3 Leveraging legislations and regulations as drivers of the open and connected agenda in Thailand

Chapter 3 examines Thailand's legal and regulatory frameworks and their implications for enabling the foundations of an open and connected agenda in the country. In addition, it looks into how the government of Thailand can enable greater stakeholder participation in the legislative and policy-making process and build the resilience of its regulatory environment to tackle real-world changes and developments.

Introduction

Rules and regulations set the "rules of the game" to promote the proper functioning of the economy and society while ensuring protections for stakeholders and the government (OECD, 2018[1]). It provides legal certainty to all actors and enables governments to effectively implement policies (OECD, 2018[1]).

In order to ensure public support, engagement and adherence, it is crucial that all laws and regulations are created together with relevant stakeholders, formulated in an understandable way and publicly communicated. The provisions of the OECD *Recommendation of the Council on Open Government* (2017[2]), *Recommendation of the Council on Digital Government Strategies* (2014[3]) and *Recommendation of the Council on Regulatory Policy and Governance* (2012[4]) provide guidance in this regard, stressing the need for governments to secure the existence of an adequate legal and regulatory framework. This includes the definition of oversight mechanisms and the implementation of regulatory assessments to secure up-to-date regulatory environments that help governments to cope with fast-paced digital transformation (Box 3.1).

Box 3.1. Relevant provisions in OECD recommendations

Provision 12 of the OECD *Recommendation of the Council on Digital Government Strategies*

"Ensure that general and sector-specific legal and regulatory frameworks allow digital opportunities to be seized, by: i) reviewing them as appropriate; ii) including assessment of the implications of new legislations on governments' digital needs as part of the regulatory impact assessment process".

Provision 2 of the OECD *Recommendation of the Council on Open Government*

"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".

Provision 2 of the OECD *Recommendation of the Council on Regulatory Policy and Governance*

"Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations".

Source: OECD (2014[3]), *Recommendation of the Council on Digital Government Strategies*, http://www.oecd.org/gov/digital-government/Recommendation-digital-government-strategies.pdf; OECD (2017[2]), *Recommendation of the Council on Open Government*, https://www.oecd.org/gov/Recommendation-Open-Government-Approved-Council-141217.pdf (accessed 15 April 2020); OECD (2012[4]), *Recommendation of the Council on Regulatory Policy and Governance*, https://www.oecd.org/governance/regulatory-policy/2012-recommendation.htm (accessed 4 June 2020).

Best practices from OECD countries can help in providing guidance to develop, update or streamline legal and regulatory frameworks in order to set the foundations for common good governance practice at the national, regional and global scale.

OECD experience shows that the underlying legal basis for an open and connected government can take various forms. It can include, amongst others: open and digital government provisions in national constitutions, regulation on stakeholder participation, anti-corruption, public sector integrity and whistle-blower protection; the protection of personal data; as well as legislation guaranteeing the right to assembly

and to safeguard civic space, freedom of the press and regulations on digital government and open data (e.g. openness by default).

While a lack of secondary legislation and policy documents (e.g. open government) may result in suboptimal policy results, evidence from the OECD peer review mission to Bangkok confirmed that most government agencies are aware of the various acts and regulations that apply to them. Yet, in some cases, government agencies might do the bare minimum to meet their obligations under the law (e.g. in terms of public consultation). To assess the legal basis that impacts the digital and open government reforms, this chapter explores the current state of the legislation for an open and connected government in Thailand and raises the challenges ahead in this regard.

Building a solid legal basis for an open and connected government in Thailand

The 2017 Constitution contains references to a number of open government principles

As in most OECD countries, the National Constitution of the Kingdom of Thailand, which was revised in 2017, does not make a specific reference to the concept of open government. However, it contains specific provisions that support the principles of transparency, accountability, integrity, stakeholder participation and access to public sector information and data. In particular:

- **Section 41** determines that "a person and a community shall have the right to […] be informed and have access to public data or information in the possession of a State agency" (Office of the Council of State, 2017[5]).
- **Section 58** stipulates that for any undertaking by the state or which the state permits to carry out, which "may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people" (Office of the Council of State, 2017[5]), a prior public hearing to consult with relevant stakeholders must be arranged.
- **Section 59** provides the basis of the access to information law and recognises a fundamental right to access information. The section requires the state to "disclose any public data or information […], which is not related to the security of the State or government confidentiality […], and shall ensure that the public can conveniently access such data or information" (Office of the Council of State, 2017[5]).
- **Section 77** establishes the requirement and formalises the deployment of good regulatory practices such as regulatory impact assessments, *ex post* review as well as stakeholder engagement, including that regulations should be made for the "net social benefit" of society. It also strengthens the regulatory oversight of these processes. It obliges the government to:
  - "Ensure that the public has convenient access to the laws and are able to understand them easily in order to correctly comply with the laws".
  - "Conduct consultation with stakeholders [prior to the enactment of every law] and should also disclose the results of the consultation […] to the public, and take them into consideration at every stage of the legislative process".
  - "Undertake an evaluation of the outcomes of the law at every specified period of time, for which consultation with stakeholders shall be conducted, with a view to developing all laws to be suitable to and appropriate for the changing contexts" (Office of the Council of State, 2017[5]).

The aforementioned constitutional provisions provide the leaders of the national open and connected government agenda with legal leverage to promote (and intervene to enforce them if needed) open government principles across the public sector. Having these principles enshrined at the highest possible legal level creates a solid legal basis and legitimates all subsequent primary and secondary legislation. Moreover, it ensures the necessary impetus for launching open government strategies and related

initiatives. It is important to refer back to constitutional provisions when developing policy and strategic documents such as a potential National Open Government Strategy, as discussed in Chapter 2.

Access to Information as a cornerstone of open and connected government

The right to access government information is a *sine qua non* legal condition for transparency, accountability and citizen participation in policy making (OECD, 2014[6]). By accessing relevant public information, stakeholders can acquire a better understanding of the government's actions, in particular related to the design of public policies and delivery of services, and it allows them to monitor how public funds are spent. The right to request and access public sector information is also foundational for it enables a strong legal basis for citizens to access and share data (e.g. as open data) with no restrictions besides those regulations in place protecting personal data and privacy.

Access to information is a valuable tool to fight corruption and help citizens and civil society watchdogs to hold public officials accountable for their decisions. Moreover, access to information can increase citizens' trust in institutions and enables them to articulate informed demands and raise society's and government's awareness of the need to act. Finally, as observed in different regions across the globe such as Europe and Latin America, access to information and transparency laws are also foundational to promote the publication and sharing, in a proactive fashion, of open government data to promote social and business innovation.

In most countries, access to information (or transparency/access to administrative documents) laws do not only regulate the proactive publication of government information but also determine the mechanisms to request that information. Access to information can take different forms, including access to public records and data, the publication of official gazettes and the provision of information on government websites. While the form matters, the attributes of the information made public, for instance its relevance and usability for citizens, are equally important. Access to information is thus a necessary but insufficient condition to enable citizens to hold the government accountable and participate in policy-making and public service design (World Bank, 2016[7]).

Access to information laws is today a central element of the open government legal framework of many countries. All but one OECD country have adopted dedicated Access to Information (ATI) or Freedom of Information (FOI) laws: worldwide, more than 100 countries have passed such laws (OECD, 2016[8]). Even though each ATI law is unique due to the country-specific context, most laws are composed of the following components: objectives, principles and scope of the access to information; proactive disclosure of information; procedure to request information (how and where to request information, response to the request, denials); exemptions; and appeals procedures. The following sections benchmark Thailand's Official Information Act against these elements.

