

## Chapter 2. Strengthening policy, legal and regulatory frameworks for open government

*This chapter examines the enabling environment of the province of Biscay by assessing its open government policy framework, in particular, the Open Government Action Plan of Biscay, as well as its legal and regulatory framework, with a special view to the Provincial Law on Transparency of Biscay. The analysis focuses on how these elements contribute to the open government agenda in Biscay and provides recommendations on how to improve them.*

## Introduction

An enabling environment is an essential and necessary precondition for open government reforms to flourish. It is composed of a sound and comprehensive policy, legal and regulatory framework. A policy framework is the foundation for open government as it sets the roadmap for open government reforms defining the “what” and the “how”. A robust legal and regulatory framework should have the necessary laws and rules for open government to thrive and should be formulated in a comprehensive way, communicated to stakeholders and effectively enforced. Such a legal baseline is mainly composed of laws on access to information, citizen participation, citizen engagement in public procurement procedures, protection of personal data and archives, open data, whistle-blower protection and anti-corruption laws.

This chapter examines the enabling environment of the province of Biscay (legally referred as “historic territory”<sup>1</sup>) by assessing its open government policy framework, in particular, the Open Government Action Plan of Biscay, as well as its legal and regulatory framework, in particular the Provincial Law on Transparency of Biscay. The analysis focuses on how these elements contribute to the open government agenda in Biscay and provides recommendations on how to improve them.

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

A sound and comprehensive policy framework is the foundation for open government reforms to deliver upon its promises, to achieve success and to ensure continuity. Such a policy framework is composed 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 where its reforms are meant to thrive as well as the explicit link on how this strategy will contribute to high-level policy objectives. See Box 2.1. These high-level policy objectives are normally defined in a government programme or strategic development plan/strategy.

#### Box 2.1. Distinguishing principles, a strategy and the initiatives of open government

**Open government principles:** Transparency, integrity, accountability and stakeholder participation (see Chapter 1 for definitions).

**Open government strategy:** A document that defines the open government agenda of the central government and/or of any of its sub-national levels, as well as that of a single public institution or thematic area, and that includes key open government initiatives, together with short, medium and long-term goals and indicators.

**Open government initiatives:** Actions undertaken by the government, or by a single public institution, to achieve specific objectives in the area of open government, ranging from the drafting of laws to the implementation of specific activities such as online consultations.

*Source:* OECD (2017<sup>[1]</sup>), *Recommendation of the Council on Open Government*, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438>.

The Recommendation of the Council on Open Government (hereafter the “OECD Recommendation”) calls for adherents to “develop, adopt and implement open government strategies and initiatives that promote the principles of transparency, integrity, accountability and stakeholder participation in designing and delivering public policies and services, in an open and inclusive manner” (OECD, 2017<sup>[1]</sup>).

An open government strategy is critical for governments as it helps them set a clear direction, by clarifying the priorities and goals, and ensuring coherence with governments’ high-level and overarching objectives. The strategy is also a tool for effective management, for identifying structural obstacles that require changes, for inspiration and empowerment, for public accountability, for effective allocation of resources and for institutional synergy, as described in Box 2.2.

### **Box 2.2. The benefits of an open government strategy**

#### **1. A tool for effective management**

A medium- to long-term, comprehensive and coherent open government strategy is a powerful tool for good public management as it provides a clear direction to its public administration by clarifying the priorities, goals and defining the means to achieve them. A strategy is also fundamental for measuring the performance of government actions and initiatives, based on clear and pre-defined standards and definitions. Such a strategy is usually based on an analysis of the current and future challenges and opportunities, ensuring long-term policy coherence and assessing the availability of the necessary resources and capacities.

#### **2. A tool for identifying needed structural changes**

An open government strategy helps to identify the structural bottlenecks that hinder open government initiatives to thrive. Those obstacles might be related to a complicated legal framework, to a counter-productive institutional culture or even to an inadequate institutional design of public institutions. By developing an open government strategy, governments might identify that short, medium and long-term positive changes should be made concerning those issues. Furthermore, the transparent public commitment is critically important in order to guarantee the continuity of open government policies in times of change of government and when political priorities change. Finally, an encompassing strategy is also a mechanism for consensus building between different government and non-government actors, which helps to eliminate divergent directives that could eventually weaken the endeavours for structural open government changes.

#### **3. A tool for inspiration and empowerment**

An open government strategy communicates to the bureaucracy and society as a whole about the government’s intention to build innovative, transparent and participatory policies. Under the principles and objectives settled by the strategy, policy makers are informed about the government’s intentions and can mobilise their efforts to act accordingly. An open government national strategy creates a powerful and coherent narrative that inspires policy makers to champion open government approaches in their areas of activities, building a safeguard for the development of open government initiatives. Furthermore, civil society, under the strategy’s umbrella, can demand open and innovative approaches to governance and can take part in and contribute to better policy making.

#### **4. A tool for public accountability**

The strategic plan is materialised in a formal document in which the government commits to delivering clear outputs according to a set timeline. The strategy creates additional liability for specific actors, who are in charge of implementing the strategies and represents a public commitment, which is a powerful tool for institutional and social oversight. By following what is agreed in the document, the institutional internal and external control mechanisms will be able to monitor the government's achievements formally and analyse their compliance with the strategy's objectives. Furthermore, civil society will find a powerful means in the document to push for the promised open government initiatives, requiring information about the strategy's implementation and call for formal justification when and if the government fails to deliver.

#### **5. A tool for the effective allocation of resources**

A whole-of-government, coherent strategic plan facilitates the bureaucratic communication between the public actors in order to clearly communicate the needs and priorities involved in the implementation of the open government initiatives. The strategy is a powerful tool to articulate the demands for human, financial and technical resources, both from national and international sources. The long-term strategy might also help to strengthen the hand of open government reformers, when dealing with technical or political negotiations, enabling the adequate and substantiated justification for the prioritisation of scarce resources to open government policies. Furthermore, by clearly articulating the open government policies' objectives and the means to achieve them, an open government strategy can mobilise, build and retain human or institutional capabilities needed to operate its intended structural changes.

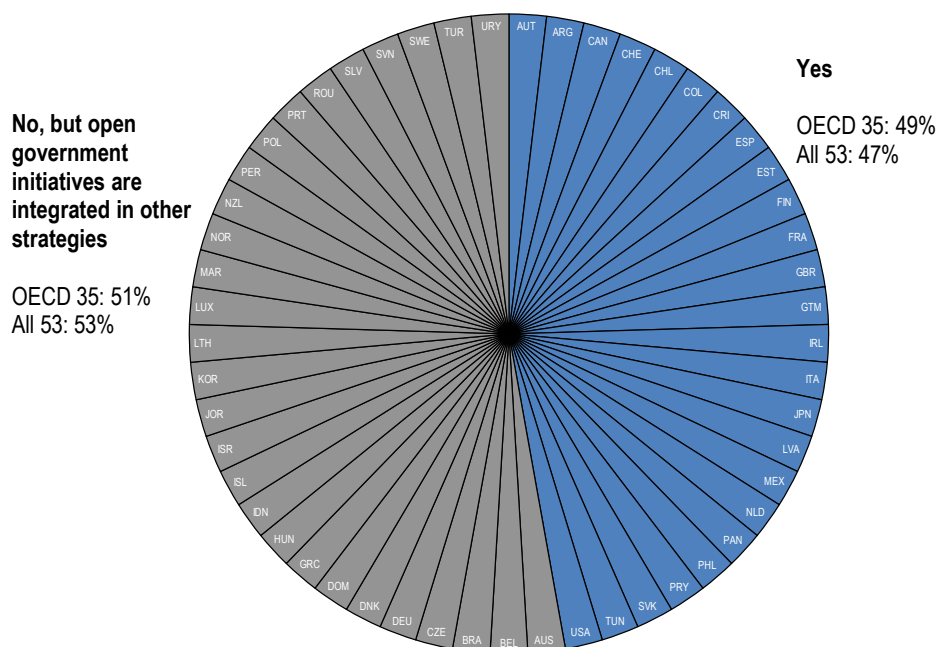
#### **6. A tool for institutional synergy**

It is not rare that different governmental institutions spend their time and a great number of public resources trying to develop solutions that might already be in place in other public or private institutions. An open government strategy, by clarifying the overall objectives and by catalysing institutional co-operation for innovation in the public service, helps to intensify joint efforts to create collaborative solutions to shared problems. It is also a common scenario that different government institutions fail to co-operate because they adopt a different understanding, and sometimes conflicting practices, related to open government policies. A concerted and communicated open government strategy can help government to elaborate and share common understanding and standards rules and processes related to open government directives, harmonising practices across different governmental agencies and institutions. This harmonisation between open government practices helps to eliminate fragmentation, facilitate co-operation and make possible better citizen understanding of the available open government mechanisms.

*Source:* Internal document; OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

According to the OECD (2016<sup>[2]</sup>) report, 47% of all participating countries (49% of OECD countries) have a single national open government strategy. While 53% of countries (51% of OECD countries) do not have such a strategy, they implement open government principles and initiatives in other sectoral policies or strategies (Figure 2.1).

**Figure 2.1. Countries with and without a single national open government strategy**



Source: OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

In early 2017, the Provincial Council of Biscay (*Diputación Foral de Bizkaia*, hereafter “Biscay”), which constitutes the government of the Province, launched its 2017-19 Open Government Action Plan (OGAP). Although Biscay has been implementing numerous initiatives linked to open government principles for several years, mainly in the areas of transparency and stakeholders’ participation, the 2017-19 OGAP marked the first attempt to group a series of scattered initiatives under a single plan.

