Assessment and recommendations

Setting the scene for open government reforms

Biscay's particular multi-level governance structure

A country's or province's context plays an important role in the way its policies and service delivery are designed, implemented and monitored. It is crucial, therefore, to understand the drivers and the space in which open government reforms develop. The Province of Biscay has a particular multilevel governance mainly due to a division of competencies between the different administrations in the Basque Country (Basque Country, provinces and municipalities) that do not follow a hierarchical distribution. The whole region has a high degree of autonomy in relation to the central government of Spain. The main competencies of the Provinces of the Basque Country, including Biscay, are tax collection and policy, territorial planning, roads and public works, environment, cultural heritage and social welfare, as well as the economic and financial tutelage of the municipalities. Biscay is characterised by its high degree of autonomy. The fiscal system represents one of the region's most notable characteristics, which establishes that the Basque Provinces are responsible for setting, collecting and distributing taxes.

Biscay's socio-economic and cultural heritage

Biscay has the largest economy of the three provinces in terms of size of gross domestic product (GDP), which provides it with the economic capacity and the flexibility to implement ambitious policies, strategies and initiatives. Biscay, and more generally the Basque Country, have a strong culture of social participation and public-private collaboration. The historic culture of participation has led civil society to build strong links within its community. This particular sense of community has favoured participative processes in the social and economic sectors of the Province. The social side, or social model as it is known in Biscay, is based on historic collaboration between non-governmental organisations and other non-profit organisations (the so-called "third sector") and the Department of Social Services to co-create and co-implement public policies and services.

Strengthening policy, legal and regulatory frameworks for open government

An enabling environment is an essential and necessary precondition for open government reforms to flourish. Such an environment is composed of a sound and comprehensive policy, legal and regulatory framework. A policy framework consists of a holistic strategy that includes short-, medium- and long-term objectives, initiatives to achieve them, a definition of open government adapted to the context in which its reforms are meant to thrive and an explicit link to how the strategy will contribute to high-level policy objectives. Each legal and regulatory framework is by nature context-specific and can take several

forms, particularly in a local government such as Biscay, which has an articulated multi-level governance structure.

Biscay's Open Government Action Plan: Paving the way for a holistic strategy

Biscay has shown high-level political commitment to, and leadership for, open government reforms. In early 2017, Biscay launched the 2017-19 Open Government Action Plan (OGAP). In this plan, Biscay aims to change the culture of the public sector with the underlying objective of improving public service delivery through 14 specific commitments. Although the definition of open government outlined in the OGAP is in line with OECD good practices, public officials and municipalities did not seem to fully grasp it, underscoring a need to better communicate and disseminate it.

In addition, Biscay aims for an open state approach, as provided by the OECD Recommendation of the Council on Open Government. Nevertheless, the action plan only includes municipalities in one commitment while no other branches of government are included. Biscay has made significant efforts to align the OGAP with some of the actions of Bizkaia Goazen 2030, the provincial strategic plan; however, it is not clear how the OGAP contributes to the higher and long-term objectives established in the provincial strategic plan.

Overall, two-year action plans, like the OGAP, act as catalysts for the implementation of open government initiatives and can also help governments raise the profile of open government initiatives, as well as push for high-level reforms. However, they are not considered comprehensive strategies, as they establish short-term objectives and lack the long-term vision that a comprehensive one can provide. Building on the lessons learned from the OGAP, Biscay could consider developing a comprehensive open government strategy in order to ensure the success and long-term commitment of its open government agenda. In order to so, Biscay may wish to consider:

- Ensure long-term, high-level political will, commitment and leadership by making further efforts to foster them in public officials through, for instance, training and communication campaigns and involving them in the creation of the open government strategy.

- Better communicate and disseminate Biscay's definition of open government in order to ensure that all stakeholders have a common understanding of open government.

- Ensure coherence between the commitments and the goals of the strategy on the one hand, and the strategy with Biscay's high-level and strategic objectives, in the other hand.

- Streamline under the strategy all other related plans and initiatives to open government principles (mainly transparency and stakeholder participation) so that it becomes the baseline policy for all related plans and initiatives.

- Ensure an inclusive process and secure buy-in from a wide range of stakeholders for the creation of the open government strategy by:

  o Involving media associations and journalists, local governments as well as the legislative and judicial branches.

    o   Considering organising town hall meetings and using social media, so as to have a direct exchange with citizens and enlarge the spectrum of stakeholders consulted.