Thailand adopted its first Official Information Act in 1997

In terms of ATI, Thailand has made significant progress over the past years. The right to information was first recognised by the 1997 People's Constitution and later included in the 2007 Constitution. Following the 2014 Interim Constitution, which did not contain any specific provision on ATI, today's version of the constitution that entered into force in 2017, includes three key provisions (respectively Sections 41, 59 and 77) guaranteeing citizens' right of information.

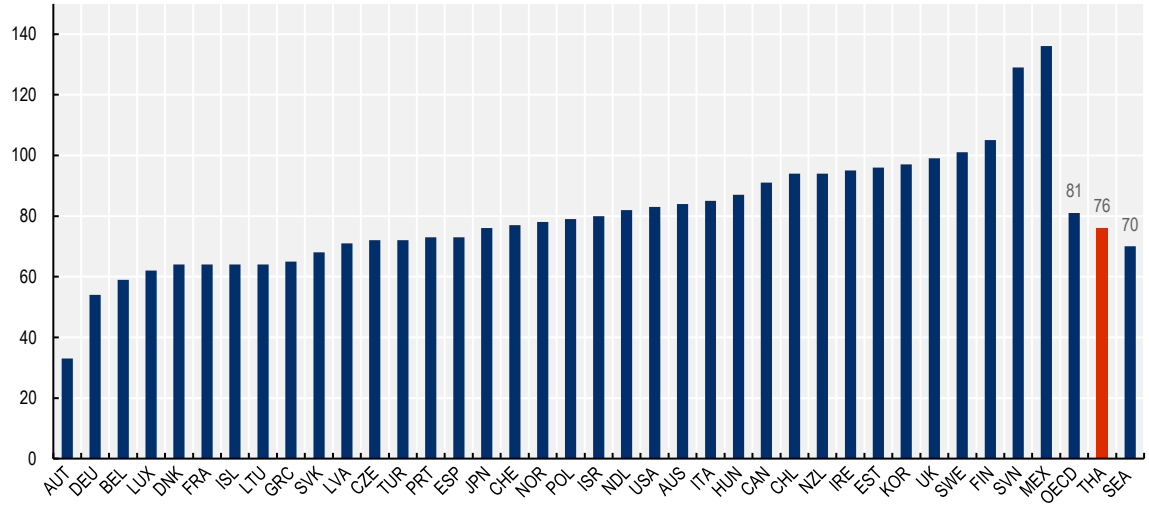
Preceded by calls of civil society for greater transparency, the government substantiated the constitutionally protected right to access government information and adopted the Official Information Act, B.E. 2540 (Government of Thailand, 1997[9]) in 1997, which reinforced the rights of citizens in this respect.

Compared to other countries in the Association of Southeast Asian Nations (ASEAN) region, Thailand was a frontrunner with the adoption of its ATI law in 1997. Indonesia adopted its Public Information Act in 2008, the Philippines issued an executive order in 2016 and Viet Nam's law on ATI entered into force in 2018

(Friedrich Naumann Foundation, 2017[10]). However, while Thailand performs considerably well compared to some other Southeast Asian countries, the legal quality of its ATI legislation lies, according to the Right to Information (RTI) Rating (AIE/CLD, n.d.[11]), slightly below the OECD average (Figure 3.1). While the rating only benchmarks the quality of the legal instruments and does not contain implementation-related components, the early adoption of the Official Information Act and its comparable legal quality shows that Thailand acknowledges the importance of the fundamental right of ATI.

To realise the full potential of the right to information, Thailand could nevertheless consider amending and updating the act to resolve some of its limitations. This is all the more important as the enactment of new legislation included some provisions that undermine the act, 23 years after its adoption (OECD, 2019[12]). The following sections, therefore, analyse existing challenges relating to how citizens' can exert their right to access public sector information and the proactive disclosure of information.

Figure 3.1. The quality of legal provisions in Thailand's Official Information Act compared to OECD countries



Note: The maximum achievable composite score is 150 and reflects a strong RTI legal framework. The global rating of RTI laws is composed of 61 indicators measuring seven dimensions: right of access, scope, requesting procedures, exceptions and refusals, appeals, sanctions and protection, and promotional measures.
Source: AIE/CLD (n.d.[11]), *Right to Information Rating*, www.rti-rating.org (accessed 15 April 2020).

Ensuring the availability of clear, coherent and simple procedures to request public information

Contrary to practices in some OECD countries, Thailand's Official Information Act, B.E. 2540 (1997), applies not only the executive branch but also to the legislative bodies (both the House of Representatives and the Senate, and institutions related to them). The judiciary is also liable under the act but courts are only obliged to take into account "affairs un-associated with the trial and adjudication of cases" (Government of Thailand, 1997[9]).

Within the executive, the act's scope includes state enterprises, professional supervisory organisations, independent agencies of the state and other agencies. The discussion regarding whether the act's scope also covers independent public agencies, such as the National Anti-Corruption Commission, the Office of the Auditor General and the Office of the Election Commission, was brought to an end by an affirmative ruling of the Supreme Administrative Court (Article 19, 2015[13]). Due to Thailand's unitary system with a

strong tradition of centralisation, the law also applies vertically to the central, provincial and local administrations.

In practice, the quality of ATI legislation is to a large extent determined by the degree of accessibility that is established by the law, in particular by the ease of filling requests and the individual protection granted to information seekers. In this light, unclear and complex request procedures, long response times or unjustifiably or inappropriately high request fees are all aspects that can limit or actively undermine the ATI for citizens.

As in 71% of OECD countries (OECD, 2011[14]), Thailand's Official Information Act, B.E. 2540 (1997), does not include any legal restrictions regarding the status of applicants and applies to all Thai citizens equally. The act allows all Thai citizens to demand official information from public institutions and information seekers are not required to provide reasons for their requests.

With regard to the range of information that can be requested, the law defines information extensively as all material held by or on behalf of public authorities, which is recorded in any format, regardless of who produced it. It is noteworthy that applicants do not need to provide their identity but are only required to provide contact details that are necessary for identifying and delivering the requested information (Section 11). Such practice that could theoretically permit anonymous information requests is in line with Article 4.2 of the Council of Europe's Convention on Access to Official Documents determines that "parties may give applicants the right to remain anonymous, except when disclosure of identity is essential in order to process the request" for instance to deliver the requested information (CoE, 2009[15]).

It is crucial to provide citizens with information on how and where to request government information to enable and guide them on their quest for public information. However, the act does not provide detailed information regarding the specific procedure concerning how to request information. Section 11 of the law only stipulates that information seekers may request information that is not already published by making a "reasonably apprehensible mention on the intended information". The act does not include a description of the form the request should follow nor what type of requests (e.g. paper copy, electronic reproduction or inspection of files) are permitted.

Moreover, the law does not specify the exact place or channels to submit information requests. While the Office of the Official Information Commission (OIC) provides a downloadable template form on their website,[1] other institutions and agencies can use their own forms to help file requests (OIC, n.d.[16]). According to the Office of the OIC, information seekers may also submit their requests without following a specific format. The OIC has made recommendations and guidelines on submitting requests available on line. It is not specified whether entities bound by the law are required to provide online portals, service phone lines or contact persons where information can be requested. As requesters are not provided with a receipt of the request procedure, citizens seeking information will be left unclear if their request is currently dealt with. It is international good practice that applicants receive a receipt or acknowledgement of their request within a reasonable timeframe. Also, responses collected as part of the OECD survey for this review showed that one of the main challenges in implementing the ATI law is citizens' lack of awareness of the existence of the act and the benefits it can bring (OECD, 2019[12]). Thailand could thus consider actively promoting ATI.