The document describes Biscay’s open government vision, as well as the consultation phases conducted for its elaboration. Its structure follows the Open Government Partnership’s (OGP) methodology (see Box 2.3) and as such, is designed for a two-year period (2017–19). It was published when Biscay joined the Leaders’ Tier Network of the OGP. Likewise, in April of 2018 the Basque Country joined the OGP Local Programme as a coalition of all the levels of government: the Basque government, the three provincial councils (Biscay, *Araba* and *Gipuzkoa*) and the city councils of the capital cities of the territories (Bilbao, Donostia-San Sebastian and Vitoria-Gasteiz) (see also Chapter 1). At the national level, Spain joined in 2011, the year the OGP was launched. The Autonomous City of Madrid joined in 2016.

### Box 2.3. The Open Government Partnership

The Open Government Partnership (OGP) is an initiative that aims to bring “together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive and accountable.” Launched in 2011 by 8 member countries, the OGP has 71 national members (as of September 2018).

In order to be eligible to join the OGP, a government must meet the following criteria: 1) ensure fiscal transparency through the timely publication of essential budget documents; 2) have an access-to-information law that guarantees the public’s right to information and access to government data; 3) have rules that require public disclosure of income and assets for elected and senior public officials; and 4) ensure openness to citizen participation and engagement in policy making and governance, including basic protections for civil liberties.

Once the government interested in joining meets the criteria, it should send a letter of intent to join OGP signed by a senior political leader and include a commitment by the government to the principles of the Open Government Declaration. Afterwards, the government should identify a lead ministry and begin developing a national action plan and commit to OGP’s Independent Reporting Mechanism process.

The OGP has a specific methodology to develop a national action plan. The plan must be co-created with civil society and contain commitments that seek to improve transparency, accountability and participation. It should contain from 5 to 15 commitments and be developed for a two-year cycle. Also, a plan should include input from different stakeholders from inside and outside the government.

In 2016, the OGP developed a “Local Programme”, recognising that “many open government innovations and reforms are happening at the local level where governments can engage more directly with citizens, and many crucial public services are delivered.” It now has 20 sub-national governments, including cities, provinces and regions. The eligibility criteria, the accession procedure and the methodology for the action plan are the same for a national and a sub-national government.

*Source:* Open Government Partnership (n.d.<sup>[3]</sup>), *OGP Local Program - About*, <https://www.opengovpartnership.org/local>; Open Government Partnership (OGP, 2016<sup>[4]</sup>), *Open Government Partnership - Brochure*, [http://www.opengovpartnership.org/sites/default/files/091116\\_OGP\\_Booklet\\_digital.pdf](http://www.opengovpartnership.org/sites/default/files/091116_OGP_Booklet_digital.pdf).

Although every open government strategy should be uniquely adapted to the context and needs of each national and local government, a comprehensive strategy should be composed, among others, of the following elements:

- high-level political will, commitment and leadership;
- a clear definition of open government and its principles;
- interrelated medium-term objectives, long-term goals and a set of initiatives to achieve them;
- connected to higher policy and strategic objectives (e.g. development plans).

***Long-term high-level political will, commitment and leadership is essential to ensure the sustainability of the open government agenda***

Open government reforms require strong political commitment since they cover several policy areas and thus entail policy coherence. Political commitment reflects the decision of leaders to use their power, influence, and personal involvement to ensure that reforms, plans and initiatives receive the visibility, leadership, resources, and the ongoing political support required to overcome resistance to change, internal and external opposition and avoid deadlock. In fact, “leaders are the role models in society: it is not only their votes but also their personal actions and behaviour that send strong signals about what is important” (The Policy Project, 2000<sup>[5]</sup>).

In this sense, the OECD Recommendation calls for adherents to “take measures, in all branches and at all levels of the government, to develop and implement open government strategies and initiatives in collaboration with stakeholders and to foster commitment from politicians, members of parliaments, senior public managers and public officials, to ensure successful implementation and prevent or overcome obstacles related to resistance to change” (OECD, 2017<sup>[1]</sup>).

Therefore, sustainable political support and commitment from high-level public authorities, such as the president, ministers, local and national legislators and other influential political figures, is a prerequisite for policy and institutional changes, and is essential for an effective open government strategy that reaches the government as a whole – not only in a specific area. Otherwise, there is a risk for an incoming government to see the open government strategy as representing the views or policies of its predecessor and could ignore it or even initiate a new strategy process more in line with its thinking (OECD, 2001<sup>[6]</sup>).

Since the beginning of the current mandate, Biscay has shown high-level political commitment with open government principles. In his inaugural address, President Unai Rementeria declared that:

*Society demands a more transparent, participative and open policy from us. I assume these three challenges. I assume them with conviction from the first day. The drive for initiatives to increase transparency and participation will be one of the first measures of our new governing team. (Rementeria, 2015<sup>[7]</sup>).*

Accordingly, the new government created two new institutional structures for open government: the Cabinet of Modernisation, Good Governance and Transparency and the Observatory of Biscay. These actions, along with the vision established in the *Bizkaia Goazen 2030* (the provincial strategic plan) and the OGAP show the strong leadership and vision-setting capacities of the Centre of Government<sup>2</sup> (CoG) of Biscay (see Chapter 3). Likewise, it demonstrates its capacity to translate policy into action by creating the needed structures for implementation as well as activating high-level political support for doing so.

To achieve the change of culture that Biscay wants to carry out through its open government agenda, long-term leadership and commitment are critical to ensuring the sustainability and implementation of the initiatives set in the strategy. Biscay could make further efforts to foster this commitment in career public officials through, for instance, training and communication campaigns and involving them in the creation of the open government strategy.



*A well communicated and disseminated definition of open government and its principles ensures a common understanding for all stakeholders in Biscay*

A single definition of what open government is and entails is vital for governments that wish to create an open government strategy and move towards a new culture of governance. According to the OECD (2016<sup>[2]</sup>) report, a single, clear and accepted definition is important because:

- It informs the public about the essential elements of open government, as well as 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 the impact of open government strategies and initiatives across different institutions and levels of government.
- It supports international comparisons of open government strategies and initiatives.

Nevertheless, in order for a definition to be effective, it needs to incorporate and reflect the political, cultural and socio-economic context of each country or region (see Box 2.4 for national and local examples). Likewise, the definition should be developed, recognised, communicated and accepted by all stakeholders involved in the strategy or initiative, including the public sector, citizens, private sector, etc. This helps to ensure buy-in and promotes ownership across stakeholders.

**Box 2.4. National and sub-national examples of single official definitions of open government**

**Canada**

A governing culture that holds that the public has the right to access the documents and proceedings of the government to allow for greater openness, accountability and engagement.

**Chile**

A public policy applicable to the whole of the public apparatus, aimed at strengthening and improving the institutional framework and management of public affairs by promoting and consolidating the transparency and access to public information principles, as well as the mechanisms for citizen participation in the design, formulation, implementation and evaluation of public policies. All of this should be in the context of the current public institutions' modernisation process, whose goal is to move towards a state at the service of all citizens and to improve the population's quality of life.

**Korea**

Government 3.0 (Open Government Initiative) is a new paradigm for the government operation to deliver customised public services and creatively generate new jobs by opening and sharing government-owned data with the public and encouraging communication and collaboration between government departments. Government 3.0 aims to make the government more service-oriented, competent, and transparent, thus pursuing the happiness of its citizens.



**Luxembourg**

Government of an accountable and democratic constitutional state based on the rule of law and justice that works to achieve, as far as possible, useful and not in contradiction with human rights or other fundamental values, a maximum level of transparency and citizen participation.

**Mexico**

Open government is a new model of governance that seeks to transform the relationship between government and society to strengthen democracy. It is creating an environment that positions the government as a platform for innovation. Open government is based on a culture of transparency, collaboration, participation and accountability that allows for the creation of new ventures and the generation of solutions to public challenges surrounding the development of the country.

**Edmonton (city), Canada**

The city adopted an open city approach, defined as the civic perspective on the broader open government philosophy, which emphasises the value of greater transparency and accountability, increased citizen engagement, and innovation and economic opportunities driven by these values and by the release of data and information.

**New South Wales (province), Australia**

Open government embodies a collective right; a right enjoyed for the benefit of communities. This right provides the foundation upon which we as a fair and open society effectively uphold and actively participate in our system of democracy. Achieving open government requires legislation to enshrine citizens' right to access information and authorise decision makers to release information. Citizens expect government decision making to be open, transparent and accountable.