In relation to designing and implementing its open government agenda and moving towards becoming an open territory, Biscay could:

- Include other key actors of the Province, such as the legislative branch, and could benefit from the ongoing Open Government Partnership (OGP) Local Programme of the Basque Country to include the municipalities – beyond the ongoing co-operation for transparency and technology tools – as well other actors of the Autonomous Community such as the Basque Ombudsman, *Ararteko,* while respecting their level of autonomy.

- Further strengthen its collaboration with municipalities on aspects that go beyond transparency and information technology (IT). For instance, Biscay could provide capacity building on stakeholder participation for local governments. Furthermore, the Province could create a space to share good practices on the principles of open government with the Basque Local Governments Association (EUDEL) and the municipalities.

The Provincial Law on Transparency at the core of Biscay's open government legal and regulatory framework

Acknowledging that access to information (ATI) laws are the cornerstones of open government and are a key element to reduce corruption and foster trust among citizens and their governments, Biscay adopted its own Provincial Law (*Norma Foral*) on Transparency in February of 2016. The objective of the Provincial Law is to guarantee transparency in two dimensions: proactive disclosure and the right to access public information. The scope of the Provincial Law includes the executive and legislative branches as well as private entities managing public funds; it does not cover other actors, such as the judicial branch or municipalities. The type of information disclosed proactively by the Provincial Law is in line with OECD standards. Citizens can request information electronically, on site or by mail, providing official proof of natural or legal identification; however, more and more countries are allowing anonymous requests. The administration has 15 days to respond once a request is filed; this falls within OECD standards. Nevertheless, it provides for administrative silence, which could potentially lead to discretion and legal insecurity, affecting the guiding principles of transparency.

Since the entry into force of the Provincial Law on Transparency in February 2016, Biscay has carried out additional activities that have contributed to its proper implementation, as well as worked to build a culture of transparency in the Province. One example is the Provincial Plan for Transparency, published in 2017. The annual monitoring report of the plan showed good progress; however, a certain level of internal resistance to change hampers the implementation of the law. As there may be a lack of awareness of the law and its provisions, public officials may perceive it as a burden in addition to their regular tasks, or that it creates extra responsibilities. In order to secure successful implementation of the Provincial Law on Transparency, Biscay could consider:

- Continue to carry out the dissemination and awareness-raising campaigns in order to increase knowledge among all stakeholders, and to ensure compliance from entities and public officials subject to the law.

- Continue to disclose the salaries of all public officials as well as their assets.

- Allow requests for information to be made anonymously.

- Continue the practice that every request is adequately responded to, either with the information that has been requested, with proper justification in case the request is denied by non-admission, or in the case of an exemption.

Ensuring a sustainable implementation of Biscay's open government agenda

Having the right institutional arrangements - understood as the existence and interaction of different stakeholders in a given national or local government that have a mandate and/or a role to play in the open government agenda - will ensure effective and efficient implementation of an open government strategy and its initiatives. Furthermore, as the use of information and communication technologies (ICTs) by governments and other stakeholders make many open government initiatives possible, it is essential to develop them and promote their use.

Towards robust institutional arrangements for effective and sustainable implementation of Biscay's open government agenda

Biscay has demonstrated its high-level political commitment to open government principles with the creation of two new institutional structures for open government: the Cabinet of Modernisation, Good Governance and Transparency (*Gabinete de Modernización, Buen Gobierno y Transparencia*) and the Observatory of Biscay (*Observatorio de Bizkaia*). Biscay chose a sectoral implementation of the OGAP so that each commitment is owned by the department in charge of its implementation. While these institutional arrangements are intended to provide more ownership, they are not sufficient to counter the risk of fragmentation of Biscay's broader open government agenda. Furthermore, the lack of institutionalisation of the open government agenda may hinder the long-term impacts of the strategy and real cultural change within the public administration. In order to build and consolidate robust institutional arrangements for effective and sustainable implementation of the open government agenda, beyond the OGAP, Biscay could consider:

- Designate an office responsible for developing and co-ordinating the strategy and the open government agenda as well as for monitoring its implementation, while maintaining sectoral ownership of the open government initiatives. The office needs to have a clear and well-disseminated mandate and use a more proactive approach to positioning it as the office in charge.