The process of requesting information could also benefit from borrowing and applying concepts from the digital government and services domain such as user experience (UX) would help in easing citizens' journey when requesting public sector information (and data) so that the experience itself is user friendly in the analogue as well as in the digital world. For instance, the introduction of a standardised request procedure for all public institutions would be a good first step to improve Thailand's access to the information process.

One way to start harmonising the request procedures could be the development of a single online request form. Similarly, a one-stop-shop-style e-government platform (central system) for consultation on

regulations is already under development by the Office of the Council of State (OCS) – hosting all information necessary to conduct engagement (see related discussion below). This is discussed in further detail in the *Regulatory Reform Review of Thailand* (OECD, 2020[17]). Such an information portal could then serve as the first access point for citizens seeking information. As the current ATI portal of the Office of the OIC was reported to be not very user friendly in the survey conducted for this review (OECD, 2019[12]), the creation of any new online request form will have to consider the ease of access for stakeholders.

The OIC also needs to continue publishing uniform guidelines and manuals that explain in an easily understandable way how to request information. Specific manuals are also needed to describe complaint and appeal procedures in simple language to citizens. These documents then need to be published on all public institution websites and paper copies should be made available everywhere government bodies interact with citizens. In this context, the Office of the OIC could explore the respective guidelines developed in Tunisia (Box 3.2).

Box 3.2. Access to Information manual in Tunisia

In order to guide and inform citizens, civil society and journalists in Tunisia about their right to access information, the OECD has developed a simplified manual in co-ordination with the Access to Information Commission and Article 19, as part of the OECD's support to Tunisia to promote open government reforms.

In easy language and Tunisian dialect, it explains, among others, how to make a request, to whom a request can be made and how to appeal a negative decision of the country's oversight institution.

Source: OECD (2018[18]), *Right to Access Information – Manual Tunisia*, www.oecd.org/mena/governance/right-toaccess-information-2018.pdf (accessed on 21 April 2020).

In the case that an institution does not possess the requested information, it shall refer the requester to another institution. However, Section 12 does not establish an obligation for the institution to transfer the request itself. This obligation only exists in the case the institution possesses the requested information but is unable to disclose it since it is labelled as non-disclosure and was provided or created by another institution. If the information is not available, institutions also need to inform citizens. The act does not include other provisions that institutions should provide assistance to information seekers to correctly lodge their requests. In particular, in the case of requesters with special needs (e.g. illiteracy or disability) assistance to file a request could be needed. If the requested information is available but was created by another institution, the request may be transferred. In the event a public institution refuses to disclose information, the person requesting information must be informed of the reasons for refusal.

With regard to the creation of concrete timelines for the provision of information, Section 11 of the ATI law only determines that information requests shall be answered "within a reasonable period of time" (Government of Thailand, 1997[9]). The law does not set any other fixed timeframes, which left room for public officials' discretion and could lead to delays. To fill in this gap, the Royal Decree on Criteria and Procedures for Good Governance obliges public institutions to respond within 15 days (Government of Thailand, 2003[19]). An extension of the deadline is possible upon notice but requires an explanation of the reasons. Despite the establishment of deadlines through the Royal Decree, it has been noted that these timeframes are not always respected (Article 19, 2015[13]).

It is generally acceptable for administrative authorities to charge a reasonable fee for a request. A distinction should be made between access to documents that are already available and information that involves research, elaboration or processing on the part of the administration. In this regard, all OECD

countries, with the exception of Iceland and Poland, apply fees at one or more stages of the information request process, most often to cover the cost of reproduction. In about half of the countries, fees are also related to the cost of sending the documents, although several countries (such as Australia and Finland) waive these fees if the information is sent electronically. Most fees are variable, meaning that they depend on the number of pages to be reproduced or the amount of time required to process the request. When a variable fee can be charged, a cap on the size of this fee is applied only in a limited number of countries (Austria, Finland, France, Italy, Norway and Portugal) (OECD, 2011[14]).

Pursuant to Section 9 of Thailand's ATI law, the information request is free but fees may be charged to inspect or reproduce documents. In case an institution decides to request a fee, the Official Information Board (OIB) determines costs of reproduction associated with the request of information. Each institution may charge different rates but needs prior approval of the OIB. To ensure consistency between institutions for citizens, it is important that the fees set for the reproduction as well as the potential delivery of information are set by the OIB. Given the lack of mention of costs in the ATI law, it is important that citizens be adequately informed about potential costs when requesting information. Should institutions charge their own rates, it is important that they are justifiable and appropriate for citizens. The OIB could also consider providing the first 20 pages free of charge.

Effective and independent oversight as a guarantor for the right to access information

For the case when an information request is refused, most countries' ATI laws allow for the possibility to appeal the decision. Some laws allow for internal appeals, while other countries give the opportunity to lodge an external appeal with an independent ombudsman or information commission. Thailand's Official Information Act does not allow for internal appeals and differentiates between complaints and external appeals.

Citizens can issue a complaint with the OIB in case the institution to which the request is directed fails to act and does not comply with the law. The OIB is located within the institutional entity of the Office of the Prime Minister (PMO). Due to its institutional affiliation, the board does not enjoy full independence and its respective oversight competencies are limited. For complaints, it therefore does not issue binding decisions but merely gives opinions on the complaints (Section 28) and provides recommendations to ensure that institutions' actions are in compliance with the ATI law.

Citizens can also submit appeals against refusals to disclose information (Section 18) to Information Disclosure Tribunals (IDTs) or the OIB. The OIB will then transfer the appeal to IDTs. There is no need to submit an appeal to the institution that the information request is directed to first. Established in accordance with specialised fields of information (e.g. foreign affairs and national security, national economy and finance, social affairs, public administration and law enforcement, etc.), the IDTs make binding decisions, which are final, unless the appeal is referred to an administrative court.

Established by the 1997 ATI law, the Office of the OIC serves as a secretariat to both the OIB as well as to the IDTs. In addition to its secretariat functions, the commission functions as an advisory body and liaises with government institutions to provide advice regarding compliance with the Official Information Act, B.E. 2540 (1997). The OIC does not, however, have any authority over other agencies. It issues recommendations on the implementation of the ATI law to individual institutions and submits regular reports on compliance with the Official Information Act to the cabinet. The head of the commission is a cabinet minister, who is appointed by the prime minister. Its mandate and location in the PMO do raise questions about its functional independence and objectivity in fulfilling the assigned mandate. In addition, the OIB supervises the implementation of the ATI law and provides official advice to the government regarding the Official Information Act.

It is critical for the proper implementation of the ATI law that fully independent oversight institutions exist. Effective oversight bodies should also be equipped with their own financial resources as well as adequate human resources. Based on the 2017 annual report published by the Office of the OIC, challenges faced

by the OIC include inadequate numbers of staff and a lack of funding. The OIC should thus be provided with additional funds and adequate human resources to meet its staffing needs.

In order to guarantee institutional independence, many countries grant their oversight institution legal personality. In many cases, ATI bodies only report back to the legislature, which can also approve the institution's independent budget. The government of Thailand may consider strengthening the independence of the Office of the OIC and of its governing commission. A country practice from the ASEAN region that could inform reforms in this regard is the composition of the Indonesian Information Commission. While the president nominates the commissioners, who are usually experts in the field, they are formally appointed by parliament. All decisions taken with regard to ATI are binding. Moreover, to guarantee the commission's independence, it is granted budgetary authority and is able to request additional funding from parliament if need be (Government of Indonesia, 2008[20]).

