their similarities and much remains to be done to ensure that open government standards are applied in practice.

42. Most open government reforms are undertaken with the aim of strengthening public trust. But openness may also undermine trust. Within government, ensuring the basis for public trust in terms of responsible decision-making may require a degree of confidentiality to ensure that hard truths are told, mistakes are not covered up and frank advice to ministers is not replaced by self-censorship. Outside government, conducting public affairs in full view may even have contributed to current levels of public disaffection and cynicism – prompting governments to invest in even more public communication. The end-result may be a downward spiral of trust as members of the public perceive – rightly or wrongly – an attempt by government to manipulate public opinion.

43. Among the many challenging issues yet to be addressed, the following appear to merit further attention and, above all, open debate:

- *Assessing the relative merits of openness*: public officials need clear criteria for deciding the merits for or against openness in concrete cases – who will provide this guidance?
- *Openness vs. equity*: does government openness empower previously marginalised groups, or does it simply increase the risk that well-endowed special interests will gain undue influence? How can public awareness of, and capacity to use, openness provisions be enhanced?
- *Private partners and public scrutiny*: can independent media, businesses, think tanks, professional associations and civil society organisations play a greater role in fostering open government and monitoring its performance?
- *Participatory vs. representative democracy*: will the inclusion of a wider range of actors in open decision-making undermine representative institutions? Or will elected officials simply have to invest more time and energy in explaining their proposals, seeking citizens' views and providing reasons for their decisions?

44. How open governments are in the future will be the result of key policy choices being made today. Better tools for self-assessment, as well as comparative benchmarking based on key indicators of government openness, may contribute to clarifying the opportunities and risks of building open government.

Table 1. Overview of current legislation and institutions for open government in OECD countries

* No national Ombudsman, but extensive coverage provided by subnational ombudsman institutions.

Country	Freedom of Information	Privacy / Data Protection	Administrative Procedure	Ombudsman/ Commission	Supreme Audit Institution
Australia	X	X	X	X	X
Austria	X	X	X	X	X
Belgium	X	X		X	X
Canada	X	X		X	X
Czech Republic	X	X	X	X	X
Denmark	X	X	X	X	X
Finland	X	X	X	X	X
France	X	X	X	X	X
Germany		X	X	X	X
Greece	X	X	X	X	X
Hungary	X	X	X	X	X
Iceland	X	X	X	X	X
Ireland	X	X		X	X
Italy*	X	X	X	X	X
Japan	X	X	X		X
Korea	X	X	X	X	X
Luxembourg		X	X	X	X
Mexico	X		X	X	X
Netherlands	X	X	X	X	X
New Zealand	X	X	X	X	X
Norway	X	X	X	X	X
Poland	X	X	X	X	X
Portugal	X	X	X	X	X
Slovak Republic	X	X		X	X
Spain	X	X	X	X	X
Sweden	X	X	X	X	X
Switzerland		X	X		X
Turkey	X				X
United Kingdom	X	X	X	X	X
United States	X	X	X		X
EU	X	X		X	X

Source: OECD.