- Ensure that the office in charge of co-ordinating the open government agenda remains at the highest level, at the Centre of Government (COG) across political levels.

- Designate open government officers in each of the departments and bringing them together regularly, as members of a committee, to discuss the challenges they faced and the solutions implemented to overcome them, share good practices and explore synergies.

- Create an open government committee composed of all institutional actors involved – and not just those responsible - in each of the commitments. The committee could also include other key actors, such as representatives from the judicial and

legislative branches, the *Ararteko* (the Basque Country's Ombudsman), municipalities as well as EUDEL (the Basque Local Governments Association) to achieve an open territory.

Increasing open government literacy among Biscay's public officials

The 2018 OGAP's intermediate self-evaluation report identified the need to develop the capacity of its staff in charge of implementing open government initiatives as one of the priority areas for internal improvement. Biscay has made significant efforts to include open government principles in competency frameworks, codes of conduct and the job profiles of its civil servants and appointed senior public officials. However, "open government literacy", which is the combination of awareness, knowledge, and skills that public officials and stakeholders require to engage successfully in open government strategies and initiatives, could be further increased by providing training to civil servants and appointed senior public officials, as both are subject to different laws, on open government principles. Additionally, Biscay does not have a comprehensive internal communications campaign on open government for all public officials. Currently, the dissemination of information related to open government is fragmented by sectors and is mainly focused on transparency.

Further efforts are needed to co-ordinate messages on open government initiatives, both horizontally and vertically, and to raise awareness and understanding of the open government strategy and initiatives among public officials. To raise open government literacy among its public officials and embed skills and capabilities that promote accountability, integrity, transparency and stakeholder participation in public officials' daily responsibilities, Biscay could consider:

- Include open-government-related principles and skills in competency frameworks, codes of conduct and job profiles by:

  - Developing a code of conduct or charter on open government for all public officials, which would include transparency, integrity, accountability and stakeholder participation as principles, as well as clear guidelines on how to put them into practice in their day-to-day work. Biscay could go a step further and develop this code of conduct or charter in co-operation with public officials.

  - Including, for certain positions, specific skills related to stakeholder participation, such as negotiation skills, mediation skills and communication skills, among others, to design and implement successful open government strategies and initiatives as well as the capacity to design and implement participation practices.

- Ensure that training continually raises awareness and strengthens skills by:

  - Developing a training module for all public officials on the principles and the definition of open government as well as on the central tenants and benefits of the open government strategy. This training could be formally included in the Training Career Plan. More detailed and in-depth training on different aspects of open government could complement this comprehensive training.

  - Including a commitment that refers directly to training on several aspects of open government, when developing the next open government strategy.

- Reinforce internal communications to raise internal awareness and understanding of open government reforms by:

- o Building on the efforts already made on transparency and expanding the content available in seminars and on the *Atarileku*, the online portal (Intranet) for public officials, to include information on the open government agenda as a whole. For example, information on the benefits of open government, its principles and the initiatives that Biscay has taken could be included. To draw greater attention from public officials, Biscay could also move away from only publishing on line (which requires an action from the public officials) and develop circulars and posters on the open government agenda on a more regular basis, a forum for public officials and pop-ups on the Intranet.

- o Convening the open government officers of each department in a network to strengthen their involvement in communication about open government initiatives, and share good practices as well as lessons learned.

- Secure funding for the open government strategy and initiatives by considering elaborating a dedicated financial plan when it develops the next open government strategy. Both the strategy and the financial plan could be co-created with the departments that will be involved in the strategy in order to define the amounts, resources and specific responsibilities for the initiatives to be included.

Biscay's initiatives on digital government and open data contribute to the open government agenda

Biscay has implemented several digital initiatives as part of its open government agenda. For example, the Province launched its open data portal in February of 2018 and published 16 datasets in a standardised and open format. However, there seems to be a limited ecosystem of open data organisations in Biscay, limiting the external demand for provincial public data. Biscay has also made efforts to reduce bureaucracy by making online procedures possible and putting in use an interoperability agreement within the Departments of Biscay's central government, the municipalities and the Basque Country. Furthermore, Biscay is collaborating with municipalities to create online portals and provide e-services through BiscayTIK, a non-profit public institution dedicated to modernising the municipalities of Biscay. To continue with its efforts on digital government, Biscay could consider:

- Continue to collaborate with local open data organisations and Basque administrations, and organising activities to further develop external demand for data.