While the OIC issues manuals and guidelines to inform public servants on how to comply with the law, it should also make sure that these internal guidance documents are promoted across all public institutions for the proper interpretation and implementation of the ATI law. These guidelines should be regularly analysed and updated to include lessons learned from the practice of handling requests, complaints and appeals by citizens. To meet the challenge of officials' "lack of knowledge and understanding of the access to information law and procedures" (OECD, 2019[12]), the OIC could also consider expanding its mobile training programmes, offering courses for officials working with ATI requests to promote guiding criteria and indicators of best practice.

From the proactive publication of information to open data

Proactive disclosure (i.e. the availability and publication of relevant government information without prior request) is an important instrument to increase the public sector's active transparency and openness. Making government information directly available for everyone has benefits for both governments and citizens. On the one hand, it allows citizens to access information while avoiding (sometimes lengthy and costly) administrative request procedures. On the other, it can reduce the administrative burden imposed on public institutions, associated with handling and answering individual ATI requests. Proactiveness is indeed one of the key dimensions of digital governments as presented in Chapter 1 and when such an approach is applied to open government initiatives, it helps in streamlining and making the government agile and more responsive to citizens' information and data needs.

In practice, all OECD countries are making some sort of government information available without prior request. In most of cases, ATI laws include a list of documents and information categories/taxonomies that all institutions are required to publish by default. In 72% of OECD countries, ATI legislation requires proactive disclosure of specific documents and information. However, the kind of information that needs to be published proactively varies across OECD countries (OECD, 2011[14]).

In Thailand, the Official Information Act and the Royal Decree on Criteria and Procedures for Good Governance, B.E. 2546 (2003), require all government agencies to proactively publish information on a central website. A cabinet resolution also requires government institutions to publish information on their individual websites. Public institutions are obliged to proactively publish information and documents regarding their structure, powers, bylaws, regulations, orders, policies and interpretations. To contribute to archiving and preservation efforts, public institutions also need to contribute to archiving public documents and have to share and disclose historically relevant information with the National Archives. Should the OIB require additional information to be published, agencies have to comply. However, it is noted that in practice, not all government information is made available through the Government Service Centre (GovChannel) portal. The OECD's survey for this review found that agencies often resist fulfilling their responsibilities in sending information to the Office of the OIC (OECD, 2019[12]).

Proactive publication is also a key aspect that can help in facilitating access to open government data so that it can be accessed and re-used by actors from all sectors as a means to promote social, business and

public sector innovation. This is based on the premise that the creation of social, economic and good governance value for society, businesses and governments results from data use and re-use, and from the understanding that data publication is only a means to an end (OECD, 2018[21]).

The OECD *Recommendation of the Council on Digital Government Strategies* stresses how building a data-driven public sector implies fostering access to, use and re-use of data to: "(a) increase openness and transparency, and (b) incentivise public engagement in policy making, public value creation, service design and delivery" (OECD, 2014[3]). The provisions of the OECD *Recommendation of the Council on Open Government* reinforce the aforementioned message. Thus, recommending countries to "proactively make available clear, complete, timely, reliable and relevant public sector data and information that is free of cost, available in an open and non-proprietary machine-readable format, easy to find, understand, use and re-use and disseminated through a multichannel approach, to be prioritised in consultation with stakeholders" (OECD, 2017[2]).

Hard law instruments (such as the current ATI law) can help to build a solid basis for the proactive publication of valuable and re-usable public sector datasets. Thailand's Official Information Act creates a legal framework for the disclosure of public information in that regard. However, the ATI law is not fully used as a policy lever that can help to advance open government data initiatives in the country.

As discussed in Chapter 2, policy instruments such as the 20-Year Digital Economy and Society Development Plan (2017-2036) or Digital Thailand are clear in terms of how the Thai government intends to further tap on the potential value of data (including open government data) to promote digital innovation and economic development. However, the Thai government could learn from the experience of OECD countries that have reinforced the governance for open data by including specific definitions on open data or the principle of "open by default" in transparency and/or ATI legislation. This would help to ensure that the right foundations are in place first to move towards a data-driven society and public sector.

Evidence from the 2017 OECD *Open Government Data Report* (OECD, 2018[21]) shows how OECD member and partner countries have used ATI or transparency laws to support the publication of public sector information as open data. Examples of countries with specific requirements on openness by default or definitions of open data include Greece, Italy, Mexico and Slovenia.[2] This does not only help to consolidate the legal basis for open data but also contributes to the sustainability of open data policies, strategies and initiatives across different government administrations. Other countries such as France, Germany and Peru have gone further by including specific provisions on open data in digital government legislation (e.g. the E-Government Law in Germany and the respective Digital Laws in France and Peru) or by publishing dedicated legal instruments on open data as done by South Korea.

A stronger ATI legal framework could also help Thailand move towards a more digital, data-driven and accountable public procurement. For instance, the Public Procurement and Supplies Administration Act (2017) sets out standards for information disclosure concerning the procurement process. This act defines the standard criteria government agencies should follow to disclose procurement information to the public in order to be transparent and promote fair competition. Combined with other tools such as electronic procurement mechanisms, the procurement act is expected to lead to enhanced transparency and integrity in government procurement. Thailand is also a member of the Infrastructure Transparency Initiative (CoST).[3] Thailand created the Multi-Stakeholder Group (MSG), chaired by the Ministry of Finance, to promote and support transparency in the context of public sector infrastructure. The MSG is integrated by representatives from the public, private and civil sectors (CoST, n.d.[22]). It is responsible for determining guidelines and regulations related to information disclosure to enhance transparency in construction projects of state agencies. Thailand has also committed to publishing information on public sector infrastructure using the CoST Infrastructure Data Standard.[4]

In light of the above, the inclusion of specific provisions on open data in Thailand's ATI Act could help to advance open data efforts in public procurement and public sector infrastructure, while reinforcing the general publication of open data at a broader scale in line with the provisions of the Digitalisation of Public

Administration and Services Delivery Act, B.E. 2562 (2019) (see the section “Building the legal foundations for a digital government”).

A clear legal framework to consult stakeholders on draft legislation

A first step in creating a legal basis for the consultation of stakeholders in regulatory processes took place in the period from 2003 to 2005 with the enactment of the Regulations of the Office of the Prime Minister on Public Consultation, B.E. 2548 (2005). The law obliges relevant government institutions to conduct credible consultations with the public prior to any major regulatory project.

This law was further reinforced by the new Section 77 of the 2017 Constitution, which requires government agencies to “conduct consultation with stakeholders [prior to the enactment of every law]”. It also obliges institutions to “analyse any impacts that may occur from the law thoroughly and systematically, and should also disclose the results of the consultation and analysis to the public, and take them into consideration at every stage of the legislative process” (Office of the Council of State, 2017[5]). Pursuant to Section 77 of the constitution, all draft acts are subject to public consultation before they are submitted to the cabinet for approval. To effectuate the requirement of consultation, the cabinet issued a resolution in 2017 stipulating that all draft legislation be published on a central consultation website (lawamendment.go.th) for at least 15 days before the agency may send the draft act together with the summarised consultation report and the impact assessment report to the Secretariat of the Cabinet.