**Jalisco (state), Mexico**

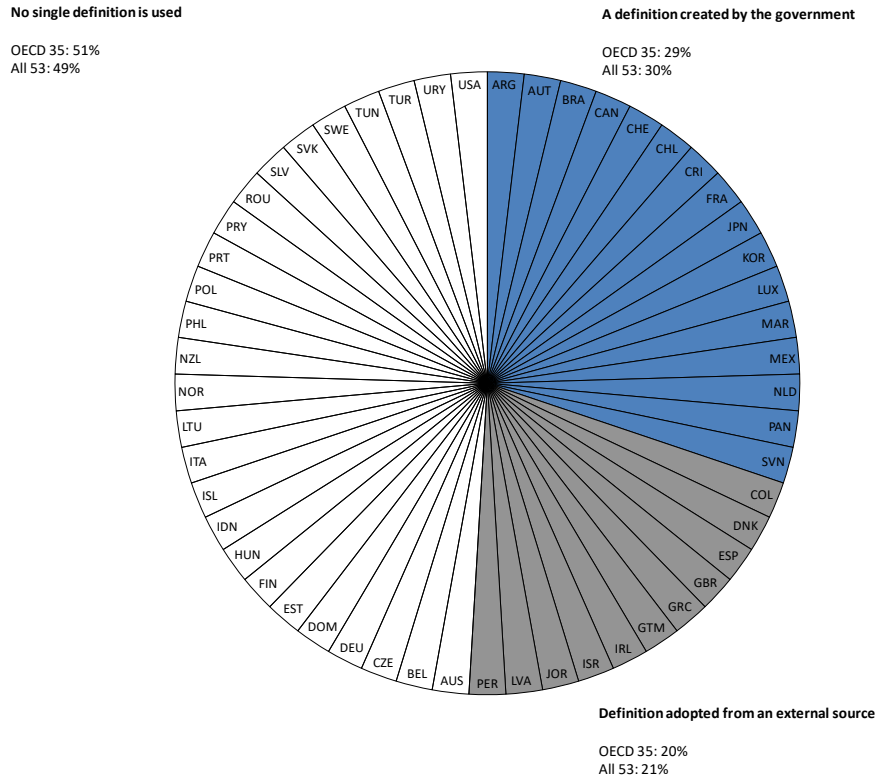
Open government is a modality of public management composed of three pillars: 1) transparency, which allows citizens to know the reasons, the costs and the forms in which the actions of the authorities are taken and implemented; 2) participation, which generates mechanisms in which citizens can express their points of view; and 3) collaboration, to put in practice the instruments to build a better society in a collective way. All of this, with an objective to create a government that meets the expectations of the citizens of the 21<sup>st</sup> century.

*Note:* Some of the definitions were translated from the original languages.

*Source:* City Council of Edmonton (2015<sup>[81]</sup>), "Open City Policy", [https://www.edmonton.ca/city\\_government/documents/PoliciesDirectives/C581.pdf](https://www.edmonton.ca/city_government/documents/PoliciesDirectives/C581.pdf); Information and Privacy Commission New South Wales (n.d.<sup>[9]</sup>), "Open Government", webpage, <https://www.ipc.nsw.gov.au/open-government> accessed on 5 October 2018; OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>; Technical Secretariat for Open Government in Jalisco (2016<sup>[10]</sup>), "Gobierno Abierto" (Open Government), webpage, <http://gobiernoabiertojalisco.org.mx/>, accessed 5 October 2018.

The OECD (2016<sup>[2]</sup>) report revealed that only 51% of all participating countries (49% of OECD countries) have a single definition of open government. From the countries with a definition, 30% (29% of OECD countries) have created their own definition, including Canada, Korea and Luxembourg (see Box 2.4) and 21% (20% of OECD countries) have adopted a definition from an external source, notably, from the Open Government Partnership (OGP), including Denmark, Ireland and Latvia (see Figure 2.2).

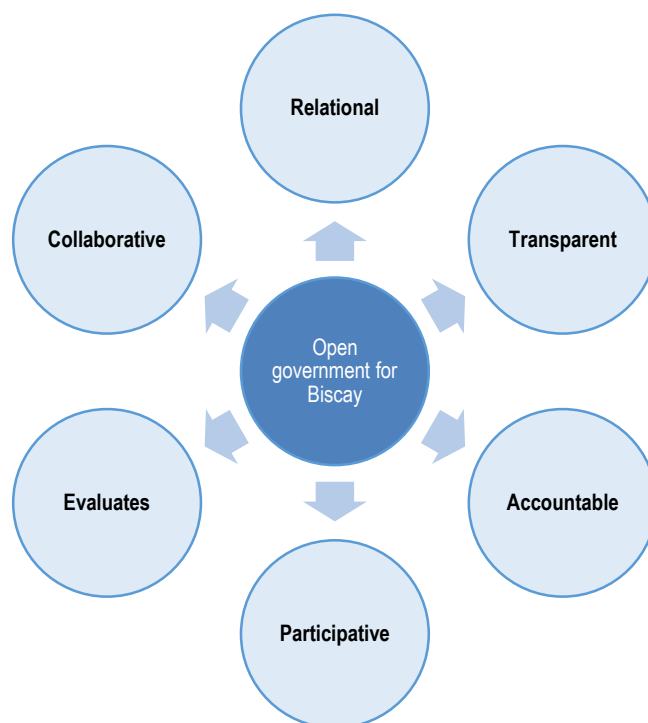
**Figure 2.2. Countries with and without an official definition of open government**



Source: OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Biscay developed what they call a “model” of open government in the OGAP. According to the plan, their vision of open government does not have a rigid definition, but rather characteristics (or particularities) that help inform the understanding of open government for Biscay (Figure 2.3).

**Figure 2.3. Characteristics of open government for Biscay**



Source: Author.

Therefore, for Biscay open government is defined as:

- a **relational government** that seeks timely and constant follow-up in order to better know its citizens’ needs and direct public policies in a more efficient way
- a **transparent government** that uses ambitious tools to make transparency a means for easier access to information and to contribute to improving efficiency in public management
- a **participative government** with a joint responsibility perspective, which creates new spaces and processes for participation across the entire policy cycle
- an **accountable government** with new spaces to subject the government administration to public scrutiny, including a government strategic plan subject to annual reviews
- a **government that evaluates** in order to make responsible and efficient use of public resources by measuring, monitoring and evaluating public policies
- a **collaborative government** open to co-operating with other stakeholders.

In sum, Biscay sees open government as “a process and a means to accomplish a better, closer, more modern and responsible way to manage the public administration” (Provincial Council of Biscay, 2017<sub>[11]</sub>). The overarching objective for Biscay is to start a cultural change embedded in an open government vision that will lead to a more efficient use of resources, the strengthening of public institutions as well as the increase of public trust in them. The definition reflects the particularities of the Province as it integrates the historic roots of participation with civil society organisations to generate social value and the longstanding and strong public-private collaboration. It also incorporates the vision of a responsible government due to the capacity of Biscay to collect taxes and illustrates the long-term vision that the Provincial Council has on the open government agenda. It aims for a change in the culture of the public sector with the underlying objective of improving public services, which is in line with the OECD definition of open government. The OECD Recommendation of the Council on Open Government defines open government as “a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth” (OECD, 2017<sub>[11]</sub>). However, during the fact-finding mission, while all high-ranking officials directly related to the open government agenda clearly understood and adhered to the definition or “model”, other civil servants from other departments of the Provincial Council (or provincial ministries, hereafter “Departments”) and municipalities did not seem to fully grasp this definition. For instance, at times they misunderstood open government with e-government or with transparency only. Although the open government definition of Biscay described in the above-mentioned action plan is in line with OECD good practices, further efforts are needed to better communicate and disseminate it in order to ensure that all stakeholders in Biscay have a common understanding of open government.

Further, the plan states that “working towards an open institution necessarily implies working with a vision of an open territory” (Provincial Council of Biscay, 2017<sub>[11]</sub>). This indicates Biscay’s intention for this open government agenda to permeate beyond a single institution but rather to attain the whole territory of Biscay with a particular emphasis in municipalities. This is in line with what the OECD has termed an “open state”, which means that “the executive, legislature, judiciary, independent public institutions, and all levels of government - recognising their respective roles, prerogatives, and overall independence according to their existing legal and institutional frameworks - collaborate, exploit synergies, and share good practices and lessons learned among themselves and with other stakeholders to promote transparency, integrity, accountability, and stakeholder participation, in support of democracy and inclusive growth” (OECD, 2017<sub>[11]</sub>). As seen in the example of Costa Rica in Box 2.5, more governments are moving towards an open state.

Biscay aims for an open state approach, or what they define as open territory due to their local nature; nevertheless, the action plan only includes municipalities in one commitment while no other horizontal branches of government are included. It is not clear how this is going to be achieved given that the only direct mention to municipalities is in Commitment 8 of the OGAP, which aims to develop technological tools for the municipalities in Biscay. In order to strengthen the open territory approach by promoting openness and inclusiveness of all relevant public actors, Biscay could include other key actors of the Province, such as the legislative branch and could benefit from the ongoing OGP Local Programme of the Basque Country to include the municipalities – beyond the ongoing co-operation for transparency and technology tools (Chapter 3) – as well other actors of the Autonomous Community such as the Basque Ombudsman, *Ararteko*, while respecting their level of autonomy when designing and implementing their open government reforms.

### Box 2.5. The Declaration for the Creation of an Open State in Costa Rica

On 25 November 2015 the president of the Republic of Costa Rica and the presidents of the three powers of the Republic of Costa Rica (which in Costa Rica are the Executive, the Legislative Assembly and the Supreme Court) and the Supreme Electoral Tribunal signed a joint declaration committing Costa Rica to moving towards an open state. The declaration states that each branch will build a plan of priority actions to “promote a policy of openness, transparency, accountability, participation and innovation in favour of the citizens”, which will be included in the institutional strategic plans and will be evaluated annually. The powers also agreed to strengthen and develop the mechanisms of citizen participation in order to contribute to a closer relationship between civil society and the leaders and to provide access to public information through the use of new technologies.

Costa Rica was the first country in the world to have signed such a promising declaration bringing together all the powers of the state. The declaration has significant potential to guide the country’s future open state agenda. In order for it to not remain only on paper, the country will now need to underpin its goodwill with concrete actions. This includes involving the sub-national and local governments, decentralised public institutions, independent state institutions, the business sector, media, academia and civil society to join forces to build an open state in Costa Rica.

