DEVELOPING A MODEL FOR OPEN GOVERNMENT IN THE EU

The Democratic Society
Developing a model for open government in the EU

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1. Introduction

Governments and political institutions worldwide are facing several fundamental challenges in the decade ahead. Technological and social change, reinforcing each other, have empowered citizens to share information and opinions, and self-organise to a degree never before seen, while also enabling wrenching economic change, mass misinformation and populist protest. These are the forces which have driven Brexit in the United Kingdom, and brought Trump to power in the United States, even as they have increased global prosperity and reduced absolute poverty for billions of people.

The EU has been a driving force for openness and international trade, and is particularly exposed to their consequences. It is a supranational and intergovernmental organisation that challenges the notions of nation state sovereignty. It has no significant history comparative to states, and its design and operations are rooted in a model of institutional and international compromise that make decisions opaque, and allow it to be blamed for unpopular decisions. This is exacerbated by an intergovernmental outlook and continental scale that puts distance between citizens and those who make legislation that affects their lives.

The world has shifted since the EU was created. Network technologies are here to stay. Citizens’ expectations about their relationship with political institutions and the state are changing. There are no easy solutions to these challenges that allow the status quo to continue. Alongside the economic and social roots of the crisis, the EU must also address the democratic roots, particularly the inability of current governance systems to meet the expectations of their citizens.

This is acknowledged by the institutions. The three main EU policy-making bodies - the European Parliament, the European Commission, and the Council of Ministers - are starting to become more transparent, participative, and accountable. All have made commitments to some degree of open government. Some of the initiatives that have been set up by these institutions are world-leading. In other ways, the EU institutions lag behind many other governments world-wide.

This report considers how the EU, as a set of institutions and in the context of the democratic infrastructure of Europe, can continue the process of reforming and becoming more open in its governance arrangements. We look briefly at what open government is and explain the Open Government Partnership (OGP), which has become a primary vehicle for progressing open government. We conduct primary research into the experiences of three diverse European countries - Estonia, Romania and the United Kingdom - in engaging with the OGP, and explore the feasibility and desirability of the EU joining this initiative. Finally, we provide recommendations and construct a roadmap for a more open EU government, building upon the lessons learned through this research. Some of the framework and required relationships are already in place around the continent through the work of the OGP, but the work also requires a change of culture and attitudes, a network for democracy and mechanisms for open government that reaches far beyond Brussels.
2. What is open government anyway?

Open government is a term encompassing broad principles aimed at changing the relationship between the state and other actors, including citizens. The presumption is that this will improve governance, enable government officials to develop better policy and services, and empower citizens to hold government to account. The international Open Government Partnership defines open government in relation to four broad values:

1. **Access to information and transparency** - Making government held information available to the public in an accessible way. This could be through proactively publishing government-held data openly, releasing information around procurement and budgets, or reactively responding to requests for information to be released, and enabling transparency of government decision-making.

2. **Civic participation** - Opening up of decision-making to citizens and civil society, increasing the transparency of democratic processes such as elections, and ensuring that media, citizens and civil society can operate and associate freely.

3. **Accountability** - Developing processes and regulations to ensure that citizens can hold government and government actors to account, for instance improving or establishing appeals processes.

4. **Technology and innovation** - An underpinning enabler of the other three values.

Open government is not just about digital technologies, open data and e-government, although many open government initiatives may be framed this way. It is about a deep transformation in the relationship between citizen and those that govern. While governments making their data accessible and reusable is a cornerstone of transparency, and while using digital platforms can enable more rapid and more efficient communication between citizen and state, these are enablers of the changing relationship rather than goals in themselves.

Many governments around the world are exploring ways to change these relationships. They accept the premise that transparent information, decisions developed with citizens, and accountability for outcomes, enable better decision making, that is more likely to succeed and is more deeply rooted in the lives and experiences of citizens. Though not always labelled as ‘open government’, initiatives such as the participatory budgeting programme in Paris, the UK’s open data portal and the European Transparency Register all are part of an increasing global trend for governments to be more ‘open’.

One of the more significant initiatives that form part of the trend has been the international Open Government Partnership, now five years old.

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2. Open Data is about making sure that anyone can use, modify, and share data. Open Knowledge International, The Open Definition. Accessed online November 2016 at: opendefinition.org
3. The website for this scheme is: budgetparticipatif.paris.fr/bp
4. The open data portal is accessed at: data.gov.uk
5. The transparency register is accessed at: ec.europa.eu/transparencyregister/public/homePage.do
The Open Government Partnership

The Open Government Partnership (OGP) is a voluntary international initiative. It aims to secure concrete and ambitious commitments that relate to transparency, accountability, and civic participation, from the governments of participating countries. It is established not just as a multi-national platform for governments but as a partnership, with civil society organisations (CSOs) involved as equal partners. The OGP was launched at the edges of the United Nations General Assembly in September 2011, with eight founding states.

Though OGP is expressly a partnership with civil society, individual governments must apply to join, and in doing so must agree to the core principles in the Open Government Declaration, namely declaring a commitment to:

- Increase the availability of information about governmental activities.
- Support civic participation.
- Implement the highest standards of professional integrity throughout administrations.
- Increase access to new technologies for openness and accountability.

The application of these principles is assessed prior to admittance. Additionally, every country that seeks to join must work with civil society organisations (CSOs) to develop a ‘National Action Plan’ (NAP) containing specific commitments to making their government more open. This requirement for partnership working is at the heart of the OGP, and of how the OGP can be used to push for progress on promoting transparency, empowering citizens, fighting corruption and harnessing new technologies to strengthen governance.

By the fifth anniversary in 2016, the number of countries in the OGP stood at 70 and includes 20 EU Member States. The OGP has informal relationships with eight multilateral organisations (described as ‘associates’). These multilateral institutions include The World Bank, the Organisation for Economic Cooperation and Development (OECD) and the United Nations Development Programme (UNDP). They have all agreed to support OGP member countries to promote open government, increase accountability and increase the reach of the OGP.

Open Government and Estonia, Romania and the UK

To understand how, and if, the OGP has had an impact at a national level in a European context, research has been conducted on the experiences of three different countries -

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6 The eight founding members of the OGP were: Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, and the United States. What is the Open Government Partnership? Accessed online November 2016 at: opengovpartnership.org/about


8 This information can be found on a google sheet that is updated on rolling basis. This document can be accessed online through: opengovpartnership.org/how-it-works/eligibility-criteria


10 The full list is available online at: opengovpartnership.org/countries

11 Multilateral organisations. Accessed online November 2016 at: opengovpartnership.org/who-we-are/multilateral-organizations
Estonia, Romania and the UK. All three countries are EU member states, have a track record of OGP membership and are geographically and culturally diverse. This research is based upon documentary evidence, interviews with participants and the outputs of the Independent Reporting Mechanism (IRM) in each country. Where possible academic literature is cited, however, it is noted that there is a lack of published research in this field. The insights gathered are grouped below as nine key lessons.

The history of open government in Estonia and Romania reflects the newness of their democracies: Estonia upon regaining independence in 1991 and Romania after the fall of Ceauşescu’s regime in 1989. As part of EU accession, Romania introduced three laws which civil society and government representatives consider create the legal framework for open government: laws on access to information and transparent decision making in 2001, and a law on re-use of public sector information in 2007 (which was updated in 2015). In Estonia the Estonian Civil Society Development Concept, approved by Parliament in 2002, has laid the foundation for a tighter partnership between the public sector and civil society. In the UK, the idea of open government has a longer history, back to the first publication of Parliamentary debates in the eighteenth century. More recently, coming out of the Guardian’s ‘Free our Data’ campaign, the Power of Information task force led by a government minister pledged in 2006 ‘to turn upside down the British public’s “recipient relationship” with official information’. By 2009, the government was starting to release data sets, transport data being a primary focus, and the UK government data store was launched in early 2010. In 2010, the UK also introduced and adopted the Open Government License that establishes the right for others to copy, publish, adapt and use the information produced by government departments and agencies. Alongside this, starting in 2010, was a push for civil service reform, with discussions of the role transparency can play in this, and in 2012, the Government’s Civil Service Reform White Paper made a commitment that open policy making would be the default mode for government.

Despite the differences in historic approach to open government, Estonia, Romania and the UK all joined the OGP within a year of each other: the UK as one of the eight founding members in September 2011, Romania in November 2011 and Estonia in 2012. The time that has elapsed since these countries joined the OGP means the model and process has had time to mature and develop within the countries, allowing for a useful comparison and exploration of lessons learned.