Most recently, the Act on Legislative Drafting and Evaluation of Law, B.E.2562 (2019), revises the system of regulatory policy making in Thailand, in accordance with Section 77 of the constitution. Amongst other reforms, it introduces more detailed instructions for conducting obligatory consultations at every stage of legislative drafting process, including impact assessments, holding consultation of the law and carrying out an *ex post* evaluation after the law has been passed (Government of Thailand, 2019[23]). Stemming from Section 13, government agencies shall consult with the public through online consultations and, in addition, may use public meetings, questionnaires and interviews. For each consultation, agencies need to publish accompanying information such as a description of the problem the draft legislation is supposed to solve, an explanation of the main ideas and principles of the draft legislation presented in simple and comprehensible language as well as a list of persons who are or may be affected by the legislation (Section 14). According to Section 15 of the act, all stakeholders participating in public consultations shall register with their corresponding address and email via a central registration system. While registration provides useful information regarding the origin of each contribution and allows for further inquiries and notification regarding the progress of the file, the lack of an opportunity to provide anonymous input may also raise data protection concerns and prevent some stakeholders from commenting. Registration barriers can thus lead to a situation where only the most committed and organised groups with vested interest share their input, while individual citizens and marginal groups refrain from doing so.

Following the consultation with the public, public sector organisations need to submit an analysis of the consultation to the Secretariat of the Cabinet, which will conduct procedural scrutiny to see whether the consultation was done according to specifications. Moreover, the results of the consultation and analysis should be disclosed to the public and need to be taken into consideration at every stage of the subsequent legislative process. All draft laws are then submitted to the Office of the Council of State, which is granted oversight responsibilities over proposals to the Council of State, including scrutiny over regulatory impact assessments (which detail the impact to stakeholders) and stakeholder engagements. It conducts substantive scrutiny and examines if further consultations should be conducted, e.g. in the case of a lack of quality in terms of who was consulted and how their comments were taken on board.

Aside from conducting formal public consultations on draft legislation and regulations, the law does not refer to stakeholder participation in the development of strategic documents. Such consultations to improve strategic planning are currently only voluntary. Regarding the inclusion of specific provisions relating to stakeholder participation in other sectoral laws, laws for environmental and town planning contain such

references. Sections 48 to 51 of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992) (amended by the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2561 [No. 2] in 2018) refer to the consultation of experts for environmental impact assessments. With Section 9, the new Town Planning Act (2019) also contains a provision on stakeholder participation.

Thailand's set of legislation to enable stakeholder consultation in legislative processes provides a solid legal framework for all public agencies. In particular, the Act on Legislative Drafting and Evaluation of Law opens a way to yield the benefit that stakeholders can bring to policy making. From a legal point of view, it is in line with the OECD *Recommendation of the Council on Open Government*, which stipulates that governments should "grant all stakeholders equal and fair opportunities to be informed and consulted (…) and actively engage them in all phases of the policy cycle" (OECD, 2017[2]).

Efforts from all public sector organisations are now needed to ensure the successful and coherent implementation of the legal framework for public consultation. While all government agencies are obliged to comply with the provisions of the laws, only a move towards a more participatory governance culture will guarantee effective implementation in the future. The success in applying this legal framework will, to a large extent, also depend on providing adequate guidance to all public institutions conducting public consultations. In that regard, the guidelines and manuals that are currently drafted by the Law Reform Division of the Council of State have the potential to support the implementation. Moreover, the OECD Handbook on Open Government for Peruvian Public Officials (2021[24]) could serve as an example.

In order to avoid consultation fatigue and ensure that consultations are meaningful, the government should further improve the sustainability of stakeholder participation. To that end, the government may consider an evaluation of the law according to a set timeline, with the aim to revise and adapt the regulation. In order to collect input for this evaluation, the OCS could draw from the feedback of a large variety of relevant governmental and non-governmental actors. In particular, the expertise and knowledge of civil society organisations, which for instance are closely following environmental impact assessments in public construction and urban development projects, could be valuable. The practice of Colombia to create a National Council for Citizen Participation that advises the national government on the definition, development, design, monitoring and evaluation of public policy on citizen participation could be interesting in this regard (Box 3.3).

Box 3.3. The Colombian law for the promotion and protection of the right to democratic participation

The objective of Law 1757 from 2015 is to promote, protect and ensure the different modalities and mechanisms of the citizens' right to participate in the political, administrative, economic, social and cultural spheres in Colombia. Article 2 stipulates that any development plan must include specific measures aimed at promoting the participation of all people in decisions that affect them and support the different forms of organisation of society. Similarly, the management plans of public institutions should make explicit the ways in which they will facilitate and promote the participation of citizens in their areas of responsibility.

The law also created the National Council for Citizen Participation, which will advise the national government on the definition, development, design, monitoring and evaluation of public policy on citizen participation in Colombia. The council is made up of the following representatives: the Minister of the Interior and the National Planning Department from the national government, an elected governor from the Federation of Departments (states or provinces), an elected mayor from the Municipal Federation, members of victims' associations, a representative of the National Council of Columbia Associations or Territorial Planning Councils, the community confederation, the Colombian Association of Universities,

the Colombian Confederation of Civil Society Organisations, citizen oversight associations, trade associations, trade unions, peasant associations, ethnic groups, women's organisations, the National Youth Council, college students, disability organisations and local administrative bodies. The heterogeneous composition of the council ensures that several groups of society are represented and guarantees that all voices are heard.

This same law on citizen participation in Colombia defines participatory budget practices as a process to ensure equitable, rational, efficient, effective and transparent allocation of public resources, in order to strengthen the relationship between the state and civil society. It also acts as a mechanism by which regional and local governments promote the development of programmes and plans for citizen participation in the definition of their budget, as well as in the monitoring and control of public resource management.

Source: Government of Colombia (2015[25]), *Ley 1757 de 2015 (Law 1757 from 2015)*, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65335 (accessed 21 April 2020).

Besides the consultation of citizens on already formulated pieces of draft legislation, other forms of participation to interact and engage with stakeholders in the policy-making cycle could broaden Thailand's participatory approach. Practices that go beyond mere consultation and focus on the active engagement of stakeholders during co-design processes could bring further value. Box 3.4 gives an overview of the different steps of the OECD approach to stakeholder participation. Similarly, the participation of stakeholders in budget processes (Box 3.3) represents an open government practice in many OECD countries. However, currently, such practices are not covered by any existing legislation.

Box 3.4. The OECD model of stakeholder participation

The OECD uses a tripartite model that distinguishes between three different levels of stakeholder participation to assess the scope and depth of stakeholder initiatives:

- Information refers to an initial level of participation characterised by a one-way relationship in which the government produces and delivers information to stakeholders. It covers both the on-demand provision of information and "proactive" measures by the government to disseminate information.
- Consultation refers to a more advanced level of participation that entails a two-way relationship in which stakeholders provide feedback to the government and vice versa. It is based on a prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on the outcomes of the process.
- Engagement refers to instances where stakeholders are given the opportunity and the necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy cycle and in service design and delivery.

Source: OECD (2016[8]), *Open Government: The Global Context and the Way Forward*, https://dx.doi.org/10.1787/9789264265189-en.

Building the legal foundations for a digital government

The 20-Year Digital Economy and Society Development Plan (2017-2036) is clear in terms of how a more streamlined and modern legal and regulatory framework can help in delivering better public services to the Thai population. The plan identifies, where appropriate, the introduction of new regulations and public sector reform as preconditions to "create trust and confidence in online transactions" (MICT, 2017[26]).

In line with the above, Thailand has made advancements to develop a legal and regulatory framework that can support the expected evolution from e-government to a digital government. For this purpose, the country has put in place different instruments touching on different aspects related to public sector digitalisation, including cyber security and digital transactions (Box 3.5).