Source: OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

### *Links between medium-term objectives, long-term goals and the set of initiatives to achieve them needs to be clearly made*

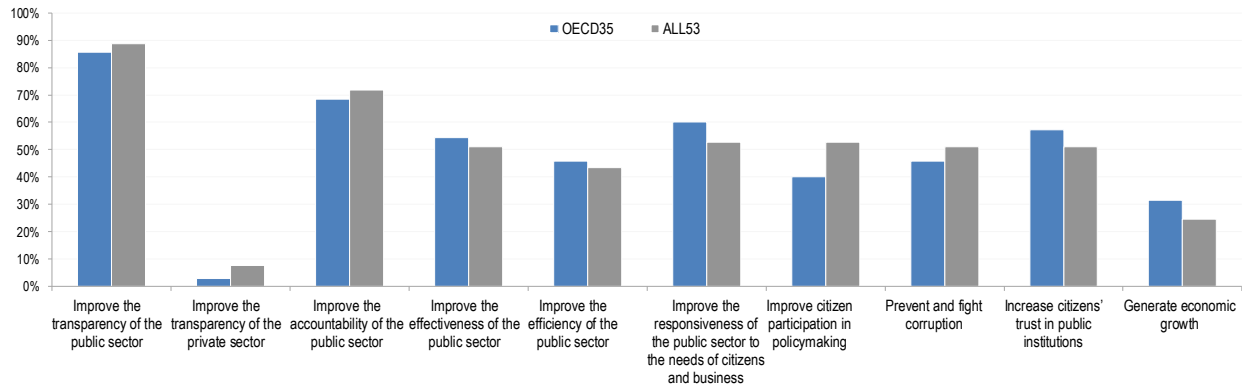
As the principles of open government are by nature horizontal and touch upon a variety of sectoral policies such as education, environment, budgetary governance, transportation, etc., the OECD Recommendation suggests that governments should develop a comprehensive, horizontal open government strategy that regroups scattered initiatives carried out in this policy area. While including open government principles in a wide range of initiatives and implementing them individually is an important step, when they exist in isolation or scattered in other strategies it limits the impact, may create duplication, may lead to overuse of scarce resources and negatively affects the potential that they can have collectively.

For instance, several governments have integrated open government principles in their strategic plans and often implement open government initiatives linked to a sectoral policy or a single principle (e.g. a transparency plan). For example, Australia, Denmark and Greece include open government principles in their public sector reform agendas; Luxembourg, New Zealand and Slovenia include them in their digital government agendas; and Costa Rica, Mexico and Peru include some of them in their constitutions (OECD, 2016<sup>[2]</sup>).

The open government strategy should set its main objectives and establish medium to long-term goals. The strategy also needs to be linked and aligned with high-level objectives set by the government, normally at the beginning of each political term. The primary objective of the OGAP of Biscay is to “improve public management and to make it more effective by reinforcing the message that Biscay is built together [...] and to involve citizens in the management of the Provincial Council of Biscay” (Provincial Council of Biscay, 2017<sup>[11]</sup>).

This is in line with some of the main objectives that several countries have included in their open government strategies. The OECD (2016<sup>[2]</sup>) report found that objectives vary according to the policy priorities of each national or local government. For example, as seen in Figure 2.4, 89% of participating countries (86% of OECD countries) stated that improving the transparency of the public sector was one of the main objectives of their open government strategy and 72% (69% of OECD countries) reported that improving the accountability of the public sector was one of their main objectives.

**Figure 2.4. Objectives of countries' open government strategies**



Source: OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

Biscay's OGAP include 6 key priority and thematic areas and 14 commitments (see Table 2.1). Each commitment comprises the following elements: the department or actor in charge of its implementation; other departments or actors involved in the commitment; the goal that needs to be achieved or problem that needs to be solved; the main objective; a brief description of the commitment, the addressed OGP challenge; values of the OGP; ambition (expected results) and the measurable milestones to reach the commitment with a timeframe (Provincial Council of Biscay<sup>[11]</sup>).

**Table 2.1. Open Government Action Plan of Biscay: Priorities and commitments**

Priorities/thematic areas	Commitments
Transparency and open data	Commitment 1. Create and implement a transparency plan for the Province. Commitment 2. Launch the open data service of Biscay. Commitment 3. Open provincial budgets.
Accountability	Commitment 4. Promote accountability initiatives in the management of the Provincial Council of Biscay. Commitment 5. Define a policy evaluation system for the Provincial Council of Biscay.
Citizen participation	Commitment 6. Develop a model for citizen participation. Commitment 7. Foster social participation in gender equality policies.
Technological development and innovation	Commitment 8. Develop technological tools for the municipalities in Biscay. Commitment 9. Set up a new comprehensive model to provide citizen services. Commitment 10. Reduce bureaucracy.
Promoting collaboration between the public and private sectors	Commitment 11. Generate economic value through collaborative initiatives with businesses within the territory. Commitment 12. Launch projects that bring together the public and private sectors to generate social value. Commitment 13. Launch projects that bring together the public and private sectors and involve young people to generate social value.
Strengthening public integrity	Commitment 14. Create and develop a provincial law for integrity, conflict of interest and incompatibilities.

Source: Provincial Council of Biscay (2017<sup>[111]</sup>), *Bizkaia Irekia: Plan de Acción de Gobierno Abierto (Open Biscay: Open Government Action Plan)*, <http://gardentasuna.bizkaia.eus/documents/1261696/1397467/Plan+de+Gobierno+Abierto.pdf/d96264cf-022e-a2c0-3919-e1778372436c>.

These 14 commitments were established based on the challenges that were identified during the consultation phases. The challenges include:

1. developing a system for collective creation
2. generating open and disseminated knowledge
3. strengthening the legitimacy and trust in public institutions
4. constructing a shared identity and vision to strengthen community values
5. drawing on more inclusive, egalitarian values.

These challenges are articulated as general lines of action, which may imply that they are actually the medium-term objectives of the Plan. Each of the 14 commitments also has a main objective. However, the connection between each commitment and its main objective to the challenges (broader medium-term objectives) is not clear. This creates a set of disconnected initiatives. Furthermore, how all of them support the main objectives of the Plan is not well defined. There is no clear causality between the commitments in place and the objectives to be reached and/or the challenges to be overcome.

Although all of these objectives can be perceived as short (lines of action), medium (targets) and long-term objectives, it is essential to present them in a way that all stakeholders involved have the same understanding of what needs to be achieved and when. By clarifying the objectives and setting a timeframe, this will contribute to stronger commitment and buy-in from all involved. Biscay could ensure coherence between the commitments and the goals of the strategy on the one hand, and of the strategy with Biscay's high-level and strategic objectives, in the other hand, as seen in the example of the government of New South Wales (NSW), Australia (Box 2.6).



### Box 2.6. New South Wales 2021 strategy, goals, targets and actions

In 2011, the government of New South Wales (NSW), Australia, launched the NSW 2021 as a ten-year plan to guide policy and budget decision making in order to deliver on community priorities. The plan sets long-term goals, measurable targets, and outlines immediate actions to achieve the goals.

The goals, targets and actions in this plan are integrated into the machinery of government, setting the priorities for funding, guiding decisions and focusing the day-to-day work of the public sector. The NSW 2021 is based around five strategies:

1. **Rebuild the economy:** Restore economic growth and establish NSW as the “first place in Australia to do business”.
2. **Return quality services:** Provide the best transport, health, education, policing, justice and family services, with a focus on the customer.
3. **Renovate infrastructure:** Build the infrastructure that makes a difference to both our economy and people’s lives.
4. **Strengthen our local environment and communities:** Improve people’s lives by protecting natural environments and building a strong sense of community.
5. **Restore accountability to government:** Talk honestly with the community, return planning powers to the community and give people a say on decisions that affect them.

The fifth strategy is composed of the following goals, targets and lines of action (extract):

Goals	Targets	Lines of action
Restore confidence and integrity in the planning system	Implement a new planning system	- Develop a new planning system for introduction to Parliament by November 2012, informed by community and stakeholder consultation.
	Up-to-date information about planning decisions	- Publish relevant planning decisions on the Department of Planning and Infrastructure website within five days. - Establish a new assessment procedure for all applications for development and infrastructure of state significance to ensure that 85% are assessed and determined within four months.
	Increase stakeholder satisfaction with planning processes and transparency	- Undertake an annual stakeholder satisfaction survey to enable feedback on the NSW planning system. - Establish a stakeholder satisfaction baseline as part of the review of the existing planning system.
Improve government transparency by increasing access to government information	Increase the public availability of government information	- Develop an open government plan to increase access to government information. The plan will identify opportunities for agencies to provide access to appropriate information. - Expand the Publications NSW website to include access to all agency information published as “open access” under the Government Information Public Access Act (GIPA).

	Up-to-date information about government services	<ul style="list-style-type: none"> <li>- Increase the number of mobile phone applications that allow people to access government data, for example, Live Traffic NSW, SMS bus services, Police eyewatch and real-time hospital emergency information.</li> <li>- Build a new National Parks website to provide real-time information, online interactive maps, and a new online booking system for accommodation, camping and annual passes for park visitors.</li> </ul>
<p><i>Note:</i> This is an extract of the fifth strategy of NSW 2021.  <i>Source:</i> New South Wales Department of Premier and Cabinet (2011<sup>[12]</sup>), <i>NSW 2021: A Plan to Make NSW Number One</i>, <a href="https://www.ipc.nsw.gov.au/sites/default/files/file_manager/NSW2021_WEBVERSION.pdf">https://www.ipc.nsw.gov.au/sites/default/files/file_manager/NSW2021_WEBVERSION.pdf</a>.</p>		

As seen in Box 2.6, each of the lines of action responds to the targets that in turn help achieve the strategic goals. Likewise, the goals help achieve the fifth strategy that is part of the strategic plan of the Province. The coherence between all the elements of the strategy simplifies understanding for policy makers and stakeholders and helps contribute to the proper implementation of the main strategy.