12 The IRM reports for each country accessed through: opengovpartnership.org/country/estonia/irm; opengovpartnership.org/country/romania/irm; opengovpartnership.org/country/united-kingdom/irm;
13 You can see more about this on the ‘Free Our Data’: freeourdata.org.uk
14 Mayo, E. and Steinberg, T. The power of information, an independent review. Accessed online November 2016 at: commentonthis.com/powerofinformation; About the taskforce Accessed online November 2016 at: powerofinformation.wordpress.com/about/
Lesson 1 - OGP membership correlates with increased progress for open government initiatives

It is hard to establish definitively the extent to which OGP participation has directly caused an increase in open government initiatives. Any such analysis would need to look at meaningful progress rather than simply the quantity of commitments made. It would have to consider the developments in technology and emergence of an open government movement over the time period of the OGP, as this would help drive change regardless of membership. However, there is clearly a correlation of OGP membership with increased activity, and it is likely that the development of a broader interest in open government has been driven by the existence of, and membership of, OGP.

There is conflicting evidence from Estonia, Romania, and the UK about the extent to which initiatives were likely to happen without the OGP framework. There is evidence from the UK interviews that many OGP initiatives would have happened regardless, but that the OGP framework played an important role in helping achieve these initiatives and doing so more quickly, such as in creation a public register of beneficial ownership. In Estonia, some felt that many of the reforms implemented were either initiated separately at first, or would have been enacted anyway. However, it is felt that through the Romanian OGP process initiatives emerged that otherwise would not have done, including a commitment to open contracting data standards and open educational resources.

Interviewees in the UK and Romania felt that being a member of the OGP helped keep transparency, accountability, and participation on the government agenda. Some of the mechanisms for this were the development of a media cycle around high-level OGP summits, enabling focussed civil society pressure and an element of international comparison. UK interviewees were split about whether or not they would be keen for the OGP to introduce a greater degree of international comparison, with ideas of a ranking system suggested by some.

Lesson 2 - OGP acts as a focus point inside government

Estonia, Romania, and UK interviews all show that the OGP acts as a valuable convening point for reformers in different ministries, departments, and agencies within government. The OGP helps build connections between individuals working on similar problems, and provides a way of linking up innovation within departments in a coherent way, helping to extend the reach of ideas otherwise inherently limited by bureaucratic structures and departmental siloes. These networks also increase the opportunity to share learning internally.

It was believed that while more could be done to build these networks, significant progress had been made above and beyond that which would have happened without the OGP. Having a central convening team, such as the UK’s Policy and Governance Team in the Cabinet Office was considered strongly beneficial, as they provided a single point of contact, and a strong driving force. In Romania, some concerns were voiced about the shared co-ordination role (currently held by the Ministry for Public Consultation and Civic Dialogue and the Chancellery of the Prime Minister). It was felt that overall coherence decreased, even while the visibility of some themes, in particular access to information, increased.
Where the focussing role of OGP extended beyond the executive, such as in Estonia, anecdotal evidence suggests this supported more effective dissemination. Here the coordinating assembly making decisions about proposals for the NAP consisted of chancellors or vice-chancellors of ministries, representatives from civil society, parliament, local government and the private sector. The UK has had some difficulty including parliamentary commitments in the third action plan because of a lack of clarity in the process of involving a public institution outside of government.

Lesson 3 - OGP acts as a framework for CSOs to come together

OGP is seen as a useful framework around which CSOs with similar aims of increasing accountability, transparency and participation can meet, exchange information, and work together. While in the UK there are existing networks around aspects of open government such as the Bond Anti-Corruption Group, the OGP has built on this in connecting diverse organisations that focus on different aspects of open government. The clear focus of the OGP was often described as an important benefit of this way of coming together.

Estonia, Romania and the UK have all developed a network of CSOs who function as partners for the government on drafting the NAPs as well as monitoring their implementation. The diversity of organisations involved can be of a concern, and although in Romania academics are involved, this involvement is not regular. In the case of Estonia and the UK, these networks are relatively formalised, with funded coordinators. The UK network, called the Open Government Network, also has a steering committee and terms of reference that were adopted in 2015. The Romanian civil society network is less formalised, with The Center for Public Innovation acting as a contact point but not operating in a decision-making role. There are plans to create a more formal Steering Committee in Romania, mirroring the international OGP committee.

In addition, this coming together allows CSOs to coordinate their policy and campaigning strategy, as well as helping to generate a strong call for open government, from a relatively co-ordinated group of CSOs. Not all CSOs quite feel able to coordinate in this way however. Some campaign organisations felt uncomfortable with a way of working that they felt “helped government fail on [our] agenda”, and therefore disengaged from the OGP process to a degree. In the UK, at least, it was felt that it wasn’t yet clear how, or if, the network would ever walk away from the partnership with government. There were also concerns that within the UK context, the civil society network had perhaps suffered from too much centralisation, although the importance of the network being proactively coordinated by a neutral organisation, rather than one with a campaign focus, was expressed strongly.

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18 Since 2014, The Estonian ‘OGP Civil Society Roundtable’ has been coordinated by, and internally funded by, Open Estonia Foundation. OEF are one of the researchers for this project.
19 These also set out requirements for the steering groups, such as at least a 2:1 gender split, and the requirement to have a representative from each of the devolved nations in the UK. (2015) Terms of reference of the UK Open Government Network Accessed online November 2016 at: opengovernment.org.uk/resource/terms-of-reference-of-the-uk-open-government-network
20 The Center for Public Innovation are one of the researchers for this project. They are found online here: inovarepublica.ro/center-public-innovation
Lesson 4 - OGP builds relationships between CSOs and government

The OGP has acted as a useful framework around which civil society and government can build new relationships, or deepen those already existing. This may be through formal OGP processes, such as the quarterly meetings that the Estonian Civil Society Roundtable (the Estonian civil society network) hold with relevant ministries to discuss implementation of the NAP. They may also be the result of less formal OGP processes, such as in Romania where the OGP governmental team has introduced an “OGP Club”. This holds public monthly meetings on themes derived from the on-going action plan.

Relationships can be established through the OGP process that then translate outside of that. Interviews with participants in the UK indicated a strong feeling that the OGP is fostering a more collaborative way of government working with external parties. There is evidence that government officials and CSOs feel able to trust each other more as a result of their work together in OGP. It has also helped some from civil society to learn more about government processes, which can enable them to work for change more effectively.

There are fears from some organisations that this building of relationships between CSOs and government officials was not necessarily positive, and that organisations could be compromised by working in such a fashion with governments. This was a minority view however. It should also be noted that in the UK, there were historical issues noted around the accuracy of government statements on the extent of progress made and concerns expressed that commitments were released too late for civil society engagement.

Lesson 5 - The focus of commitments can broaden over time

Early action plans in Romania, Estonia and the UK focussed heavily on freedom of information and how digital technologies could enhance this, but the type of commitments made has broadened in later plans. This history shows that the scope of OGP work in a country can expand from narrow beginnings; and acts as a reminder not to judge the scope of OGP from early work. At the same time, there is evidence that the initial narrow and technical focus of OGP work within countries has presented difficulties for trying to later broaden the focus of this programme.

Early Romanian commitments focussed heavily on open data. Subsequently, this has shifted to broader topics, and ones that focussed at a less technical level, such as the idea of ‘Citizen Budgets’ and open education\(^21\). The UK’s first NAP was largely informed by an open data consultation\(^22\), not through wider civil society engagement, and commitments within it centred heavily on open data. Over time other commitments have emerged that go beyond this rather narrow idea of open government. These include the development of the Sciencewise programme for engaging the public effectively in debates around science and technology\(^23\), publishing draft legislation online, improving transparency around ‘beneficial ownership’ of UK companies, and exploring how online consultation processes can be improved.


\(^{23}\) sciencewise-erc.org.uk
These examples show that what has often started as a technical process, focussing on data access, can quickly mature and expand to encompass broader socio-cultural and policy aspects of good governance. They demonstrate that OGP can act as a catalyst for cultural and process change not just as a tool for managing the digital aspects of government. At the same time, there was evidence that some people were put off from the OGP by its initial technical focus, which was a challenge that CSOs and government involved in the OGP still have to think how to overcome.