Box 3.5. Key legal and regulatory instruments for digital government in Thailand

- **Electronic transactions:** In 2001, the Electronic Transactions Act, B.E. 2544 first legalised electronic data messages and e-signatures. In 2019, a revised version of the act (Electronic Transactions Act No. 3, B.E. 2562) harmonised this law with the United Nations Convention on the Use of Electronic Communication in International Contracts and appointed the Electronic Transactions Development Agency (ETDA) as the body in charge of supporting the Electronic Transactions Commission in setting standards for electronic transactions (including digital identity tools).
- **Cyber Security:** In 2007, the Computer Crime Act, B.E. 2550, defined the concept of "computer-related crime". In 2017, the revised version of the act, B.E. 2560, clarified ambiguous concepts, such as illegal content and defamation, and improved the efficiency of the law enforcement process. In 2019, the Cyber Security Act, B.E. 2562, established the National Cyber Security Commission and set the rules to handle threats in cyberspace.
- **Paperless government:** In 2008, the Electronic Transactions Act, B.E. 2551 legalised the transformation of paper-based into electronic forms. In 2015, the Licensing Facilitation Act, B.E. 2558, required government authorities to work towards a paperless system to reduce excessive bureaucratic procedures and the burden on citizens in the context of their interaction with the public sector (e.g. for obtaining registrations or licences).
- **Data protection:** In 2019, the Personal Data Protection Act, B.E. 2562, created the Privacy Enforcement Commission and Agency and imposed the regulation of information privacy. The 1997 Public Information Act also included specific provisions to prevent the misuse of personal data by public officials and the right of citizens to know how their data is being used by public sector organisations.
- **Data sharing:** Cabinet Resolution 187/2558 (2015) created four different committees in charge of: i) establishing a common data platform for the public sector; ii) developing an integrated database on citizen information and public services; iii) a database on water resources and weather data; and iv) a database on security and safety.

Other relevant instruments include:

- **Public sector structure – *Digital economy*:** Act No. 17, B.E. 2559 (2016), reorganised the government structure by creating the Ministry of Digital Economy and Society (MDES) and the Office of the National Digital Economy and Society Commission (ONDE). In 2017, the Digital Development for Economy and Society Act, B.E. 2560, created the Digital Development for Economy and Society Commission, the Digital Economy Fund and the Digital Economy Promotion Agency (DEPA). Earlier, in 2003 the Thai government approved the establishment of the National Innovation Agency (NIA) under the supervision and management of the Ministry of Science and Technology. Later the same year, the ministry appointed the National Innovation Committee as the body in charge of monitoring the activities of the NIA (Ministerial Command No. 91/2003).
- **Public sector structure – *Digital government*:** In 2011, Royal Decree B.E. 2554 created the Electronic Government Agency (EGA), which after 2016, was placed under the MDES. In 2018, Decree B.E 2561 created the Digital Government Development Agency (DGA), replacing the

EGA and moving from the MDES to the PMO. In 2019, Act B.E. 2562 created the Digital Council of Thailand.

Source: OECD with information from Bukht, R. and R. Heeks (2018[27]), "Digital economy policy: The case example of Thailand", in *Development Implications of Digital Economies*, Centre for Development Informatics, Global Development Institute SEED, University of Manchester, EGA (2016[28]), *Thailand e-Government Status Report*, Electronic Government Agency, Bangkok, Thailand, and Thiratitayangkul, C. (2019[29]), "Open and digital government", Presentation in the context of the OECD mission to Bangkok, Thailand, 3 April 2019; and with information provided by the Thai government for the purpose of this review.

For instance, the Thai government has worked on updating the regulatory framework on electronic transactions. The Electronic Transactions Act, B.E. 2562 (2019) aims at addressing information asymmetries between users, public and private service providers, and securing the integrity of the system itself (e.g. by ensuring that users provide valid legal identification when submitting an application for the use of e-signature tools). The revised version of the act also aims at streamlining data sharing among public sector organisations and avoiding asking citizens the same information twice (once-only principle).

Also, in 2019, the publication of the Digitalisation of Public Administration and Services Delivery Act, B.E. 2562 (2019), provided stronger legal support for the development of a digital government in Thailand. The act, commonly known as the Digital Government Law, is intended to accelerate digital transformation in the public sector with a focus on:

1. The digitalisation of processes and services using a citizen-centric approach.
2. Data integration between government agencies to provide comprehensive digital services for citizens and businesses.
3. The publication of open government data in machine-readable formats to enable citizens and businesses to re-use and develop innovations.

The plans, rules and standards to elaborate on these legal provisions are still underway (Rohaidi, 2019[30]). As a continuation of the previous two plans, the DGA released a new Digital Government Development Plan (2020-2022) that targets the publication of two standards on the data governance framework and open data on the Thai Royal Gazette in 2020 to facilitate the digitalisation of all public sector organisations. Furthermore, the draft of the standard on digital ID for government services is under review by the Thai cabinet as of June 2021 before its effective date is set by the Digital Government Development Commission. Based on the Digital Government Development Plan (2020-2022), standards on data integration and data exchange are also underway.

The Digitalisation of Public Administration and Services Delivery Act, B.E. 2562 (2019) has created high expectations among public officials given its strong focus on the digital transformation of the public sector and the creation of a data-driven government. Information shared by public officials during the OECD mission to Bangkok indicate that the Digital Government Law is expected to provide a major boost to the application of data for the creation of public value, including (ONDE, 2019[31]):

- The development of the Digital Government Development Plan and the Data Governance Framework.
- The promotion of citizens' digital rights and public officials' duties and responsibilities when handling sensitive data.
- The digitalisation of government services, tapping into the value of data for this purpose.
- The integration of data and services across government agencies.
- The promotion of open government data as a tool for economic and social value and more innovative products and services.

- The creation of a government platform for information exchange for greater service integration and access to public services.

The Digitalisation of Public Administration and Services Delivery Act, B.E. 2562 (2019) is therefore ambitious and complements previous legal and regulatory instruments on digital government. It will provide a more solid legal basis to deliver the mid-term and long-term goals for digitalisation in Thailand.

Agility and regulation

The challenge ahead is however not only related to the need for new legislation (which could follow a lengthy development and approval process) but to ensure that legal and regulatory activities meet the velocity of fast-paced technological progress and other socio-economic challenges as exemplified by the COVID-19 global emergency (Box 3.6).

Box 3.6. Regulating in the era of digitalisation

Regulatory effectiveness in the era of digitalisation

Digital technologies present opportunities and challenges to the way governments regulate because of how digitalisation fundamentally transforms the way people live, work and interact.

The main issue lies in how regulators can leverage regulation with agility and anticipation to spur digital innovation and unlock the benefits of technologies for the economy and society or let regulation stand in the way and impeded enforcement. The challenges present themselves as the following:

- **Pacing problem**: Digitalisation happens at a faster pace than regulatory development aimed at governing digital technologies.
- **Designing "fit for purpose" frameworks**: Digitalisation and the emergence of digital platforms obfuscates the traditional delineation of markets and sectors, the distinction between consumers and producers, and price formation in the digital economy.
- **Regulatory enforcement**: Digitalisation questions the traditional notion of liability by making it difficult to attribute and apportion responsibility for damage or harm caused by technology.
- **Institutional and transboundary**: Digitalisation creates transversal challenges that span across regulatory regimes and jurisdictional boundaries, as businesses are able to avoid compliance based on physical presence.