### ***The open government strategy needs to be connected to high-level and strategic policy objectives***

The document that sets the vision, policy and strategic goals to be achieved by the Province during the mandate of President Unai Rementeria is *Bizkaia Goazen 2030*. This strategic plan was published at the beginning of his term in 2015 and sets a long-term vision for the territory, extending it to 2030 with broader policy objectives to achieve.

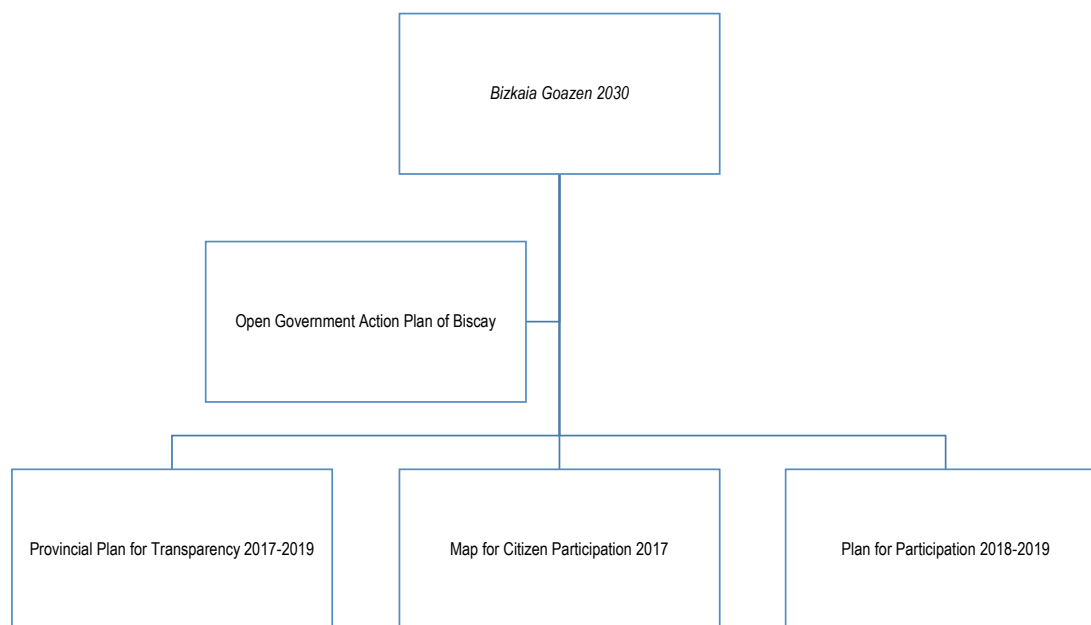
The first section of the strategic plan makes an in-depth analysis of Biscay's current challenges and opportunities and provides four axis of intervention: 1) economic activity and employment; 2) social and territorial cohesion and equal opportunities; 3) modern, close and responsible; and 4) connectivity to the world. Each axis has several strategic objectives with specific actions (120 actions in total) to be implemented with an allocated budget. It was elaborated with the purpose of doing yearly monitoring reports to measure the degree of implementation of all the actions (for more information on their monitoring and evaluation system, see Chapter 4).

The above-mentioned third axis, which aims for a modern, close and responsible public administration, is directly linked to open government. While it does not explicitly mention the term, it contains several principles and initiatives (actions in the document) that were later included in the OGAP. For instance, the two strategic objectives of the third axis, modernising the administration and achieving a closer provincial council, touch upon the principles of transparency, citizen participation, accountability and integrity and thematic areas related to open government such as digital government.

In turn, the OGAP builds upon several elements of the third axis of the *Bizkaia Goazen 2030*. For instance, in the case of transparency, the first commitment of the OGAP is to ensure the correct implementation of the Provincial Law on Transparency (*Norma Foral de transparencia de Bizkaia*) by creating and implementing a transparency plan for the Province (2017-19). The developed transparency plan sets an ambitious goal for the transparency agenda and clear guidelines to achieve it, which are embedded in Biscay's open government vision.

As for stakeholder participation, Commitment 6 of the OGAP calls for the development of a model for citizen participation. One of the outputs of that model is a document called the Map for Citizen Participation, which provides an overview of the initiatives in different policy areas in which citizen participation practices took place in 2017. Biscay also published a Plan for Participation 2018-2019, which sets a roadmap to increase citizen participation throughout the whole policy cycle (for more information on the stakeholder participation agenda, see Chapter 5) (Figure 2.5).

**Figure 2.5. Strategies linked to open government in Biscay**



Source: Author.

Biscay has made significant efforts to align its open government agenda with some of the actions of *Bizkaia Goazen*. However, it is not clear how the OGAP contributes to the higher and long-term objectives established in *Goazen*. Biscay could establish a more explicit connection between *Bizkaia Goazen 2030* and the current and forthcoming OGAP, which is composed mainly of short-term initiatives.

In sum, two-year action plans, like the OGAP, act as important catalysts for the implementation of open government initiatives. They can also help governments raise the profile of open government initiatives as well as push for high-level reforms. Such has been the case in Biscay, where the high-level political support for, and commitment to, open government pushed for the approval of the Provincial Law on Transparency and the creation of two new institutional structures inside the government dedicated to open government: the Observatory of Biscay and the Cabinet for Modernisation, Good Governance and Transparency. However, based on to the OECD definition of an open government strategy (see Box 2.1), these bi-annual action plans are not considered comprehensive national or local strategies, as they establish short-term objectives and lack the long-term vision that a comprehensive strategy can provide. Developing a holistic open government strategy implies moving from setting and implementing fixed plans towards creating an adaptive system that can continuously improve public governance and promote

coherence given different challenges. It also implies moving from a focus on output (e.g. initiatives and laws) towards a focus on outcomes (e.g. impacts of projects and legal changes). Therefore, Biscay could take the lessons learned from the OGAP and consider developing a comprehensive open government strategy in order to ensure the success and long-term commitment of its open government agenda and to streamline all other related plans (mainly transparency and stakeholder participation) so that it becomes the baseline strategy. Also, the legacy of a consolidated open government strategy would ensure continuity with a new government and would increase buy-in with current and new stakeholders and accomplish a real cultural change within the public administration. Further, a clear strategy facilitates adherence to and buy-in from all sectors and all levels of government, and it sets a baseline that can be used to measure the performance of open government.

### *An inclusive process for the creation of the open government strategy ensures buy-in*

In order to reach the full potential of an open government strategy as well as ensuring its successful implementation, it is important to have the ‘buy-in’ from key actors, both within and outside the government. For this, internal communication with, and among, civil servants is essential. In addition, an early integration of civil society, including non-governmental organisations (NGOs), academic institutions, local governments and citizens is crucial for the development of the national or local strategy. Finally, the required reforms need to be communicated and made tangible to civil society, citizens and other stakeholders throughout the entire process (OECD, 2016<sup>[2]</sup>).

Biscay conducted three consultation phases to develop the OGAP. The first phase was an external consultation for which, participants were selected through two main mechanisms. First, the Province opened a call to participate to the 8,000 subscribers of an online newsletter dedicated to participative initiatives in the Province (see Chapter 5 for more information on the newsletter). Then, it invited other stakeholders to participate, such as the private sector and trade unions, through Innobasque, the innovation agency of the Basque Country. From all of those that showed interest to participate, Biscay selected 36 participants (citizens, civil society entities, representatives from the private sector and trade unions) based on three criteria:

1. previous knowledge or experience in open government;
2. the degree of collaboration with the Provincial Council of Biscay; and
3. gender parity.

The output of this phase was the identification of the characteristics of what an open territory should be in Biscay, the challenges to be addressed and the necessary actions to overcome them. The second phase was undertaken with 59 civil servants and technicians from different departments of the Provincial Council of Biscay. It helped recognise the challenges and align the actions to their respective departments and sectoral plans or strategies already in place. Finally, the third phase was carried out with 14 policy experts and academics to enrich and consolidate the definition, the challenges and the proposed actions.

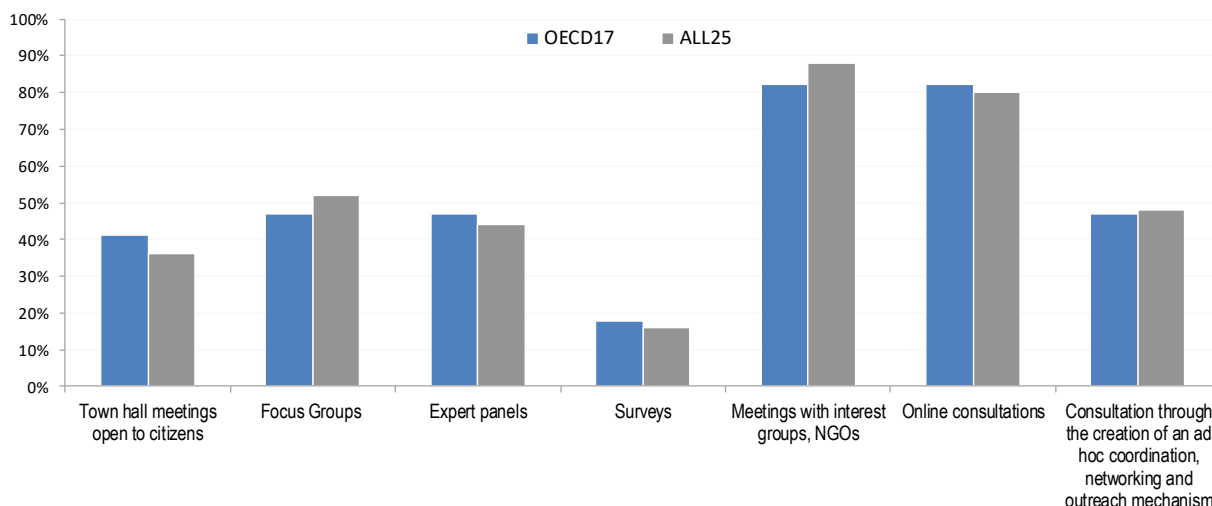
The process of developing and communicating an open government strategy is as important as the strategy itself, as it will set the scene for its adherence by stakeholders and to a certain extent, its success. All relevant stakeholders within and outside the government should be involved in the process; this will increase buy-in and commitment as well as continuity of

the open government agenda beyond a single administration. Further, communicating the definition, the objectives and the strategy itself will ensure support from the stakeholders involved and will help permeate the adherence of a larger public to the open government strategy.