- Implement a targeted strategy to disseminate the online interactive tool for provincial budgets, in order to encourage awareness and use of the new tool by all stakeholders.

- Further increase collaboration with municipalities, through BiscayTIK, to tailor new technological tools that target stakeholder participation, in line with the characteristics and needs of the municipalities.

Building a monitoring and evaluation framework for open government

A robust monitoring and evaluation (M&E) system is essential to ensure that, as for any other policy area, open government strategies and initiatives are achieving their intended goals. It serves to highlight the achievements, relevance and visibility of these initiatives across government and therefore provides incentives to ensure that public policies are

designed and delivered from an open government perspective. Sound M&E can also help identify challenges and obstacles that hinder effective policy implementation, as well as show the way forward to address the challenges, based on lessons learned about what has worked (or not) in the past.

Towards a robust monitoring and evaluation system

The development of an M&E system is a high priority for Biscay's 2015-19 administration, as expressed in the OGAP and outlined in specific deliverables, such as the creation of evaluation tools and indicators. However, to date, Biscay does not have the needed legal or policy framework to guide M&E across government. Biscay's two key actors with shared M&E responsibilities are the Observatory of Biscay and the Directorate General of Good Governance and Transparency. A certain degree of overlap and confusion regarding the division of labour between the two bodies were found during the review process, as well as some gaps regarding responsibilities for defining the course of action for commissioning evaluations; developing skills, competences and/or qualifications of evaluators; and ensuring quality standards on M&E.

One of the challenges that Biscay is facing today is the lack of capacity-building activities (training courses) and tools (guidelines) to build skills development in M&E. Therefore, Biscay could invest in the further development of a coherent M&E system, supported by a sound institutional framework. More specifically, and as Biscay's M&E system currently is in its initial phases, the government could consider:

- Centralise responsibilities regarding M&E into a single institution in charge of 1) developing a whole-of-government M&E system; and 2) promoting the use and quality of monitoring and evaluation across government. Such an institution could be responsible for conducting M&E across government and/or developing guidelines, training courses, and quality checks for other departments wishing to carry out their own M&E. It could also promote the use of evidence resulting from M&E efforts.

- Provide a clear mandate that sets out specific tasks and responsibilities regarding the M&E agenda appropriate to the institutional set-up chosen.

- Establish a co-ordination instrument, such as an M&E council or committee, to co-ordinate M&E across government.

Fostering an M&E culture among public officials and stakeholders, Biscay could consider:

- Include a particular M&E dimension in the ethical code and training modules.

- Offer specific training courses on policy M&E for public officials, as part of the menu of training courses that the Directorate-General of the Legal Regime and Civil Service offers, and in parallel, developing guidelines to conduct M&E.

- Include *Behatokia* in the Civil Dialogue Table, which would allow *Behatokia* to engage with key stakeholders from the social sector in a systematic and more structured way. In particular, Biscay could use this platform to promote the establishment of a – formal or informal - network of policy monitoring and evaluation practitioners, which could include representatives of academia as well as other stakeholders.

Monitoring and evaluation of open government strategies and initiatives in Biscay

In order to collect the information for the 2018 intermediate self-evaluation report of the OGAP, Biscay developed a perceptions-based methodology that includes both citizens and public officials' views on the implementation of the commitments and priority axes of the OGAP. Engaging citizens and public officials in the assessment of the progress made on the OGAP may have created a sense of ownership of the open government agenda, as well as promoted its principles both inside and outside Biscay's public institutions. Nevertheless, data collected in this way is not necessarily completely reliable, as perceptions-based measurements of the efficacy of public institutions are usually biased due to external factors.

A specific set of indicators at different levels (input, process, output, outcome, impact) could help Biscay measure the performance of its open government initiatives more accurately, as well as analyse how these initiatives contribute to Biscay's broader open government strategic goals. Overall, the gradual development of an M&E system will positively influence Biscay's capacity to evaluate the achievements of open government initiatives. Therefore, Biscay could consider monitoring and evaluating open government strategies and initiatives by:

- Develop a monitoring mechanism to collect regular, up-to-date quantitative data on the implementation of the different open government initiatives. This could be operationalised, for instance, through the creation of a dashboard embedded in Biscay's data collection platform.