Solutions need to be grounded in rethinking and adapting regulatory approaches with comprehensive international and domestic regulatory co-operation to fit the digital context. Traditional regulation may not serve the purpose of encouraging innovation while mitigating risks. However, creating dynamic fixed-term regulatory exemptions such as regulatory sandboxes or waiting and seeing with continuous assessment could be more appropriate. A "whole-of-government" approach to engage with relevant stakeholders would be critical at a national level to overcome the transversal challenges of digital technologies.

Regulatory quality and COVID-19: Managing the risks and supporting the recovery

Regulations and enforcement have been vital to manage and recover from the health pandemic and economic crisis. Even as countries moved to adopt "fast-track" procedures and easing non-critical administrative barriers to expedite the decision-making and delivery processes, it is important to:

- Ensure that regulatory measures are proportionate to the level of risk in question.
- Undertake transparent consultation with advisory groups and experts.

- Conduct a careful review after implementation or put in place sunset clauses.

International regulatory co-operation has also proved to be crucial to align government responses to overcome these global challenges. Countries can work together on gathering and sharing evidence, exchanging on the design of emergency rules, aligning regulations or using mutual recognition to expedite the trade of essential products.

Good governance and innovative approaches to regulation can make a difference. In the move to use digital technologies, artificial intelligence and big data to improve regulatory insights, governments need to ensure that regulatory outcomes are for the people and are in the protection of their fundamental rights.

Source: OECD (2019[32]), "Regulatory effectiveness in the era of digitalisation (brochure)", https://www.oecd.org/gov/regulatory-policy/Regulatory-effectiveness-in-the-era-of-digitalisation.pdf; OECD (2020[33]), "Regulatory quality and COVID-19: Managing the risks and supporting the recovery", http://www.oecd.org/regreform/regulatory-policy/Regulatory-Quality-and-Coronavirus%20-(COVID-19)-web.pdf.

Existing and future legal instruments would provide a good baseline to advance the open and connected government agenda. Yet, technology and citizens' expectations change rapidly and governments (including the Thai government) should be able to adapt and meet the needs of citizens and businesses in this fast-paced context in order to stay relevant. Public officials were also quite vocal in this respect, as they indicated considering the legal and regulatory framework both an opportunity and an obstacle for the open and connected agenda, stressing the need to ensure the right balance between issuing new regulations and the need for adapting existing ones. They also raised concerns in relation to the capacity of the Thai government and its regulatory bodies to keep up with technological developments to avoid perpetuating or creating bottlenecks blocking the agility and capacity of the public sector to adapt and leverage technology and data in the pursuit of value for society.

Bodies such as the Office of the Council of State (OCS) and the Office of the Public Sector Development Commission (OPDC), in collaboration with all relevant bodies, will play a key role in ensuring that Thailand is capable of coping with the challenge. This would mean applying agile and innovative approaches to balance more traditional regulatory policy tools such as regulatory impact assessments (RIAs), various administrative burden reduction methods and *ex post* review of regulations.

Thailand does have a history of introducing reforms to update its system of regulatory policy making in accordance with international good practices. In 2003, a cabinet resolution was passed that introduced the OECD Reference Checklist for Regulatory Decision-Making into Thailand. In 2015, Royal Decree on Revision of Law, B.E. 2558 (2015, the "Sunset Law"), and the Licensing Facilitation Act, B.E. 2558 (2015), were introduced to reduce the administrative burden on licensing procedures and require ex post review of regulations after five years. More recently the Thai government launched a regulatory guillotine project in 2017 and published the Act on Legislative Drafting and Evaluation of Law (2019) which introduces wide-reaching reforms to the system of good regulatory practices and governance in accordance with Section 77 of the constitution, including RIA, stakeholder engagement and ex post review. The 2019 act also established the OCS as the oversight body responsible for both promoting the use of good regulatory practices across the Thai government as well as scrutinising RIAs and stakeholder engagement efforts before a law can receive final approval from the Council of Ministers. These efforts were further analysed as part of the OECD report *Thailand: Regulatory Management and Oversight Reforms* (OECD, 2020[17]).

Thailand is not the only country facing the above-mentioned challenges. The OECD is actively working with member and partner countries in exploring the intersection of innovative, agile and iterative approaches in the context of digital and data governance. For instance, as discussed in the OECD report *The Path to Becoming a Data-Driven Public Sector*, "regulation can be an obstacle for good data governance for the proliferation of fragmented instruments and unco-ordinated efforts can hinder cross-institutional data integration and sharing. Taking an anticipatory approach can help to identify risks and

trends in order to implement the needed regulatory action to foster public sector readiness to change" (OECD, 2019[34]).

In this context, some countries are exploring how the intersection between agility and regulatory activity could help not only in reducing and preventing regulatory barriers but also in improving the activities of the government in order to regulate better.

Applying an agile approach to regulatory activities can help the Thai government to make more informed decisions and tackle the challenges of the digital era in a more efficient fashion. By bringing together innovation, openness, regulatory and digitalisation approaches, the Thai government could:

- Engage stakeholders in a more proactive, dynamic and iterative fashion. This implies however increasing governments' and regulators' understanding that agile regulation goes beyond the traditional public consultation process (e.g. publishing draft regulations on online platforms to collect feedback from interested parties) either *ex ante* or *ex post*.
- Get prompt feedback on current regulations and the *real* need for new ones, with all relevant parties, actively involved. This requires government agencies to be active players rather than passive and compliance-driven organisations that follow a tick-the-box approach to public consultation (as the case in Thailand).
- Make the best use of digital technologies and data to collect, share and access data to inform the regulatory process.
- Provide insights to public, private and social stakeholders in relation to what actions they should take to comply with regulatory provisions.

In line with the above, the Thai government, under the leadership of the OPDC, the DGA and the involvement of other bodies such as the OCS, could further explore the implementation of practices such as regulatory sandboxes, future-proofing regulation and Rules as Code (RaC).[5] Yet, these practices imply revamping the way the public sector works and a "fundamental transformation of the rule-making process itself and of the application, interpretation, review and revision of the rules it generates" (Mohun and Roberts, 2020[35]).

Also, In Thailand, the OPDC is aware of how bureaucracy, the lack of collaboration (including with external actors and within the public sector) and the passive cultural approach to engagement and innovation constrain the delivery of the open and connected agenda. For this reason, the OPDC self-identifies as a "mentor" that can help in driving organisational and cultural change and explore new ways of public management. Indeed, results from the survey administered for the purpose of this review confirmed that public sector organisations identify the OPDC and the DGA as the main bodies in charge of public sector innovation.[6] Therefore, initiatives such as the OPDC Innovation Lab could be further leveraged to enable safe spaces to explore the implementation of agile regulatory initiatives in Thailand.

However, this would require not only enabling hubs where regulators, interested parties and innovators from all sectors can come together to discuss and explore regulatory actions but also providing funding and incentives when needed. For instance, in 2018, the UK Department for Business, Energy and Industrial Strategy (BEIS) launched the Regulators' Pioneer Fund to allocate up to GBP 10 million in order to fund and "promote cutting-edge regulatory practices" – led by UK regulators – "to help make the UK the world's most innovative economy, whilst protecting citizens and the environment" (UK Government, 2018[36]).

Also, innovation in regulatory policy is an area that calls for collective action. Bodies such as the OCS (responsible for both promoting and training Thai officials on the new regulatory practices as well as scrutinising efforts), the NIA and other regulatory bodies in Thailand would also need to fully embrace an approach that explores and exploits the synergies between regulation and innovation and put it into action and get actively involved on the OPDC's and the DGA's efforts working in the intersection between regulation and innovation.