For the elaboration phase, it is crucial to have an inclusive process such as the one used for the open government action plan. The OECD survey revealed that nearly all countries (96%) with an open government strategy had taken an inclusive and participatory approach. Like Biscay, most countries involve the concerned central government institutions, civil society organisations (CSOs), citizens and academics. For a more holistic and inclusive approach to open government, Biscay could consider involving media associations and journalists (such as the Netherlands), local governments (such as in Finland) as well as the legislative and judicial branches, while also fostering greater openness within those actors.

There are different ways to conduct the consultation phases. For the external phase, most countries carry out meetings with interest groups and CSOs (88% of survey respondents, 82% of OECD countries) and online consultations (80% of survey respondents and 82% of OECD countries) (see Figure 2.6). Biscay could consider organising town hall meetings, for example; this approach, carried out by 36% of participating countries (41% of OECD countries), offers a direct exchange with citizens. The use of social media can also be a useful tool to raise awareness and to increase response rates in online consultations or surveys, and they can act as an enabler to promote open government principles and the strategy itself (see Chapter 5 for the role of external communication in open government).

**Figure 2.6. Consultation approaches used by countries during the development of an open government strategy**



OECD (2016<sup>[2]</sup>), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264268104-en>.

While Biscay made important efforts during the consultation phases that led to the OGAP, establishing a narrow criteria for the first phase, to those subscribed to those newsletter, that have experience on open government and have collaborated before with the Provincial Council of Biscay limits the spectrum of actors that can have a say during the process and hinders the participation of other actors that have not yet participated with the Provincial

Council of Biscay or that are related to open government. Conducting town hall meetings can widen participation to new actors who could enrich the open government strategy, broaden the scope of civil society that participates in the process, boost general knowledge on open government and increase buy-in from a wide range of stakeholders.

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

An open government strategy needs a robust legal and regulatory framework in order to be effectively implemented. As stated in Provision 2 of the OECD Recommendation, national and local governments should “ensure the existence and implementation of the necessary open government legal and regulatory framework, including through the provision of supporting documents such as guidelines and manuals, while establishing adequate oversight mechanisms to ensure compliance” (OECD, 2017<sup>[1]</sup>).

A robust legal and regulatory framework should be formulated in a comprehensive way, communicated to stakeholders and effectively enforced. Some examples of what such a legal baseline could include, but is not limited to, are: laws on access to information, citizen participation, citizen engagement in public procurement procedures, protection of personal data and archives, open data, whistle-blower protection and anti-corruption laws. 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 multilevel governance structure.

The core legal basis for open government can take different forms in every country; however, the OECD survey showed that a significant number of OECD members introduce open government provisions in their constitutions, as is the case in Mexico, Norway and Sweden (OECD, 2016<sup>[2]</sup>). Most of these provisions refer to access to information and citizen participation. As explained in Chapter 1, Biscay is a local government with unique multilevel governance arrangements. At the highest levels, the Spanish Constitution mentions access to information (Article 20 and 105.b) and the recognition of citizen participation as a right (Article 9) (Government of Spain, 1978<sup>[13]</sup>). In addition, the Statute of Autonomy of the Basque Country reinforces Article 9 of the Constitution by stating that “the Basque public authorities will, within the scope of their competencies, facilitate the participation of all citizens in the political, economic, cultural and social life of the Basque Country” (Congreso de España, 1979<sup>[14]</sup>).

Acknowledging that ATI and FOI laws are the cornerstones of open government and are “a crucial element to reduce corruption and deepen trust among citizens and their governments” (OECD, 2016<sup>[2]</sup>), Biscay adopted its own Provincial Law (*Norma Foral*) on transparency in February of 2016 (Juntas Generales de Bizkaia, 2016<sup>[15]</sup>). Before this, the legislation enforced at the Provincial level was the national Law for Transparency, Access to Public Information and Good Governance approved in December 2013 (BOE, 2013<sup>[16]</sup>). This is not unique, in some countries with federal structures, local governments have passed ATI legislation; such is the case of ten provinces and three territorial legislatures in Canada.

ATI or FOI laws allow citizens to know their rights and to understand the role of the government better. They are also a tool to hold governments accountable and to make informed decisions. While providing access to information does not lead to an automatic increase of citizen participation or engagement (World Bank, 2016<sup>[17]</sup>), it can act as an enabler. As indicated in the OECD (2016<sup>[2]</sup>) report, ATI or FOI laws aim, among others, to:

- guarantee the greatest degree of transparency in government operations
- encourage the reuse of information
- generate economic value by private individuals and companies.

More than 100 countries worldwide have adopted ATI or FOI laws, including all OECD countries. While each ATI or FOI law is different as it is adapted to the particularities of each country or local government, the most shared elements of such a law include:

- objectives and principles
- scope
- proactive disclosure
- procedure to request information
- exemptions
- appeals procedures
- information officer

### *Objectives of the Provincial Law on Transparency*

Although the Provincial Law on Transparency of Biscay was adopted in 2016, Biscay had been implementing transparency initiatives for several years. In 2005, the provincial strategic plan included transparency as one of the main horizontal axes; also, the strategy for the period 2011-16 included an objective on making the management of public administrations and public information more transparent. Biscay's efforts and progress in this matter are shown in the results of the Index of Transparency of the Provincial Councils of Spain, carried out by Transparency International. Since the index began in 2012, focusing only on proactive disclosure of information, the Provincial Council of Biscay is ranked among the first five most transparent in Spain (Transparency International Spain, n.d.<sup>[18]</sup>). Taking into account the progress already made at the provincial level, the Provincial Law on Transparency of Biscay built on the state law and took as a reference a similar draft bill that was being discussed at the Basque Parliament at the time. The former draft bill was not enacted but the Basque Parliament is discussing a new version, which, as of February 2019, has not yet been approved.

The objective of the Provincial Law on Transparency of Biscay is to guarantee transparency in two dimensions: proactive disclosure and the right to access the public information of the Provincial Council of Biscay as well as of that of the state-owned enterprises. To achieve this objective, the Provincial Law has the following objectives:

- The information that is published must be true and accurate.
- The entities subject to this Provincial Law must meet with what is established.
- The information that is published must be useful.
- The information that is published must be simple and understandable for citizens.
- The access to information must be free, except in the case of fixed rates for the delivery of information or copies that are different from the original (Provincial Council of Biscay, 2016<sup>[19]</sup>).



### *Scope of the law*

Evidence from OECD countries shows that ATI laws vary in terms of applicability and scope. Only 25 OECD countries include local governments in their ATI laws, only half their legislative and judicial branches and few include state-owned enterprises

In Biscay, the Provincial Law on Transparency applies to the Provincial Council of Biscay (i.e. the executive branch), to the legislative branch, to other public entities (autonomous organisms, state-owned enterprises, foundations, and other provincial entities subject to public law), to private entities that receive funds from the Provincial Council (that receive EUR 100 000 or more, or that they represent more than 40% of their yearly income) to any natural or legal person that provides services to the Provincial Council and to other entities that receive subsidies such as political parties and trade unions. However, it does not cover other actors such as the judicial branch or municipalities.

For municipalities, the Law of Local Institutions of the Basque Government (BOE, 2016<sub>[20]</sub>), also known as “LILE” for its initials in Spanish, regulates the competencies of the municipalities in the Basque Country and it includes provisions on transparency, i.e. access to information provisions and citizen participation. Table 2.2 summarises the scope of application of the ATI law at the state level, at the Autonomous Community (draft bill), in Biscay and in the municipalities.

**Table 2.2. The breadth of access to information laws that apply in the Basque Country**

Law or local law	Enacted by	Applies to
Law of Transparency, Access to Information and Good Governance (19/2013)	Spanish state	Central and sub-national governments Executive and legislative branches The Household of His Majesty the King, the Constitutional Court, the General Council of the Judiciary, the Bank of Spain, the Council of State, the Ombudsman, the Court of Audit, the Economic and Social Council and the similar regional institutions, in relation to their activities subject to administrative law Private entities managing public funds*
Draft bill on transparency and citizen participation in the Autonomous Community of the Basque Country ( <i>draft bill</i> )	Autonomous Community of the Basque Country	Central government Executive and legislative branches Private entities managing public funds*
Provincial Law on Transparency (1/2016)	Province of Biscay	Central government Executive and legislative branches Private entities managing public funds*
Law of Local Institutions of the Basque Country (LILE) (2/2016)	Autonomous Community of the Basque Country	Central government (municipalities) Executive branch Private entities managing public funds*

*Note:* \*Applies to private entities managing public funds under certain conditions (amount of money they receive or percentage owned by the state). The conditions vary in each law.