- Pursue specific initiatives to advance towards the development of governance indicators gradually. Adopting a theory of change approach could be instrumental in ensuring that each initiative carried out within the open government strategy pursues a specific objective (outcome and impact) related to the improvement of public governance and/or service delivery.

- Consider, in addition to standards to create robust indicators, engaging with key actors on indicator development through a quality assurance process. *Behatokia* and/or the institution responsible for the development of these indicators could involve experts both from the government as well as from academia and civil society, so as to receive their feedback on the quality of the indicators and specific recommendations on how to improve them.

- Make use, in the long term, of the development of a government-wide M&E system to explore conducting pilot evaluations of the openness of sectoral policies, in order to assess how open government approaches to policy making improves outcomes and impacts.

Mainstreaming stakeholder participation in Biscay

National and local governments alike are going beyond providing services to pursue greater partnerships with all relevant stakeholders, by moving away from one-way approaches to providing information, to new ones that encourage active, two-way dialogue. Stakeholders are no longer passive receptors but participate jointly with governments to build value and provide better and more targeted public services.

Ensuring a proper legal, institutional and policy framework for successful stakeholder participation

Biscay has a significant concentration of civil society organisations (CSOs) compared to the other provinces in the Basque Country; however, few CSOs exist in horizontal policies such as open government, open data, transparency and anti-corruption. Biscay has shown strong political commitment and leadership to consolidate stakeholder participation as an essential component of the policy-making cycle and as a core principle of its open government agenda. Biscay published throughout 2018 a Plan for Participation 2018-19, a Model for Citizen Participation and a Map for Citizen Participation, which are a conducive policy framework to implement stakeholder participation initiatives. In order to consolidate such a policy framework in the long term, other OECD countries have passed laws and regulations in this policy area. The current communication strategy for participation and open government reforms targets only specific initiatives, revealing the need to raise awareness and understanding of the open government reforms as a whole. Therefore, to ensure a proper legal, institutional and policy framework for successful stakeholder participation, Biscay could consider:

- Maintain its high-level commitment to stakeholder participation in policy making, design and implementation.

- Strengthen the existing CSOs and facilitating the creation of new ones for horizontal issues such as open government, open data, transparency, and anti-corruption by:

    o Benefiting from the current OGP process with the Basque Country, in particular through the commitment related to the creation of an I-Lab innovation for citizen engagement to encourage the creation of horizontal CSOs and other collaboration networks in the Province.

    o Ensuring that information about the outcomes of the participation initiatives is systematically provided to build trust and long-term commitment from different stakeholders.

- Reinforce the Model for Citizen Participation by:

    o Streamlining the model guidelines to ensure coherence among the different practices and departments.

    o Introducing additional elements that will help guide the decision of which initiative to replicate.

- Strengthen the Map for Citizen Participation by:

    o Listing the initiatives that have a specific focus on stakeholder participation under information, consultation and engagement if a new map is drafted.

    o Including in the next version of the map more information under each of the initiatives. The information could include the stakeholders involved, including characteristics and numbers to ensure all relevant actors are involved, including the media, business associations, independent institutions and vulnerable populations, such as migrants, youth/elderly as well as other marginalised groups of society; mechanism(s) used for participation; the time associated to it as well as cost; unit responsible within the department; roles and responsibilities of each party; and feedback loops, communication and evaluation mechanisms.

- Consolidate the Plan for Participation 2018-19, the Model and the Map as the framework for stakeholder participation by:

  o Carrying out a series of dissemination campaigns to ensure that the framework is well known and implemented by all departments.

  o Complementing the framework (Plan, Model and Map) with more tailored guidelines that address the particularities of each sector to increase their impact.

- Ensure that training courses are carried out within the public administration and for other stakeholders, including the municipalities, in order to raise awareness and increase buy-in.

- Ensure the continuity of an office responsible for the implementation and follow-up of the Plan for Participation 2018-19 so that it can reach its objectives. The office needs to remain at the centre of government and/or be the one in charge of co-ordinating the open government agenda. It should also be equipped with the necessary human and financial resources to carry out its tasks.

- Consider developing a communication plan dedicated to the open government agenda in order to raise awareness, ensure understanding and increase buy-in from new stakeholders. If Biscay decides to elaborate such a plan, it could consider using an inclusive approach so as to take into consideration marginalised and under-represented groups.