References

AIE/CLD (n.d.), *Right to Information Rating*, Access Info Europe and Centre for Law and Democracy, http://www.rti-rating.org (accessed on 15 April 2020). [11]

Article 19 (2015), *Asia Disclosed: A Review of the Right to Information across Asia*, https://www.article19.org/data/files/medialibrary/38121/FINAL-Asia-Disclosed-full.pdf (accessed on 19 April 2020). [13]

Bukht, R. and R. Heeks (2018), "Digital economy policy: The case example of Thailand", in *Development Implications of Digital Economies*, Centre for Development Informatics, Global Development Institute SEED, University of Manchester. [27]

CoE (2009), *Convention on Access to Official Documents (Details of Treaty No. 205)*, Council of Europe, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205. [15]

CoST (n.d.), *CoST Thailand*, CoST – the Infrastructure Transparency Initiative, http://infrastructuretransparency.org/where-we-work/cost-thailand/ (accessed on 8 April 2020). [22]

EGA (2016), *Thailand e-Government Status Report*, Electronic Government Agency, Bangkok, Thailand. [28]

Friedrich Naumann Foundation (2017), "Freedom of information and Southeast Asia - Status quo and deficiencies", https://www.freiheit.org/sudost-und-ostasien/freedom-information-and-southeast-asia-status-quo-and-deficiencies (accessed on 19 April 2020). [10]

Government of Colombia (2015), *Ley 1757 de 2015 (Law 1757 from 2015)*, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65335 (accessed on 21 April 2020). [25]

Government of Indonesia (2008), *Public Information Disclosure Act*. [20]

Government of Thailand (2019), *Act on Legislative Drafting and Evaluation of Law B.E. 2562*. [23]

Government of Thailand (2003), *Royal Decree on Criteria and Procedures for Good Governance B.E. 2546*. [19]

Government of Thailand (1997), *Official Information Act 1997*, https://www.etda.or.th/app/webroot/files/1/files/L7.pdf. [9]

MICT (2017), *Digital Thailand: Thailand Digital Economy and Society Development Plan*, Ministry of Information and Communication Technology, Thailand, https://file.onde.go.th/assets/portals/1/ebookcategory/23_Digital_Thailand_pocket_book_EN/docs/Digital_Thailand_pocket_book_EN.pdf (accessed on 27 March 2020). [26]

Mohun, J. and A. Roberts (2020), "Cracking the code: Rulemaking for humans and machines", Draft for public consultation, Observatory of Public Sector Innovation (OPSI), https://docs.google.com/document/d/1tcB8WEIZAFN-0Q6qoePDBplPewPX_cU0A1fcryYO8Qc/edit#heading=h.pdmvi577bxja (accessed on 2 July 2020). [35]

OECD (2021), *Handbook on Open Government for Peruvian Public Officials*, OECD, Paris, https://www.oecd.org/gov/open-government/oecd-handbook-on-open-government-for-peruvian-public-officials.htm (accessed on 16 April 2021). [24]

OECD (2020), “Regulatory quality and COVID-19: Managing the risks and supporting the recovery”, *Tackling Coronavirus (COVID-19): Contributing to a Global Effort*, OECD, Paris, http://www.oecd.org/regreform/regulatory-policy/Regulatory-Quality-and-Coronavirus%20-(COVID-19)-web.pdf. [33]

OECD (2020), *Thailand: Regulatory Management and Oversight Reforms: A Diagnostic Scan 2020*, OECD Reviews of Regulatory Reform, OECD, Paris, https://www.oecd.org/countries/thailand/RIA-Thailand.pdf (accessed on 16 April 2021). [17]

OECD (2019), “OECD Survey on Open and Connected Government in Thailand”, OECD, Paris. [12]

OECD (2019), “Regulatory effectiveness in the era of digitalisation (brochure)”, OECD, Paris, https://www.oecd.org/gov/regulatory-policy/Regulatory-effectiveness-in-the-era-of-digitalisation.pdf. [32]

OECD (2019), *The Path to Becoming a Data-Driven Public Sector*, OECD Digital Government Studies, OECD Publishing, Paris, https://dx.doi.org/10.1787/059814a7-en. [34]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [1]

OECD (2018), *Open Government Data Report: Enhancing Policy Maturity for Sustainable Impact*, OECD Digital Government Studies, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264305847-en. [21]

OECD (2018), *Right to Access Information - Manual Tunisia*, OECD, Paris, http://www.oecd.org/mena/governance/right-to-access-information-2018.pdf (accessed on 21 April 2020). [18]

OECD (2017), *Recommendation of the Council on Open Government*, OECD, Paris, https://www.oecd.org/gov/Recommendation-Open-Government-Approved-Council-141217.pdf (accessed on 30 August 2019). [2]

OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264268104-en. [8]

OECD (2014), *Open Government in Latin America*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264223639-en. [6]

OECD (2014), *Recommendation of the Council on Digital Government Strategies*, OECD, Paris, http://www.oecd.org/gov/digital-government/Recommendation-digital-government-strategies.pdf. [3]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris, http://www.oecd.org/governance/regulatory-policy/2012-recommendation.htm (accessed on 27 April 2018). [4]

OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, https://dx.doi.org/10.1787/gov_glance-2011-en. [14]

Office of the Council of State (2017), *Constitution of the Kingdom of Thailand*, https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1460&filename=index (accessed on 19 April 2020). [5]

OIC (n.d.), *Recommendations on the Information Inspection*, Office of the Official Information [16]

Commission, http://www.oic.go.th/web2017/en/inspect01.htm (accessed on 19 April 2020).

ONDE (2019), "Open and connected governance in Thailand", Presentation by Dr Piyanuch Wuttisorn, Secretary General, Office of the National Digital Economy and Society Commission (ONDE), in the context of the OECD Open and Connected Review of Thailand. [31]

Rohaidi, N. (2019), "Airada Luangvilai, Senior Executive Vice President, Digital Government Development Agency, Thailand: Women in GovTech special report", *GovInsider Asia*, https://govinsider.asia/data/airada-luangvilai-senior-executive-vice-president-digital-government-development-agency-thailand-women-in-govtech-special-report-2019/. [30]

Thiratitayangkul, C. (2019), "Open and digital government", Presentation in the context of the OECD mission to Bangkok, Thailand, 3 April 2019. [29]

UK Government (2018), *Competition Overview: Regulators' Pioneer Fund*, Innovation Funding Service, https://apply-for-innovation-funding.service.gov.uk/competition/199/overview (accessed on 9 April 2020). [36]

World Bank (2016), *Evaluating Digital Citizen Engagement: A Practical Guide*, World Bank, Washington, DC, https://openknowledge.worldbank.org/bitstream/handle/10986/23752/deef-book.pdf (accessed on 2 September 2019). [7]

Notes

[1] For more information, see http://www.oic.go.th/web2017/en/inspect01.htm.

[2] For more information, see https://www.oecd.org/gov/open-government-data-report-9789264305847-en.htm.

[3] For more information, see http://infrastructuretransparency.org/.

[4] For more information, see http://infrastructuretransparency.org/resource/cost-infrastructure-data-standard/.

[5] For more information, see https://joinup.ec.europa.eu/collection/better-legislation-smoother-implementation/discussion/better-rules-and-rules-code-references-australia-nz-mainly.

[6] Questionnaire for public sector organisations: Digital government: Question 58.