**Lesson 6 - Action plans become more co-created as the process matures**

As the OGP process matures, the UK, Romania, and Estonia have all seen an increase in the level of co-creation in their actions, showing that it can be possible for this to build up over time, and the OGP shouldn’t be judged too strongly on initial processes. Latest action plans in each country show examples of good practice for co-creation.

Romania’s first action plan included a series of e-government projects proposed by various government agencies and a component related to open data, negotiated with civil society but decided on by government. For the third action plan the Romanian government released a timeline which deliberately coincided with civil society launching a crowd-sourcing process. The first stage started with the collection of ideas using an online open source tool, and surfaced 28 ideas from 152 participants, including developing open educational resources and open access to academic research data, and involved 152 participants. The second phase, organised by the Center for Public Innovation distributed the ideas into 14 thematic clusters. Thirteen of these 28 proposals were included in Romania’s third NAP. Some of these, such as commitments falling under open education or open culture, are commitments in which the text was taken entirely from the civil society proposal.

The third Estonian action plan was marked by an open call for input, inviting government and civil society partners to propose broader themes and then fill the chosen themes with more concrete commitments. However, the outreach didn’t exceed the circle of partners already active within the framework.

In the UK, the lack of CSO engagement in the development of the first action plan was strongly critiqued by an informal network of UK-based organisations, and the second and third action plan development processes have been marked by much more significant engagement. The second action plan was developed with meetings taking place on a weekly or fortnightly basis between a small group of CSOs in London (the initial members of the Open Government Network). It is felt by many that this was excellent in terms of co-creation, enabling a strong bond and understanding to be created between civil servants and CSOs. Equally however, there were also concerns that the process was too London centric and engagement limited to a handful of well resourced, often international, CSOs.

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24 ‘Romanian Civil Society takes co-creation very seriously’ (2016) OGP Blog. Accessed online November 2016 at: opengovpartnership.org/blog/ovidiu-voicu/2016/03/09/romanian-civil-society-takes-co-creation-very-seriously

For the third action plan, commitments from civil society were publicly crowd-sourced through an online platform which allowed people to comment and upvote suggestions. Offline events were held around the country to engage a wider audience. Similar ideas were then merged, and implausible ones cut, at an Open Government Network event in London. The outcome was the Open Government Manifesto, published as the basis of the network’s negotiation with government over the content of the final action plan. The UK government worked in parallel to find commitments from within government departments.

To finalise the action plan, both civil society and government commitments were assigned a named organisation from the civil society side and theme lead from government. For political reasons, government was often unwilling to share a full list of the government sourced proposals publicly, and so these commitments were shared only with those leading on developing commitments and with the OGN Steering Committee.

The final plan took shape through public discussion and negotiations with the Minister for the Cabinet Office and the Cabinet Office team. The wider network did not get to see government-side commitments prior to the final plan and the final plan had to be passed by Cabinet (the executive body at the heart of government). Civil society representatives believed that about half of the OGN manifesto made it into the final NAP in one way or another. There was some unhappiness with the final write-up, and with commitments being lost. People thought that more could have been done to clearly communicate upfront how the process would work. This highlights a trade-off between the in-depth but more closed conversations around the second NAP and a more open and distributed process used in the third and demonstrates that the OGP process is itself still evolving.

**Lesson 7 - High level political buy in is needed**

It was felt that strong support and political leadership from senior government ministers and senior officials is highly beneficial to the OGP process. The processes of transparency, accountability and participation can be intimidating for more junior officials who may be unsure about unintended consequences of transparency, or unsure about how to increase public participation if they feel policy decisions are already made.

A major boost to the Romanian OGP process came when open data commitments in the second action plan received support from the prime minister. By participating in several public meetings dedicated to open government, being present at the OGP Summit and repeatedly saying open government was a priority, he helped keep the issue on the agenda and motivated various agencies to implement their commitments. Similarly in the UK there was high level buy-in under a previous administration, with the prime minister launching action plans at international summits and speaking at an OGP Summit. Political support came from the Minister for Cabinet Office at the time of the OGP launch, which helped create the focus and resources needed.

The tacit backing of senior ministers has clearly been important. Conversely, our interviews highlight concerns that many of the UK’s newly appointed senior ministers remain unconvinced by the open government agenda, and that as such there is a risk that there may be a decrease in high impact commitments in future action plans.
Lesson 8 - Resource limitations hamper CSOs ability to engage

Many CSO are operating under constrained funding, and this limits their capacity to engage with action plan development, and any involvement to support the implementation of commitments. Both Estonia and the UK have some highly active organisations involved, but their overall number is relatively small. In the UK, some of those organisations have taken a lesser role in developing the third action plan than they did in the second, and in both the UK and Estonia, CSOs are citing a lack of certainty about the impact of engaging. It seems likely that more CSOs would engage if they were convinced of impact, but it must be recognised that not all CSOs would be able to engage deeply, even in this situation.

Questions of who may fund civil society’s participation in OGP remains problematic, yet it is vital that CSO’s feel sufficiently able to devote time and resource to it if the process is to be effective and truly collaborative. The charity Involve has taken a central role in coordinating the UK civil society network, and has been an important part of the success of the OGP in the UK. Some interviewees, however, suggested that a broader distribution of funds may enable other CSO’s to better support their own involvement in the process.

How to best enable CSO engagement needs to be thought over by the whole range of actors involved in the OGP - government, network coordinators, and non-governmental funders.

Lesson 9 - Failing to reach out beyond the bubble

The OGP process in none of the three countries studied here has managed to cross-over and reach beyond a small number of core organisations (often focussing on data, human rights and transparency). It is felt that there are some inherent barriers that prevent citizens and small CSOs engaging, beyond the resource point mentioned above. Concern was expressed in Estonia, Romania and the UK that initiatives and conversations are often too technical and specific, focussing on points of legalities and technicalities, rather than on broader issues that may be of interest to a wider audience. All three countries have struggled to reach beyond an original, albeit strongly engaged, group of CSOs. There is a feeling that the strong focus on open data, especially in the origins of the OGP, can be off-putting. Open data itself has not yet made a significant move beyond a very technical audience, and this is perhaps exacerbating problems here. It is noted that the Scottish Pioneer Programme (a sub-national pilot within the UK OGP process) is starting to explore a broader OGP narrative based on the UN’s Sustainable Development Goals (SDGs) with the express intent of overcoming this ‘siloing’ of open government.

There are also concerns that the OGP itself can look very complex, that there are lots of emails that get exchanged and that this flurry of information without context can be off-putting, bureaucratic and difficult to understand.

Finally, there is a geographic barrier. In all three countries, the civil society networks and development process for the action plan are focussed around the capital city. Events around the UK were introduced in developing the third action plan, with CSOs within the network contributing to this, but the core of the process is still London-centric. In Romania, online tools helped reduce the gap during the consultation for the third NAP but the geographic barrier is more visible during implementation. According to government officials, there are

More can be found out about Involve on their website: involve.org.uk
organizations and groups from outside Bucharest that expressed their interest in participating in the implementation but are unable to because of the distance. In Estonia, the CSO roundtable has only one organisation involved who does not have its headquarters in Tallinn, and while in the UK online conferencing and calls are used in network meetings, this does not provide quite the same opportunity to engage as being face-to-face.

There are numerous challenges in terms of widening the circle of people who engage in the OGP process. Scotland’s exploration of how the OGP can relate to SDGs is a potential way to relate open government to a wider audience. CSOs can do more to engage and use their networks to educate, inform and engage beyond the core participants. The OGP is currently operating as a process that engages CSOs, rather than citizens directly, but perhaps it could do both? Using more inclusive, less technical, language will be an important requirement for engaging a broader audience.

It would be easy to be cynical about the relatively limited reach of those engaging but it is important to focus on the numbers of people who, in a relatively short time frame, have come together who otherwise would might not have collaborated. It should be a focus of open government processes that they aim to strengthen the range and reach of civil society involvement, particularly where there is a risk that the already engaged CSOs are seen as part of the ‘system’ and therefore risk lacking broader credibility or being seen as unrepresentative.

Summary of Lessons Learned

There have been significant changes in all three countries during their participation in the OGP. The processes and methods have started to come of age.

There is a lack of evidence about whether the OGP has been responsible for an advance in open government initiatives, and there is evidence that many OGP initiatives would have happened without this framework. However, there was a strong feeling that OGP does help push this work forward. Having a team working on this within government, bringing diverse civil society groups and internal reformers together in a focused setting, creating a cycle of media and civil society attention, were all seen as important factors. Having a way in, and having stakeholders already in the room for progressing work were also considered key.