- Ensure that the creation of an additional newsletter dedicated to facilitating communication with citizens on participative processes and raising awareness of the channels available to participate is widely implemented by targeting new stakeholders while using various channels of communication, including social media.

Stakeholder participation in open government reforms

In the three consultation phases that were conducted for the elaboration of the OGAP, Biscay involved several stakeholders, including citizens, civil society organisations, and public officials from different departments of Biscay's central government, policy experts and academics. In addition, the OGAP's intermediate self-evaluation report showed that most stakeholders perceived positive progress made on the open government initiatives. According to the report, some OGAP commitments involved stakeholders in the design, implementation and monitoring of certain initiatives. However, this involvement seems to occur more on an ad hoc basis and only for certain initiatives, rather than systematically. In addition, the sectoral implementation of the OGAP implies that the stakeholders involved in some of the initiatives are not necessarily engaged, nor aware of, the overarching plan. Biscay could broaden stakeholder participation in open government reforms by:

- Involve, if Biscay were to elaborate a new open government strategy, more stakeholders in order to ensure buy-in from key actors, both within and outside the government.

- Make further efforts to engage stakeholders systematically in the development, implementation and monitoring of the open government strategy.

Developing and strengthening Biscay's stakeholder participation initiatives
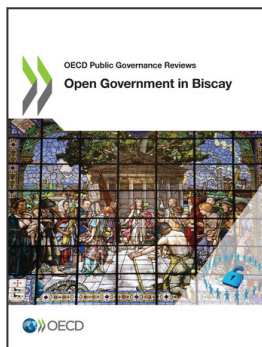
In addition to the ATI, Biscay has created other mechanisms to share information with stakeholders. For instance, Biscay has implemented an innovative two-phase initiative for information and accountability. The first phase consists of a series of workshops called "*Encuentros con Unai*" in which President Unai Rementaría provides information regarding the governments' actions. The second phase is the *Bizkaia Goazen* Bus, which consists of a bus equipped with interactive maps and touchscreens that display the services, projects and the general functioning of Biscay's central government. Concerning regulations, Biscay has two mechanisms to encourage participation in regulatory processes: prior consultation (*consulta previa*) and public hearings and information (*audiencia e información pública*).

Setting policy priorities using a participatory process occurs mainly during the elaboration of certain sectoral plans. Such was the case for the Plan for Participation and Quality of Life of People with Disabilities in Biscay 2016-19. The co-design of the Plan was made with the different stakeholders associated with the sector through existing formal participative bodies, namely the Civil Dialogue Table (*Mesa de Diálogo Civil*), which constitutes an example of a forum where stakeholders participate in the evaluation of the plan and the implementation of the policies.

Biscay has several specific participation initiatives focused on improving public services. The most prominent example is the process it uses to elaborate service charters (*cartas de servicios*); Biscay drafted guidelines for the public service providers that have to use them. These guidelines include, as a crucial element, a consultation phase with users of the services provided. Building on these examples, Biscay could further foster and strengthen stakeholder participation initiatives by:

- Continue to expand the *Encuentros con Unai* and the Bizkaia Goazen Bus, as these initiatives allow citizens to exchange on a wide range of topics and discuss them directly with the president of the Province, and provides an innovative means to be informed and exchange with heads of departments (ministers) on sectoral topics.

- Make further efforts to increase awareness of the Provincial Decree of Biscay for the Elaboration of Proceedings, the prior consultation (*consulta previa*) and public hearings and information (*audiencia e información pública*), the Regulatory Annual Plan and their benefits through awareness-raising campaigns, as indicated in the Plan for Participation 2018-19.

- Ensure that the consultation phase takes place in the overall elaboration of the service charters of the other public entities, as this is a relevant way to integrate user needs when adapting public services.

- Involve citizens in the co-design of policy priorities in sectors other than the social sector, as well as in horizontal policies.

- Provide a more integrated approach to the Civil Dialogue Table and the Council for Elderly People by widening the net to involve other actors beyond the social sector related to the policy and its users.

- Develop more initiatives to participate in horizontal policies.

- Transfer the good practices and know-how of integrating key stakeholders to ensure that all plans – including horizontal policies - co-identify needs, co-draft, co-monitor and evaluate.

- Use the well-established Civil Dialogue Table platform to push evaluation practices with the participation of stakeholders to other policy areas.