*Source:* Author

### *Proactive disclosure*

Proactive disclosure of information, that is the information that is made available to the public without a prior request, is essential to achieve more transparency and openness in a government. It also reduces the costs of administrative procedures as it reduces information requests. All OECD countries proactively publish public information; nevertheless, the

type of information varies in each of them. The Provincial Law on Transparency of Biscay includes proactive disclosure for the following types of information:

- **Institutional:** Organisational information (e.g. organisational norms, plans), a list of high-ranking officials and their annual declaration of income, assets and property.
- **Legal and regulatory:** Draft bills, provincial laws, regulatory resolutions, etc.
- **Economic and financial:** Budget (updated every three months), provincial balance sheets (e.g. deficit, public debt), investments, tax revenues, etc.
- **Public administration:** Procurement, grants and subsidies, etc.
- **Sectoral policies:** Sectoral plans and programmes, service charters (*cartas de servicio*), etc.
- **Public employment:** Staffing structure, job offers, training programmes, etc.
- **General information:** Any information that can be useful for citizens including maps, social services, cultural activities, access to public services, citizen information services, etc.

The type of information disclosed proactively by the Provincial Law on Transparency of Biscay is in line with OECD standards. For example, like Biscay, most countries disclose budget reports (94%), annual ministry reports (84%) and audit reports (72%). However, very few countries (22%) publish the list of public servants and their salaries (OECD, 2011<sup>[21]</sup>). In Biscay, like in Italy, the Netherlands and the United Kingdom, the disclosed salaries of public officials are only for top positions via an annual asset declaration. Concerning the salaries for civil servants, an income scale by position is made public. Biscay could continue to disclose the salaries of all public officials as in Chile, Estonia and Israel as well as their assets.

An important element of a transparency law is where and how information is published. In 81% of OECD countries, information is published in a single website, whereas for others it is done in each ministry's website or both. In relation to how the information is published, governments should ensure that the information is timely, up to date, reliable and re-usable (OECD, 2011<sup>[21]</sup>). The Provincial Law on Transparency of Biscay specifies that information will be published on Biscay's updated and centralised online transparency portal, called Bizkaia Gardena (<http://gardentasuna.bizkaia.eus/es/>). This includes any information that concerns the central government and the executive branch, while the other public bodies shall publish their information on their own online portals. A unified format for online portals was elaborated for the public bodies subject to the Law. Also, the Provincial Law on Transparency of Biscay foresees that every portal shall have a space dedicated to what Biscay calls collaborative transparency, which is a space for citizens to submit their requests and needs as well as to evaluate the quality of public services. The Provincial Law on Transparency of Biscay establishes that all information shall be re-usable, in an open and standardised digital format. Finally, the Provincial Law on Transparency stipulates that a transparency plan shall be developed by the central administration of the Provincial Council and the entities of the public sector of the Province every three years in order to define the minimum targets of proactive disclosure and to establish new requirements of transparency.

### *Procedure to request information*

All OECD countries establish standards for responding to information requests made by citizens; these include a time limit to respond, the eligibility conditions to file the request and, sometimes, fees. As for Biscay, in 71% of OECD countries any natural or legal person can file a request for information without the need to indicate the motivation or reason for the request. The process of requesting information in Biscay can be made electronically, on site or by mail. Electronically, the request can be submitted by filling in a form via the transparency portal or via the portals of the provincial bodies. In all cases, it requires the identification of the natural or legal person requesting it, which is also the case in the national Law for Transparency, Access to Public Information and Good Governance (BOE, 2013<sup>[16]</sup>). Although Biscay does have an online channel that allows for anonymous requests, complaints and suggestions to be made called “*Laguntzaile*”, it is not part of the Provincial Law of Transparency and thus, not subject to the same standards (response time, opportunity to appeal, etc.). More and more countries, are allowing for anonymous request. For instance, some OECD countries such as Australia, Canada and the United States have enacted legislation that allows requests for information made anonymously. In case the Provincial Law is revised in the future, Biscay could consider the possibility of allowing the requests to be made anonymously.

Once filed, the provincial body in question has 15 days to respond; this period can be renewed for an additional 15 days in the case of an unusual volume or complexity of the information requested. This falls within the OECD standards, where the average time to respond is 20 working days, and even less in countries such as Estonia (5) and Portugal (10) (OECD, 2010<sup>[22]</sup>). However, as the national Law for Transparency, Access to Public Information and Good Governance, the Provincial Law provides for administrative silence, which means that in the absence of response within the period specified, the applicant can consider his/her request denied. In this case, the requester can appeal the decision to the Complaints Commission (see section on appeals procedures). Even though Biscay currently has an internal commitment to respond to all demands, this is not reflected in the Provincial Law, which can hamper the confidence that citizens have in the law if the practice is not continued in the long term. The absence of a proper justification of a denial may lead to discretion and legal insecurity affecting the guiding principles of transparency, which imply that all public information is accessible and can only be withheld in order to protect other rights and national security, as stated in the Provincial Law. According to the Common European legal standards and the OAS Model Law on Access to Public Information, “no administration can deny access to a requested document without justifying its decision. Any refusal should mention the legislative exemption upon which it is grounded and clarify why the disclosure would harm the legitimate public or private interests protected by the exemption” and “in case exceptions to disclosure of the information are applied, they must be clear and narrow and must be legitimated and strictly necessary in a democratic society. The requester must be informed of the reason and legal provision of why the information is not given as well as the possibility to appeal the decision”, respectively (OECD, 2016<sup>[23]</sup>). Biscay could 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.

In Biscay, the request for information is free, although some administrative fees can apply in the case of issuing copies or of a change of format in a document, which can never exceed the real cost in accordance with the Provincial Law on Fees and Public Prices. In OECD countries, most fees depend on the number of pages or on the amount of time to process

the request. While most countries differentiate between the charging fees of a document already available with requests that require research or elaboration, only a limited amount of countries cap the size of the fee, such as Austria, Finland and France. Aside from cases that require research or elaboration, the OECD suggests that public institutions should consider removing all fees in order to ensure access to information to low-income citizens.

### *Exemptions*

Every OECD country with an ATI law has exemptions where the access to information cannot be granted. The most recurring cases for exemptions include sensitive data and information on matters of national security, personal data or commercial confidentiality. The Provincial Law on Transparency of Biscay states the following causes for non-admission of a request:

- when the information requested is in the process of elaboration or publication
- when the information requested is supportive or instrumental (e.g. informal notes, drafts and internal communications)
- when the information requested needs a previous process of elaboration
- when the addressed body does not have the information requested
- when the information requested is repetitive, abusive or has disproportionate costs.

The exemptions of the Provincial Law include information on public security, commercial confidentiality, environmental protection, private life, personal data and child protection. While the use of non-admissions and exemptions are accepted, they should be limited and properly justified.

### *Appeals procedures*

In cases where the information requested is denied, natural and legal persons should be able to appeal. In Biscay, an independent body called the Complaints Commission was created to address appeals, which is composed of three civil servants, appointed by the executive branch of the Provincial Council of Biscay for a non-renewable term of four years. The appeal can be filed within one month after receiving the denial, and the Complaints Commission has three months to respond. In the case of a negative response from the Commission, the requester can appeal the decision in an administrative court. In other countries with an ATI law, the three most common approaches to appeal withholding information are:

- 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 disclosure of 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 disclosure of information. No further appeal is provided for in the access law, although the commissioner’s actions remain subject to judicial review for reasonableness (World Bank, 2009<sup>[24]</sup>).

In Biscay, the requester can file a complaint with the Complaints Commission in case the department or body in charge of responding to a request does not provide the information requested. In turn, the Commission analyses the complaint and can file a disciplinary inquiry into the department or body. In case of fault, the sanction applied will depend on the regulation corresponding to the person responsible.

### *Information officer*

In order to implement an ATI law correctly, it is important to have adequate financial and human resources. Several OECD countries have an information officer to oversee and process the appeals. In Biscay, while appeals are dealt with by the Complaints Commission, the Cabinet of Modernisation, Good Governance and Transparency is in charge of the whole transparency agenda of the Provincial Council of Biscay. With regard to information requests, the Cabinet has what they call a decentralised model of implementation. In practice, this means that the Cabinet receives the information requests and sends the requests to the competent bodies or departments to respond. Likewise, the Cabinet produces reports related to transparency requests and manages the transparency portal.

### *Implementation*

Since the entry into force of the Provincial Law on Transparency in February 2016, the Provincial Council has been carrying out several activities contributing to a proper implementation. For instance, since the beginning Biscay created a body to provide technical assistance to all public servants covered by the Law, set up the new transparency portal as well as an open data portal to reuse the content of proactive disclosure (see Chapter 3 for more information on open data initiatives). Biscay created the Complaints Commission and to facilitate the dissemination and understanding of the Law, Biscay published an easy-read version and conducted several awareness-raising public events. In addition, in 2017, Biscay decided to go a step further and published a Provincial Plan for Transparency to ensure proper implementation and to build a culture of transparency in the Province. The Plan was built around 6 strategic axes with 24 actions to achieve them, as seen in Table 2.3.