There was also a strong feeling that a main strength of the OGP is in terms of somewhat peripheral, or longer-term, effects from this way of working. This included things like improving government-civil society relations, building civil society networks and helping organisations learn from each other, as well as sharing innovation internally within government. In time, there is also a suggestion that the OGP might provide an impetus for civil society organisations to get better at involving the wider public in their work.

The OGP has proven, if not a catalyst for civil society engagement in open government, at least an effective focal point where a transformative culture of openness and transparency can take root. It appears to have supported the conditions where governments and their civil society partners can work together productively and where those who believe in open and transparent government can collaborate and feel supported.

The processes themselves are still emerging and maturing; OGP is far from ideal and there are criticisms with the process, including some who feel an additional edge of international
comparison would be beneficial, and a failure to deliver on commitments. Some key challenges that remain include balancing the agility to respond to political events, with a continued respect for agreed inclusive processes of co-creation; expanding the reach of the OGP (and maintaining effectiveness within this); and balancing inclusive co-creation with realistic expectations of what a representative government will be able to take up.

4. The European Union and open government

![Core European Union Institutions Diagram]

The EU is not a government. It is a set of decision-making institutions that can only act on where empowered to by its founding treaties, rather than having full sovereignty - the power “to make or unmake any law whatever”\(^\text{27}\).

Although the EU does not have universal competence, the range of areas in which the EU can legislate has increased, and its powers differ in different policy areas. Sometimes the Union acts as a supranational (for example, negotiating trade deals and adjudicating competition cases in place of its member states); sometimes it works in an intergovernmental fashion (working to agree common foreign policy positions, for example), and there are many hybrid processes in between.

The main strategy-setting body is the European Council, composed of the heads of government of member states, which sets the strategic direction of the European Union. The

European Commission is the executive of the European Union. It proposes and implements legislation and is tasked with guarding the “European” interest of EU actions.

The two main legislative bodies are the Council of Ministers and the European Parliament. The Council of Ministers, also called the Council of the EU, is composed of representatives from the governments of EU member states. The Parliament is directly elected by voters of member states every five years. Members of the European Parliament (MEP’s) are elected in each country on the same day, and work in political groupings bringing together parties of similar beliefs.

Decision-making within the EU does not follow the pattern of traditional state democracies. Unlike states, legislation can only be proposed by the executive body, the Commission, although stimulus for legislation can come from different sources such as the European Parliament, the Council of Ministers, international organisations such as the UN, or treaties such as Free-trade agreements. The majority of EU legislation is then scrutinised by the Council of Ministers and the Parliament, who have to reach agreement between themselves and with the Commission for a proposal to become European law. Depending on the area of legislation, other EU or representative bodies (such as the European Economic and Social Committee and the Committee of the Regions) may have a role in the legislative process. Unlike in states, EU law is generally not implemented directly by the EU. Much EU legislation sets minimum standards that are to be implemented in national law, leaving member states leeway to enact these policies in their own way.

The European Parliament and Council of Ministers, do not act as a representative parliament and a federal senate, although there are superficial similarities. The European Parliament lacks the legal sovereignty of national parliaments and has no ability for members to directly introduce legislation. There are some similarities between the appearance of the Council of Ministers and the German Bundesrat, both being made up of representatives of their constituent state bodies. Membership depends not on an electorate or constituency but instead on their status and position within their national constitutional frameworks, and their focus is largely to defend the (perceived) interests of their member state. The Council does not act as a typical revising or scrutinising chamber over the detail of legislation, behaving more as a co-legislator than a traditional second chamber.

While the Council of Ministers does have a legislative function, proposing amendments and voting upon proposed legislation, it also acts an intergovernmental and diplomatic body. The formal meetings of Ministers tend to be the culmination and formal adoption of agreements among the member states, rather than the forum for debate. Meetings are now broadcast

28 There are some interesting nuances here when thinking about the realities of the right of initiation outside of an executive body. For instance, in the United Kingdom, legislation is initiated either from government or through a Private Member’s Bill. These are chosen through a ballot system but are unlikely to succeed into legislation unless the government benches support them.
publicly, but the charge has been levelled that this has increased the drive to find agreement before the Council meetings, rather than having debate (and negotiation) in public.

How has the EU become more open?

When the European institutions were created, they were designed as bureaucracies, with civil servants working on specialist matters of trade and its regulation. The twin traditions of bureaucracy and diplomacy did not lend themselves to openness. Over time, the institutions have become more open, although such progress has been somewhat stop-start. The rules-based nature of the organisation (rather than a common-law basis in which judicial interpretation builds up over time) has meant that many initiatives are about prohibitive rules outlawing bad practice rather than encouraging good behaviours. Different cultural and political traditions within member states also make change slow, with ideas of what terms like “open” and “transparent” mean differing based on the constitutional set-up and recent history of individual countries. Despite this, the EU has without doubt progressed in terms of being more clear about how policies are made, making information available to citizens, clarifying the role of lobby groups and encouraging broader participation early in the policy-making process. Some, but by all means not all, of these initiatives are described below.

Transparency and access to information

EU institutions have developed a significant number of initiatives over the last decade that improve transparency and access to information.

Publishing government held open data acts as a means of proactive transparency. The Commission has long been pushing Member States to enable re-use of public sector information29, and themselves provide the European Open Data Portal30, on which free and reusable data from the EU institutions are published. At the time of writing, 9,152 data sets are currently published on this portal.

EUR-Lex, published by the inter-institutional Publications Office of the European Union, provides free access, in the 24 official EU languages, to all important EU documentation31. This includes EU law (including directives, regulations, and treaties), legislative proposals, reports, policy papers, and summaries of EU legislation.

The European Parliament has created the Legislative Train website which aims to make it clear where important EU legislation is in the legislative procedure and what will happen next32. It is a good example of improving the comprehensibility of information using open data.

29 Directive 2013/37/EU encourages Member States to make as much information available for re-use as possible. It addresses material held by public sector bodies at national, regional and local levels, as well as organisations funded for the most part by or under the control of public authorities. The Directive itself focusses more on the economic aspects of re-use of information rather than on the access of citizens to information. For more information see: ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information
30 The Open Data Portal can be accessed at: data.europa.eu/euodp/en/about
31 EUR-Lex can be accessed at: eur-lex.europa.eu/homepage.html
32 This can be accessed at: europarl.europa.eu/legislative-train/
Other initiatives include the Transparency Register, which operates as a joint European Parliament and Commission initiative, and requires all organisations acting as lobbyists to register. Citizens can request access to EU documents. The Commission, Council of Ministers, and European Parliament must keep have a register of documents, and these are essentially websites with a library of documents published online in which citizens can search for documents. Efforts have also been made to provide more transparency about financial matters. All budget documents are made available online, and recipients of EU funds administered by the Commission are available in an online database.

In December 2014, the EU Parliament approved an intergroup named “Integrity: Transparency, anti-corruption and organised crime” (ITCO). An intergroup is an informal group of cross-party MEPs that allows these individuals to come together, highlight and promote shared interests. They also allow a point of contact for external shareholders, including CSOs. Since it was set up, ITCO has carried out a number of activities related to open government such as writing letters to the Commission about the second EU anti-corruption report, and releasing a number of press statements including requests to ensure the Transparency Register is more robust and calling for greater protections for whistleblowers.

**Participation and openness in policy making**

Attempts have also been made to better understand and hear the views of citizens living within the EU. The European Commission operates a public opinion polling service, Eurobarometer. This service maintains an analysis of broad EU themes over time across all EU member states and some accession countries. Policy units are also able to commission surveys on specific topics, which is often used in the preliminary stages of legislative preparation to help orient the approach.

The European Citizens Initiative (ECI) is a means by which legislative priorities can, theoretically, be shaped by the citizens of the EU. Initiatives are registered in a database. For any which gain a minimum of one million verified signatures from a minimum of seven EU member states within one year, and also falls within EU areas of action, the European Commission should consider proposing legislation. There are critiques about the value of the ECI. Despite being heralded as the world’s first transnational tool of participative democracy, the process for launching an ECI is far from simple. The topic of the ECI needs to be within EU competencies. Signatories are required to provide a good deal of personal information for verification purposes, and the timescale for gathering signatures is short considering the amount of work required. There have been only three successful ECIs since the launch of the initiative in April 2012 and of these none so far have resulted in legislation. Furthermore,

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35 This information is available here: [ec.europa.eu/budget/fts/index_en.htm](http://ec.europa.eu/budget/fts/index_en.htm)

36 More information about the ITCO intergroup, including the activities mentioned in this paragraph, can be found here: [itcointergroup.eu/](http://itcointergroup.eu/)

37 The Eurobarometer is publicly available here: [ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm](http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm)

once an ECI has successfully overcome the barriers, the Commission is not obliged to act on it, only to consider whether it should, and then to provide a response.

**Citizens’ Dialogues** have been carried out across the EU since 2012, providing an opportunity for anyone to engage with European Commissioners and local or national figures who represent that country or region at EU level\(^{39}\). While these have not been policy-making forums, they have allowed a more grassroots engagement with the issues discussed at EU level, though the absolute number of citizens involved is relatively small, and the question-and-answer format lends itself to airing of concerns or comments more than conversation or participative policy design.

There have been regular efforts to encourage more consultation in the policy-making process, with the advent of online tools making it easier for consultations to be made available to people and for contributions to be gathered. The most recent initiative in this direction is the EU Better Regulation Agenda\(^{40}\).

The European Commission’s Joint Research Centre has recently started working with Policy Labs\(^{41}\) from countries across Europe and the European Parliament to develop approaches that focus on effectively putting citizens at the heart of policy making\(^{42}\). There have been pilot projects in participatory policy-making in some areas of the Commission, but these have not been broadened out.

**Accountability**

Prior to 1979, the European Parliament was appointed, rather than elected, and this is seen as a means of increasing accountability. Since then, it has increased its legislative and scrutiny powers. The Parliament now has the right to vet all candidates appointed to the European Commission, through a programme of public hearings. Since this process was introduced in 2004, the European Parliament has exercised its right to reject a candidate at least once at every election\(^ {43}\).

**Scope for further action**

There is growing international acceptance that open government leads to better governance, and this is reflected in the work being done by cities, regions and countries worldwide.

Multiple EU politicians over several years have spoken of the need for the EU to take the same route, increasing trust and improving policy making by opening its decision-making processes. This can be done by building upon initiatives that have gone before, as well as by exploring new ideas. The aim should be to develop clear and consistent approaches across

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\(^{39}\) 51 of dialogues were carried out between 2012 and 2014 (Debate on the Future of Europe Accessed online November 2016 at: ec.europa.eu/archives/debate-future-europe/index_en.htm ). The site for this ongoing scheme can be accessed at: ec.europa.eu/citizens-dialogues/


\(^{41}\) Policy labs are organisations that aim to bring more open, data-driven, digital and user-centred ways of making policy. The UK government policy lab can be found here: openpolicy.blog.gov.uk

\(^{42}\) The page of the European Policy Lab, can be accessed at: blogs.ec.europa.eu/eupolicylab

\(^{43}\) Ingrid Ure (Latvia) and Rocco Buttiglione (Italy) in 2004; Rumiana Jeleva (Bulgaria) in 2009; Alenka Bratusek (Slovenia) in 2014.
policy areas and across institutions that provide greater legitimacy through developing more opportunities for participation, and through enabling greater transparency and oversight.

While there have been many high-level statements made, and a broad push to ensure increased levels of transparency within the Parliament and Commission, the EU remains some significant distance from being a transparent, accountable, and participative body. This is despite some of the innovative initiatives that it has enacted to date.

Some of that distance is due to culture. The EU institutions and processes were not initially designed to be transparent, accountable and open to participation, built as they were before a more modern push, enabled by new technologies, for openness. They work on abstract policies not concrete implementation, on the scale of a continent not the scale of a city.

Other problems are structural. EU institutions work in a continent with dozens of languages spoken, widely different political systems and cultures and in an environment where background knowledge of EU policy and structure is low. Even a 1% participation rate in a consultation would be an overwhelming flood of information for what is, in relative terms, a very small governing infrastructure.

Within the institutions, we have heard voices arguing that these factors make open government less relevant to the EU, and citizen participation an impossible vision. Some we have spoken to said they believe that smaller NGOs and individual citizens may not have insight to share on legislation and policy development, sufficient to justify the administrative cost of involving them.

Action based on this culture, and no history of engagement, leads to very patchy levels of direct engagement between EU institutions and citizens and civil society organisations - often dependent upon the policy unit involved. While there have been some attempts from the Parliament and Commission to engage with civil society organisations, these processes often favour the well-resourced CSOs or formal groups. There is little consideration as to how to best enable less resourced CSOs or citizens to participate.

The formal consultation process is more user friendly than it was, using online forms rather than paper and becoming more focused on broad questions (including, sometimes, options for idea generation). However, there is still all too often a belief that publishing a series of questions on a website is an effective means of hearing from citizens and NGOs, with little thought provided about how they may wish to be engaged. There is existing work that explores how online consultation processes can be improved.

A lack of consideration for end users is also reflected in how information about the EU is made available. While the EU has introduced many initiatives focussed on transparency, this is often not done in a way that thinks about how someone may want to use the information. The current model of publication reflects the complexities of the institutions themselves, nuances of which are often not understood by citizens and CSOs. This results in “passive

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44 Such as through the Commission’s Futurium platform, available at: ec.europa.eu/futurium/en

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secrecy”: even where information is available, it is not a given that citizens or CSOs, however highly engaged, will know where to look. All institutions, and the Commission in particular, should pay more consideration to how citizens, CSOs, and businesses may use their information portals and websites, for example, being aware that terms used in the institutions might not be the terms used for that policy area at national or regional level.

This difficulty of navigation is exacerbated by a lack of understanding of the EU outside the EU institutions themselves. This, in part, is due to member states not being sufficiently concerned about providing education relating to this, but there is also much the EU itself could do. Some elements of its operations are complex, but some are needlessly obscure, such as the publication of votes in the Council of Ministers in PDF minutes rather than in a systematic open format. Such barriers to scrutiny and oversight increase scepticism about the EU project. By finding more clear ways to communicate information to external audiences, including citizens, NGOs and businesses, trust and understanding would be increased.

As the EU institutions are the products of compromise they, like many such institutions, are sometimes unclear and hard to navigate. The barriers between them can sometimes seem impenetrable, so where good practice and ideas exist, they can be trapped within small pockets within Directorates-General (DG), or within institutions. It can be hard from the inside to connect ideas and initiatives across these silos, and hard for CSOs and citizens on the outside to understand how to encourage change.

As discussed above, the OGP model provides some fixes to these siloes. Furthermore, there are multiple potential initiatives relating to ‘open government’ that can help streamline processes, and make them more actively transparent to citizens.

Table 1 - Initiatives suggested by interviewees and from research into country-level commitments.

<table>
<thead>
<tr>
<th>Pillars / Levels</th>
<th>Council of Ministers</th>
<th>European Parliament</th>
<th>European Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency and access to information</td>
<td>Develop and adopt uniform rules and procedures about how votes are captured when the Council of Ministers is operating as a legislative body, that are adopted across all policy areas, and publish votes in a systematic open format (rather than within PDFs)</td>
<td>The declaration of financial interest should ask for finer level of detail at more regular intervals.</td>
<td>Extend ‘cooling off’ period for former members of the Commission.</td>
</tr>
<tr>
<td></td>
<td>Adopt a regular timetable, across all policy areas, for releasing minutes following meetings.</td>
<td></td>
<td>Work with current and potential data users to explore what additional data sets can be released openly from the EU institutions.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Adopt open contracting standards, as seen in UK and Romania</td>
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<td></td>
<td></td>
<td></td>
<td>Strengthen the Transparency Register.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Adopt a consistent set of rules about how to implement regulation 1049/2001 about access to document regulation.</td>
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</tbody>
</table>
The three main institutions to further increase the transparency of law-making in the EU by publishing key documents related to their informal negotiations (known as “trilogues”).