**Table 2.3. Biscay's Provincial Plan for Transparency 2017-2019: Strategic axes and actions**

Strategic axes	Actions
Biscay as a transparent territory	<ol style="list-style-type: none"> <li>1. Organize informative conferences on transparency.</li> <li>2. Support municipalities in the implementation and progress of transparency.</li> <li>3. Support private entities that receive subsidies to comply with their obligations on proactive disclosure.</li> <li>4. Promote transparency in the private entities of Biscay.</li> <li>5. Recognize good practices of transparency in Biscay.</li> <li>6. Participate in national and international forums to position Biscay as a transparent territory.</li> </ol>
Foster and improve the content of proactive disclosure	<ol style="list-style-type: none"> <li>7. Integrate new content of proactive disclosure to the transparency portals.</li> <li>8. Integrate elements that facilitate the comprehension of the information.</li> <li>9. Increase the reusable content of proactive disclosure.</li> </ol>
Transparency in the key management processes of the Provincial Council of Biscay	<ol style="list-style-type: none"> <li>10. Consolidate the transparency dimension of public procurement.</li> <li>11. Progress in the transparency dimension of budgetary information.</li> <li>12. Development of the transparency dimension of the provision and evaluation of public services.</li> <li>13. Consolidate the transparency dimension in the elaboration of legislation.</li> <li>14. Strengthen the transparency dimension of data protection.</li> </ol>
Improve and implement new channels of communication	<ol style="list-style-type: none"> <li>15. Improve the accessibility of the transparency portals.</li> <li>16. Facilitate and improve the right to access public information.</li> <li>17. Develop new channels to provide information on the governance of the administration.</li> </ol>
Internal capacities to manage transparency	<ol style="list-style-type: none"> <li>18. Include transparency in the training schemes of civil servants and the access plans of public job offerings.</li> <li>19. Awareness and training of the Provincial Council of Biscay on transparency.</li> <li>20. Sustainability of the transparency management system</li> </ol>
Evaluation and monitoring of transparency	<ol style="list-style-type: none"> <li>21. Periodic evaluation of the management of transparency.</li> <li>22. External accreditation of the quality of the management of transparency.</li> <li>23. Implementation of a consultation analytical system.</li> <li>24. Elaboration of a follow-up report of the transparency plan.</li> </ol>

Source: Provincial Council of Biscay (2017<sub>[25]</sub>), *Plan Foral de Transparencia de Bizkaia 2017-2019* (Provincial Transparency Plan of Biscay 2017-2019), <http://gardentasuna.bizkaia.eus/documents/1261696/1266763/Plan+Foral+de+Transparencia+de+Bizkaia+2017-2019+.pdf/2826b52d-6cad-8948-ae1a-8e36d9ca8a46>

As in the OGAP, each action has an objective, a description of the action, the responsible body to implement it, as well as indicators and an estimated date for its implementation. The Cabinet of Modernisation, Good Governance and Transparency is in charge of the overall implementation and co-ordination of the Plan. Likewise, the Cabinet established an inter-departmental working group to ensure co-ordination within all the Departments that work on the Plan (Provincial Council of Biscay, 2017<sub>[25]</sub>).

The annual monitoring report of the Transparency Plan published at the end of 2017 showed important progress in its implementation. For example, in municipalities, the Cabinet through BiscayTIK, supported the publication of new transparency portals through the online portal “*Udala Zabaltzen*”, an easy-to-use website created by BiscayTIK in 2014 for municipalities (see Chapter 3 for more information on this portal). Likewise, to use transparency to improve public services, Biscay developed service charters (*cartas de servicio*) for certain public offices that have constant contact with the public (for more information on service charters, see Chapter 5). In terms of requests for information, during 2017 Biscay received 19 in total. The most requested topics were related to institutional information (27%) as well as public works and urban planning (16%). The Complaints Commission has so far received two complaints since its creation. The numbers appear to be low, which is understandable due to the recent approval and implementation of the law. The Provincial Council has been carrying out efforts to better promote the Provincial Law,

both within the public administration and outside, so all stakeholders are well aware of their rights and obligations. Biscay has identified that some internal and external challenges still need to be addressed. On the institutional side, Biscay has raised that the resistance to change the internal culture hampers the implementation of the Law, as it may be considered a burden to civil servants' regular tasks, extra responsibility or lack of awareness of the law and its provisions. This challenge is not only related to the transparency law, it is also an important barrier for the implementation of the OGAP. From the user side (stakeholders), the Provincial Council has mentioned communication to better disseminate the instruments that stakeholders have at their disposal to access the information, to increase awareness and interest on the value of reusing data and more importantly, to know about the law, and the rights that stakeholders have under it, as the main limitations to a full implementation of the law.

Acknowledging these challenges, Biscay has carried out several activities to raise awareness and ensure compliance, for example, through technical seminars for all the Provincial Departments and the elaboration of guidelines for private entities subject to the law, as shown in Box 2.7. Biscay could 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.

**Box 2.7. Support of the implementation of the Provincial Law on Transparency to private entities in Biscay**

To facilitate compliance with the Provincial Law on Transparency, Biscay elaborated a Transparency Guide for private entities that fall within the scope of the law. The Guide is a summarized document that outlines clear steps for private entities to facilitate compliance. It includes guidance on the information that should be published, the deadlines to respect, how to publish the information and the consequences for non-compliance. The Guide also includes a practical example to illustrate all the steps.

Further, the private entities that do not have electronic means to comply with the Provincial Law, can employ the transparency portal shared by other public entities and facilitated by the Provincial Council. Further, in order to advertise the Guide, Biscay organized two technical seminars during the course of 2017 with private entities.

*Source:* Provincial Council of Biscay (2017<sup>[26]</sup>), *Guía de Transparencia (Transparency Guide)*, <http://gardentasuna.bizkaia.eus/documents/1261696/1265157/Descargar.pdf/29ab9b22-76c1-1d91-5671-cd913064e319>.

### *The Law of Local Institutions of the Basque Government*

As mentioned in previous sections, Biscay has made several efforts to implement a vision of an open territory by focusing on strengthening collaboration with municipalities. In that sense, the Law of Local Institutions of the Basque Government (*Ley de Instituciones Locales de Euskadi*, LILE), is of particular importance. The LILE regulates the competencies of the municipalities in the Basque Country, including those in Biscay. Within this law, there is a dedicated chapter on open government with provisions for transparency and citizen participation.

Concerning transparency, the LILE provides for proactive disclosure and the right to access the public information. The scope of the law includes the executive branch of all municipalities as well as certain private entities managing public funds. The type of



information disclosed proactively is in line with OECD standards. The law also establishes that all information shall be re-usable, in an open and standardised digital format. A dedicated transparency portal is only obligatory for municipalities with more than 20 000 inhabitants. Once a request for information is filed, municipalities have one month to provide a response. The exemptions and limits that apply are the same as for the Provincial Law. The appeals procedures in municipalities fall upon the Basque Commission of Access to Public Information. Finally, the Law has an additional provision that phases the time that the Law will come into force according to the size of the municipalities. For example, municipalities with less than 2 000 inhabitants have five years to fully comply with all the obligations related to the transparency provisions of the LILE.

In terms of citizen participation, the LILE regulates the conditions that guarantee effective stakeholders participation in the elaboration of norms, local strategic plans and decision-making. The Law fosters stakeholders' participation throughout the policy cycle (initiative, design, elaboration, implementation and evaluation). Likewise, the LILE regulates the tools for citizen participation, including popular consultations (*consultas populares*), sectorial consultations (*consultas sectoriales*) and open citizen consultations (BOE, 2016<sub>[20]</sub>).

During the fact-finding mission, some local governments recognized how comprehensive and useful the Law is, however, some mentioned that they struggled to meet all the obligations due to a lack of human and technical resources. To that effect, the Provincial Council is an important ally since it supports local capacity building through BiscayTIK, specifically in digital aspects that are used for the transparency obligations, as with the example of *Udala Zabaltzen*. This support can particularly help municipalities with less than 20 000 inhabitants by providing a level playing field; currently, 44 municipalities have this transparency portal. The Basque Local Governments Association (EUDEL) also plays an important role representing and connecting municipalities in the Basque Country. It provides capacity-building activities targeted to open government principles. For example, in 2017 it implemented, in collaboration with the Council of Europe, a pilot project called the European Label of Governance' Excellence (ELoGE). This pilot benchmarked nine Basque municipalities with 12 principles of good governance, including one on openness and transparency and another on accountability. Initiatives such as ELoGe and *Udala Zabaltzen*, can provide the needed support and boost to small municipalities in order to further implement open government principles (Centre of Expertise for Local Government Reform, 2018<sub>[27]</sub>). In order to become a transparent and open territory, Biscay could 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.

## Recommendations and proposals for action

Biscay is in line with OECD practices, as in early 2017, Biscay launched its 2017-19 Open Government Action Plan (OGAP) as the first attempt to group open government principles and initiatives under a broader open government strategy. In addition, Biscay has shown high-level political commitment with open government principles since the beginning of the current mandate of President Unai Rementeria. However, Biscay still needs to carry out additional efforts to ensure the success and long-term sustainability of its open government agenda.

With regard to positioning open government as a holistic and long-term strategy, 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:
  - Involving media associations and journalists, local governments as well as the legislative and judicial branches.
  - 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 securing a well implementation of the Provincial Law on Transparency, Biscay could:

- 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.

In relation 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.

## Notes

<sup>1</sup> The Province of Biscay is legally referred to as a “historic territory”, a term exclusive to the Basque Country that describes the political and administrative system of its three provinces. In view of facilitating the understanding of the term for readers not familiar with the concept and of shortening the term repeated throughout the Chapters, the Review will refer to the historic territory of Biscay as “Province of Biscay”.

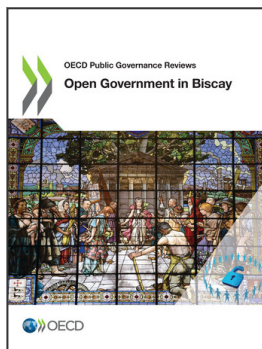
<sup>2</sup> The CoG is known under different labels in different countries, such as Chancellery, Cabinet Office, Office of the President, Office of the Government, etc. It is playing more and more an active role in policy development, co-ordination, leadership, collaboration and co-operation across the public administration. It aims at securing a strong, coherent and collective strategic vision - especially when it relates to major cross-departmental policy initiatives (OECD, 2014<sup>[28]</sup>).

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