<table>
<thead>
<tr>
<th>Participation</th>
<th>Encourage Member States to carry out participative processes in their own countries before Council of Ministers meeting on a specific topic.</th>
<th>Expand the DG ITEC and EU Publications Office pilot that enables citizen commenting on legislation.</th>
<th>Improve the experience of online consultations, Cross-party outreach events by MEPs asking for direct public views on upcoming votes.</th>
<th>Pilot the idea of holding citizen panels on significant pieces of legislation, or legislative packages. Could take place either in every member state, at the EU Parliament, where citizens are invited and their expenses paid to attend.</th>
<th>Pilot the idea of specific engagement and outreach through Parliament and Council offices in each member state.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountability</td>
<td>Prohibit MEPs from taking a second job as a lobbyist.</td>
<td>Citizen panel in each member state, which is to be consulted and involved in the evaluation of actions taken.</td>
<td>Citizen ombudsman with members paid for time</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The European Union and the Open Government Partnership

Twenty out of the twenty-eight member states within the EU are members of the OGP. These countries have joined the OGP at different times since the OGP was set up and thus are at different stages of implementing their first, second or third action plans.

Figure 2 – A map of Europe, showing EU and OGP membership, as well as highlighting case study countries.

The EU itself is not a member of the OGP, although there have been a number of calls for it to join. In July 2014, a call was made by 70 civil society organisations\(^{46}\) for the EU’s “close engagement with and eventual membership of the Open Government Partnership”\(^{47}\), and in July 2015, a letter to MEPs was co-written by OSEPI, Access Info Europe, and Publish What You Fund, co-signed by over 50 CSOs\(^{48}\). These calls received interest from pockets of the EU with a sense of open government – from the European Ombudsman to Members of the European Parliament - however gained little political traction.

\(^{46}\) The Democratic Society, authors of this report, and Open Estonia Foundation, one of the researchers for this report were both signatories to this call. The call itself was organised by Open Society European Policy Institute, the funders of this report.


It is not only CSOs who have been calling for EU involvement in the OGP. Robert Madelin, the former Senior Innovation Adviser to the European Commission also recommended the Commission join in the OGP in a strategy note published in July 2016. In February 2015, the European Ombudsman wrote to the European Commission First Vice-President responsible for transparency, Frans Timmermans, stating that “there is the potential for the Commission, on behalf of the EU, to become a leading force for change within the OGP”, and that the “EU level of governance” should be involved in the OGP.

Could the EU join the OGP?

The Commission’s response was dismissive of the suggestion, citing a lack of eligibility, concerns about the EU’s ability to develop commitments for an action plan, and concerns about the “financial and human resource implications”.

Two of the arguments are unconvincing: the idea that the EU couldn’t develop commitments for an action plan, and the financial and human resource implications.

While potentially the Commission could propose new legislation or enhance existing legislation that applies to member states, enhancing existing legislation related to open government, there are questions about whether the institution would be acting outside of its remit in doing this. The EU however, could build upon its history of developing initiatives related to the actions of the institutions themselves. The initiatives discussed above in ‘How can the EU become more open?’ are exactly the types of initiatives that we see emerge through OGP National Action Plans.

The direct resource requirements of joining the OGP are not extensive. As discussed above the UK, and many other countries have adopted a model in which a small central core team are responsible for the OGP project. This small team are responsible for liaising with other ministries, and for developing an action plan. In none of the countries studied for this report, has the executive branch allocated additional resource to ministries to carry out any commitments made in an action plan. Instead departments allocate small resources to the implementation of these initiatives, as part of a regular budget allocation process. It is difficult to capture a full picture in terms of cost of the engagement with the OGP, however given these factors, it is unlikely to require significant new resource.

The third argument made by Frans Timmermans however is correct. As it is not a state, the EU, is technically not eligible for membership of the OGP. It is a requirement that the OGP application for membership receives formal approval from ‘the Head of State’; a position the EU does not offer. Throughout the discussion on eligibility for the OGP and the

52 How to Join. Accessed online November 2016 at: opengovpartnership.org/how-it-works/how-join
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documentation provided for guidance on how to develop an action plan, the formal term ‘country’ is used. The basis for this definition is implicitly drawn from membership of the UN, and the EU does not meet the sovereignty criteria required for membership. Instead the EU holds “enhanced” observer status within the UN, though it is party to some 50 international UN agreements, and unlike other observers, has the right to speak in debates among representatives of major groups, to submit proposals and amendments, the right of reply, to raise points of order and to circulate documents.

While eligibility is currently a barrier to EU membership of the OGP, this does not mean that it always will be. The OGP may decide to amend the terminology used to describe membership eligibility in such a way that enables EU membership. This has precedence with the World Trade organisation (WTO) which was originally only open to states. Following negotiation, it was agreed to vary that term to ‘governments and customs territories’ so that the EU could act as a single voice for its Member States. There are obvious differences: the EU could never replace its member states in OGP processes like the EU stands for its member states in trade negotiations. However, the WTO sets a precedent that an inter-governmental organisation can adopt flexible rules to enable EU membership.

It is likely that the OGP will have to rethink their membership model soon, in any case. In April 2016 the OGP announced the 15 sub-national governments who would take part in a ‘Pioneers Pilot’ programme, which explores how the OGP model can work at a more local level. These sub-national government, include Scotland and cities across the world, including Madrid and Paris. It is not yet clear how the OGP will continue to work with these subnational governments following the completion of the Pioneers Pilot, but any continued involvement will require some change of the existing OGP eligibility criteria.

For the EU to sign up to the OGP, there would theoretically be two options: firstly, the EU signing up as a legal construct, including its institutions and member states, and secondly the three main institutions (Parliament, Commission, and Council of Ministers), reaching an inter-institutional, or common, agreement for the institutions themselves to sign up. As the OGP would likely fall outside the bounds of how the EU institutions are allowed to act in terms of enforcing their actions upon member states, it is most likely that the EU signing up to the OGP would take the form of such an inter-institutional agreement.

Does the EU meet other OGP eligibility criteria?

Setting aside the question of whether the requirements relating to being a state excludes EU membership of the OGP, the other eligibility requirements should not prove a major hurdle to the EU joining the OGP. To be eligible to join the OGP, a country must meet a minimum set of criteria that are scored across the following areas:

- **Fiscal Transparency:** The timely publication of essential budget documents
- **Access to Information:** Access to information law that guarantees the public’s right to information and access to government data.

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- **Public Officials Asset Disclosure**: Rules that require public disclosure of income and assets for elected and senior public officials.
- **Citizen Engagement**: Openness to citizen participation and engagement in policymaking and governance, including basic protections for civil liberties.

The EU largely meets the eligibility criteria as laid out in the table below. There are some doubts about whether the EU would currently meet the citizen engagement criteria, however expressing the intent to establish more significant means for this would be considered sufficient, and indeed the opportunity to develop and learn is a key part of the point of OGP.

Table 2 - Cross-reference of EU functions to OGP criteria.

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Transparency</th>
<th>Access to information</th>
<th>Public official’s asset declaration</th>
<th>Citizen engagement</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Commission</td>
<td>Draft budget made available online in 23 languages Recipients of EU funds administered by the Commission are available online</td>
<td>Transparency register of active interest groups (Commission and Parliament) Individuals can request access to documents under Regulation 1049/2001. Commission has a register of documents</td>
<td>Commissioners declare assets/interests on their personal webpages. Code of conduct for Commissioners. Staff regulations have rules on interests, but no requirement to declare.</td>
<td>Public consultations at early stages of policy design. European Citizens Initiative Some ad-hoc elements of citizen involvement 8,239 datasets on EU Open Data Portal</td>
</tr>
<tr>
<td>European Council and Council of Ministers</td>
<td>Council of Ministers position on the draft budget is available online in 23 languages</td>
<td>Individuals can request access to documents under Regulation 1049/2001. The General Secretariat of the Council maintains a register of documents relating to the Council of Ministers and the European Council</td>
<td>Staff regulations have rules on interests, but no requirement to declare.</td>
<td>Council of Ministers meetings are broadcast publicly. The Council of Ministers has 3 datasets on EU Open Data Portal</td>
</tr>
<tr>
<td>European Parliament</td>
<td>European Parliament resolution is available online in 23 languages</td>
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<td>Petitions to the European Parliament 14 datasets on EU Open Data Portal</td>
</tr>
</tbody>
</table>

56 ec.europa.eu/budget/fts/index_en.htm
Should the EU join the OGP?

While answering whether the EU could join the OGP is comparatively simple, it is much harder to answer the question of should the EU join the OGP. From the interviews carried out for this report, there is recognition of what the EU has already done in terms of transparency and accountability. There is also a keen interest for the EU to be showing greater commitment to the agenda of openness: especially relating to greater transparency of decision making, and enabling greater participation of citizens in the development of policy and legislation.

Some interviewees have expressed concerns that enabling the EU to sign up as a member would constitute mission drift for the OGP. There are fears that too close an affiliation with the EU may adversely affect an organisation who likes to think of themselves as an agile organisation that builds bridges between external reformers and institutions. Furthermore, there are some concerns heard about whether the OGP should be the main focus of energies related to improving the existing democratic system, with concerns raised about a lack of democratic engagement through elections, and the fact that initiatives proposed may be insufficiently game changing. There is also concern about the limited reach of the OGP beyond a small number of large and well-resourced CSOs.

Despite these concerns, there are several significant benefits of the EU being a member of the OGP. The EU has some significant initiatives that it can share with the broad global community, including the Transparency Register and the idea of public hearings for candidates being appointed to the Commission. Additionally, the EU can benefit from joining. The OGP is one of the key networks where reformers inside and outside of government come together. It provides a rich body of knowledge and experience from which the EU can learn and discover good practice.

It is strongly felt by both civil servants and individuals who work for CSOs that one of the key benefits of the OGP process is the development of an action plan. This helps to join individuals together within government, breaking down the silos that exist within any bureaucratic organisation. The EU is no exception here. Developing an action plan also provides a key point of contact between staff in EU institutions, and CSOs and potentially citizens. Due to the already existent OGP process in its member states there are already 20 ready-made national civil society coalitions for the EU to engage with.

While it is naïve to think that merely joining OGP could directly increase public trust in the EU and its institutions, the net benefits to be obtained from developing and applying an ambitious and measurable open government action plan should contribute to this in the long term. There is a concomitant benefit to civil society and other OGP actors in member states, providing increased support and legitimacy for transparent, accountable and open government processes, which in some states are under severe pressure from proponents of so-called “illiberal democracy”. There is also a symbolic value in the EU joining the OGP as it suggests that its institutions are willing to improve their own transparency, accountability and wanting to hear from the citizens who live within the member states. Similarly, it would be a rare moment where the EU promotes and absorbs best practice of its member states.

We believe there is significant value in the EU becoming involved in the OGP. However, this does not necessarily require membership. There are other forms of relationship that could be pursued.
The OGP has formed formal multilateral agreements with organisations such as the World Bank and the OECD. A similar relationship between the EU and the OGP is conceivable, which would enable the EU to be present in OGP related conversations, to learn and share knowledge, but not committing to developing an action plan. This is similar to what is seen in other forums such as the G7, or G20, where the EU attends as a non-member, alongside some of its member states.

At the most radical, the EU could require OGP participation of accession countries. The complementarity of the EU's Copenhagen Criteria and open government are undeniable - in particular the requirement that the “candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”58. In practice, some candidate and countries with association agreements are using OGP to drive reforms in a way that is not dissimilar to EU accession requirements. Out of the current candidate countries, Albania and Macedonia are on their third action plans; Serbia and Montenegro their second (Turkey is listed as ‘inactive’). Ukraine, with a stalled EU Stabilisation and Association Agreement, is implementing its second action plan. International complementarity could even go one step further as states explore how to implement Goal 16 of the SDGs of which effective, accountable and inclusive institutions is a significant part 59.

Even if no such relationship with OGP is pursued, the EU could, and should, still follow the OGP’s agenda, learn from OGP initiatives in other countries, and follow the good practices embodied in this way of working. The EU and the OGP have overlapping objectives around transparency, participation, and accountability. Without significant cost or administrative overhead, much could be done to align the EU with OGP principles and actions.

The most important marker of success in open government initiatives is consistent support from the political level and within the administration. If the EU were to develop its existing commitments to open government and pair them with concrete action, it could quickly show real leadership in open government. Good open government action without OGP membership is far preferable to OGP membership as a dead letter, with no accompanying action.

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58 The Copenhagen Criteria, originally established by the Copenhagen European Council in 1993, provide three criteria to which any country wishing to join the EU member must conform. More about this can be found here: eur-lex.europa.eu/summary/glossary/accession_criteria_copenhague.html

59 SDG 16 states the aim to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. It includes a number of targets that overlap with open government, including 16.6 (“Develop effective, accountable and transparent institutions at all levels” and 16.7: (“Ensure responsive, inclusive, participatory and representative decision-making at all levels”). For more information see: sustainabledevelopment.un.org/sdg16
6. Building an open government model and roadmap for the EU

“When we think about open government, we can’t just think about local and national governments - supranational and international bodies are a crucial piece of the jigsaw” - Interviewee for this project

The OGP’s national action plans are designed for states, which have a government (and, in some cases, parliament) on one side, and a civil society network on the other. The EU’s complex institutional arrangements and differing competencies mean that creating a clear action plan for the EU institutions is a more difficult task. The Commission, as the administration and guardian of the treaties, is the clearest analogue to a national government. For this reason, it is to the Commission that we have directed most of our recommendations.

This does not mean that the other elements of the EU institutional framework should be left untouched. It is sensible that they should be encouraged and able to create and join shared commitments to open government. This can occur by such institutions adopting the declaration of principles we recommend below.

Generating open government initiatives must reflect the fact that, unlike traditional central governments, European bodies often play dual roles. The Commission sometimes acts as a policy maker, and sometimes in a judicial function. Different approaches to open government are required to reflect these different roles.

The EU is broad, diverse and complex; it operates in a world of multiple languages and different political systems, all feeding into the EU institutions. Beyond this there are significant differences in the social and political cultures, and as such, in the expectations of citizens, NGOs, and MEPs, about how and what a government looks like, and how one would relate to it. The EU itself is not static, treaty changes have evolved its function and purpose and there are frequent shifts in powers, roles and responsibilities. Core principles of openness can be applied at a high level, but detailed application must remain flexible and able to adapt to the evolving role and mission of EU institutions, and the expectation of citizens.

Recommendations

We recommend action on several fronts: to use the EU’s existing powers for greater transparency and openness; to give clear direction of open government work within the EU; to support civil society to create networks and connections that can support open government action in Brussels and beyond; to benchmark and improve EU open government action across the board; and to pilot innovative open government approaches in one (or a few) Directorates-General.
1. Lead on standards

The primary focus of this report is on open government within EU institutions. It should be noted that the EU legislates in areas where transparency is important, and it has a role in encouraging good governance in member and aspirant member states.

Where legislation is pending on issues where transparency, accountability and participation are a significant element, for example anti-corruption or anti-money-laundering rules, the EU should work with the OGP and CSO networks with an interest in this area to ensure that where possible, policies align with the shared goals and commitments of the EU. CSOs should look to secure commitments in their own country’s OGP NAPs (where they are members) so their governments commit to supporting this legislation at the EU level. To this end, we recommend that EU member states who are members of the OGP should seek to include commitments in their NAPs about how they can promote the ideas and aims of openness and transparency at the EU level.

The EU should also use its funding programmes to support co-ordination of initiatives around open government across the member states. Programmes such as Horizon 2020 and Next Generation Internet already have significant open government and open data elements, for example the project EUCROWD, funded through Europe for Citizens, looks at how technology platforms for crowdsourcing could be used in EU policy making. The impact of initiatives such these could be increased through better co-ordination with national action plans and OGP networks in the member states.

2. Develop strong leadership on open government

Like any programme of change, open government needs clear leadership at both the political and official levels, and it requires support from those within the system and outside it who are trying to bring about change. The EU is not short of commitments to open government, from the 2001 White Paper onwards. The very fact that there are multiple sets of commitments, however, means that leadership on the issue is unclear.

The EU should bring together its different commitments and work programmes on open government into a clear declaration of principles on open government to ensure visibility and clarity. These should be accompanied by action (described below) and the principles should cross-reference and align with the OGP’s principles.

This declaration of principles must be drawn up with the collaboration of a broad and representative network of civil society actors and organisations, to ensure that they are ambitious, realistic and appropriate. However, the network that could support the EU's thinking and action in this area is not yet fully formed.

3. Create the space for open government actors to connect inside and outside the institutions

The EU should replicate some of the structures of the OGP. Our research has shown strongly that a principle benefit of the OGP has been the opportunities for developing and improving connections between government officials. In the EU, the DGs responsible for transparency and open government are entirely disconnected from the DG responsible for
better regulation. There are people doing interesting things but, as with any large organisation, it can be hard to join these reformers together. Yet doing so is vital.

The OGP model, as highlighted above, provides an excellent and well-tested framework that allows reformers both inside and outside government to convene. Adopting a similar framework would provide a significant benefit to the EU. It will enable more effective transfer of knowledge and ideas, a coming together to discuss initiatives and promote better and more effective transparency, participation, and accountability. This includes learning from good practice trialled within different institutions, or developed in member states through the OGP and other mechanisms.

This would be further increased by the encouragement and establishment of informal peer-to-peer networks through online and offline means, to which staff from all EU institutions should be encouraged to sign up.

To help ensure flow of information, and buy in from all institutions, this activity should be overseen by a steering-group, having membership from all institutions. As we have seen from the UK, where this hasn’t happened, ensuring proactive buy in from the institutions is crucial for making it easier to push for initiatives that may affect both the legislative and executive branches.

The EU should also consider how it could work with the OGP.

4. Build routes to citizens and organisations beyond Brussels

At the European level, the sort of civil society network that exists in OGP member countries does not exist. Although there are several organisations working on transparency, accountability and participation at European level, these often focus on the EU level, and rely on national partners at state level. Effective open government must reach beyond the familiar parts of civil society and into wider networks, including individual citizens and academics. This lack of reach is something that has been felt within national OGP work, but will be felt more acutely given the particular challenges that come with the scale of a continent.

Starting from the civil society and institutional connections recommended above, it is recommended that this work be extended through the linking of innovation and open government work at European, national and local level. This network should be as broad and open as possible, modelling the behaviour it wants to see in government, and allow organisations and individuals to participate to the extent and in the depth that they are able. Through this network, EU open government work can reach beyond representative bodies and reach citizens and organisations directly in their own media and political environments. The existence of these routes to citizens is important for work on transparency and accountability, and essential if participation in EU policies is to be broad enough to make a difference.

The initial steps to create this network can start quickly, they do not need to wait for the declaration of principles from the Commission - indeed, there is benefit in starting this strand of work first, to ensure that the basic network is in place as soon as possible to support work on other elements of these recommendations. Whilst it is tempting to describe how this network could function, and good practice examples exist through the OGP mechanisms in a
number of member states, it is important that the members of the network be permitted to co-create and to allow it to evolve organically.

The work as it develops will need to manage several challenges. It can be assumed that the working language of the network will be English, but the network will need to develop ways of bridging language barriers. Given the physical scale of Europe, digital methods will be preferable, but means of engaging those who do not feel comfortable in, or cannot use digital environments will need to be found. The network must ensure that the commitment of time is manageable even for small organisations, while also ensuring that those who commit significant resource are fairly recompensed for it. All these challenges are like those faced by the institutions in policy making for a multilingual, multi-country community, so the network can itself be a testing ground for some of the innovation it seeks in government.

5. Tell the story about what is already happening

As part of the declaration of principles, the EU should set out the work already underway on open government within the institutions, and what its ambitions are for further development of these projects and initiatives. At present, the teams responsible for open government in the Commission are spread across several Directorates-General, and different teams within the same DG. The creation of a single narrative will support the delivery of every initiative, by placing it in context and demonstrating that it is part of an organisation-wide approach to open government.

Creation of a clear narrative that can cut through the complexities can provide impetus for organisation, creating a reference point for open government work within the Commission as a whole or within each DG, as happens in national governments.

6. Actively develop open government policy and practice

The Commission should work with external partners to improve its approach to public engagement and better regulation, using national partners to access wider networks, and supporting peer learning and mentoring within the organisation so better regulation and open administration become embedded in the Commission's culture.

As part of this, it should develop its open government work further, using the rich set of examples from its own member states’ national action plans, with changes where needed to adapt them to the political and cultural conditions of the Union. In our own country research, and through interviews, several initiatives have been identified that could be beneficial if taken to European level. These are found in ‘Scope for further action’.

However, there will certainly be many other potential opportunities. Ideas for these can be found not just in member states’ national action plans, but also among institutional staff, CSOs and citizens. A good way of demonstrating the commitment of the EU to working differently would be generating the ideas themselves through a participative process, as happened during the development of the third National Action Plan in the United Kingdom. If carried out well, this process would in itself draw attention to the importance of open government as a new agenda, and start to create the networks of participation and trust on which successful implementation of open government depends.
The actions that emerge from this process should be judged against a set of simple criteria. While not acting as a hard filter, they can help people think about what initiatives should be included. The criteria we suggest are:

- **Impact**: an initiative can make a real impact on the world
- **Feasibility**: whether the initiative can plausibly take place at a European scale.
- **Practicability**: the initiative can describe a plausible path to implementation,
- **Transparency**: clarity of outputs and outcomes of the initiative are clear
- **Sustainability**: there are sufficient financial and human resources to complete the work.
- **Affordability**: the initiative can deliver at a cost that is reasonable
- **Reach**: citizens affected by the initiative are broadly representative and initiatives operate in a multilingual context.

**Taking the first steps**

The recommendations set out here are the work of several years to fulfil. In particular, aligning the EU’s open government work with the OGP, and reaching the point where a decision to join is realistic, may take until the end of the current Commission mandate in 2019. However, many of the recommendations can be implemented in the coming months.

The initial areas of work that need to run in parallel are the creation of the civil society network, and internal discussions within the institutions (primarily the Commission) on creating a narrative of existing initiatives, and a declaration of principles on open government. An ambitious but achievable roadmap would be:

**By the summer of 2017**, the Commission (and other institutions if possible) have mapped their internal open government work, have created and are ready to publish a narrative and declaration. Units within the institutions where there is already an interest in open government (for example in the Commission’s DG CNECT, DG JUST and DG COMM) have created open government pioneer areas, in which they signed up to a draft set of open government principles and are now preparing experiments alongside civil society partners around participation, transparency and accountability.

At the same time, the core of a civil society network has been formed in Brussels, which has started to spread out into member states and draw in other members. An initial network conference is held in the summer.

**After the summer of 2017**, the Commission’s pioneer areas work with the first elements of the civil society network to develop an approach to creating action plans in the manner set out above. The results of the first pilots are produced near the end of the year, and the second wave of experiments focuses on using the widening civil society network developed to directly contribute to the openness of government by better engaging a wider audience with information that is newly being made available, and enabling a wider range of participants to usefully engage with developing EU policy.
At the next OGP conference in Georgia in late 2017, the Commission and the civil society network share a stage to reflect on the past year’s work, and announce their plans for 2018.

In 2018, what has started in the pioneer areas and been assessed and evaluated as successful starts to move into the mainstream. A new wave of pilots goes bigger and broader, and starts to reach out into new networks and ways of working. The spring sees the first round of open government action planning undertaken through an open process that works collaboratively with a wide-range of citizens.

By the end of 2018, a revision of, or addendum to, the 2001 White Paper on Governance makes some core open government practices a requirement across the Institutions, and sets out ambitions for further development. The civil society network has broadened further and is now seen as a policy-making asset for the EU and for citizens, supporting productive two-way communication between citizens and the EU, and giving policy makers a clearer view of policy preferences and the practical consequences of policy implementation. The wide network and visible action that have taken place over the past two years have an impact on the European Parliament elections, increasing the scope for debate and ensuring that European, not just national issues, are the subject of conversation. The incoming Commission, with the support of the member states, works with the Council and Commission to make significant commitments on open government for the next mandate, seeking to make accountable, transparent and participative policy making the default mode of working across the European Institutions. Supporting that, a network of civil society actors, built up from local level and operating in every member state, gives citizens the ability to understand, participate in, and monitor EU policy making and implementation.
The Democratic Society (Demsoc) works for more and better democracy, where people and institutions have the desire, opportunity and confidence to participate together. We work to create opportunities for people to become involved in the decisions that affect their lives and for them to have the skills to do this effectively. We support governments, parliaments and any organisation that wants to involve citizens in decision making to be transparent, open and welcoming of participation. We actively support spaces, places and processes to make this happen. See: demsoc.org.

The Open Society European Policy Institute (OSEPI) is the EU policy arm of the Open Society Foundations. We work to influence and inform EU policies, funding and external action to ensure that open society values are at the heart of what the European Union does, both inside and outside its borders. OSEPI brings into EU policy debates evidence, argument and recommendations drawn from the work of the Open Society Foundations in more than 100 countries. The foundations’ priorities include human rights, justice and accountability pursued through a wide range of policy areas including education, health, media, information, arts and culture.