

# 3

## Ensuring transparency and integrity in Thailand's public decision making

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This chapter provides an assessment of policies that aim to promote transparency and integrity in public decision making in the Kingdom of Thailand. It identifies weaknesses in the current legal framework, such as the lack of specific guidelines or regulations on how stakeholders and public officials interact during policy making. Furthermore, it raises practical concerns related to the enforcement and implementation of the regulations in place such as the lack of data and broad assessments on public consultations. Based on the analysis and the Recommendation of the OECD Council on Public Integrity, the chapter provides recommendations to foster regulations on stakeholder engagement and participation in policy making, for example by developing rules for interactions between stakeholders and public officials. Further, it provides advice to promote transparency and access to information on decision making, as well as to strengthen enforcement by raising awareness and including sanctions in regulations.

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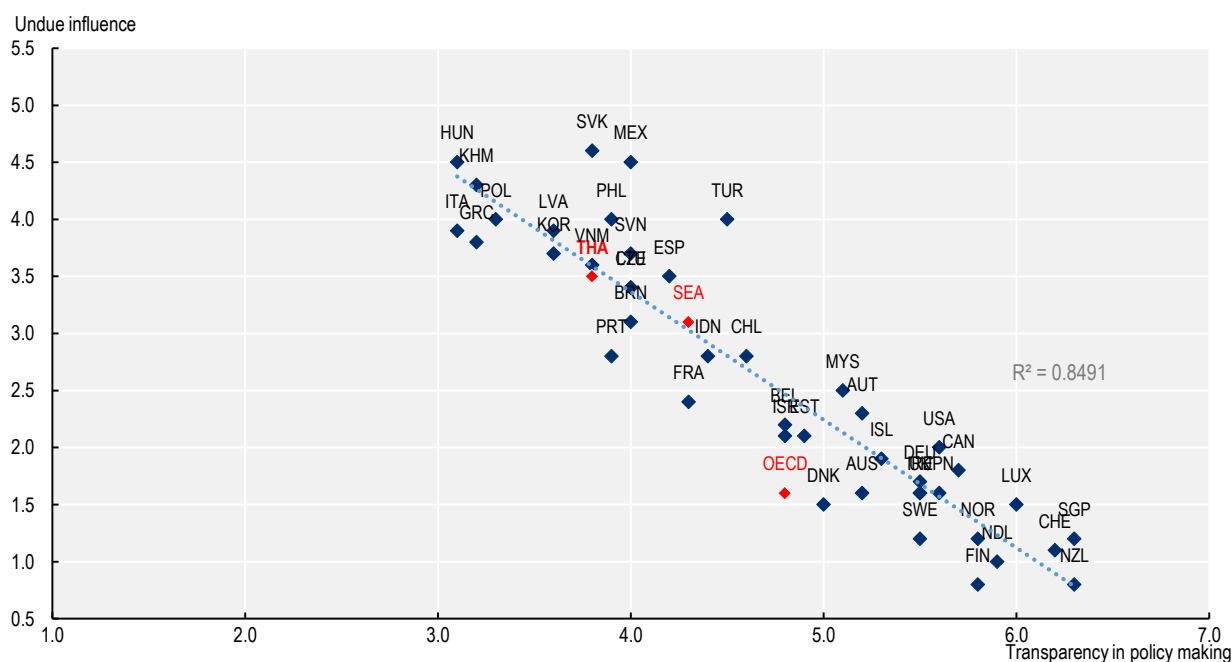
## Introduction

Inclusive public policies and decision making based on integrity, participation and transparency legitimise and make policies more effective, thereby strengthening citizens' trust in governments (OECD, 2017<sup>[1]</sup>). However, powerful individuals and interest groups can use their wealth, power or advantages to tip the scale in their favour at the expense of the public interest. When public policy decisions are consistently or repeatedly directed away from the public interest towards the interests of a specific interest group or persons, policies are captured rendering them unfair and exclusive (OECD, 2017<sup>[2]</sup>). Public policies that systematically favour narrow interest groups could affect the delivery of public services in the long-term, as well as fair competition, trust in government and the legitimacy of political systems.

The OECD Recommendation on Public Integrity (OECD, 2017<sup>[3]</sup>) states that governments should “encourage transparency and stakeholders’ engagement at all stages of the political process and policy cycle to promote accountability and the public interest”. Indeed, enforcing the right to know through transparency and access to information, and the inclusive and fair participation of stakeholders are key instruments for levelling the playing field and protecting the policy-making process from being dominated by particular interests.

Over the past decades, Thailand has made impressive economic progress: it has joined the rank of upper middle-income economies, poverty has been reduced, and economic growth and well-being indicators have improved steadily (OECD, 2019<sup>[4]</sup>). However, data from the World Economic Forum’s Global Competitiveness Report 2017-2018 shows that Thailand seems to be, on average, more vulnerable to undue influence than other countries in Southeast Asia and the OECD, exhibiting lower levels of perceived transparency in government policy making (Figure 3.1). Besides, while according to the Asian Development Bank, Thailand shows the lowest levels of reported bribery solicitations in the continent (9.9% of firms in the country reported experiencing bribery requests), the perception among representatives from business reflects that government officials show favouritism to well-connected firms and individuals when deciding upon policies and contracts (IMF, World Economic Outlook Database). Further, country experts from the Varieties of Democracies Project consider that most of Thailand’s social and infrastructure spending systematically favours a specific corporation, sector, or set of constituents, instead of allocating social and infrastructure expenditures for the benefit of society as a whole (V-Dem Institute, University of Gothenburg).

**Figure 3.1. Undue influence comes along with lower levels of perceived transparency of government policy making**



Note: A value of 0 is “low” and a value of 6, “high”. The scores for the “undue influence” indicator have been inverted to reflect that higher scores mean higher levels of undue influence. The World Economic Forum calculates the indicator based on the responses to two questions, relating to judicial independence (“In your country, to what extent is the judiciary independent from influences of members of government, citizens, or firms?”) and favouritism (“In your country, to what extent do government officials show favouritism to well-connected firms and individuals when deciding upon policies and contracts?”). Level of transparency of government policy making is calculated based on the response to the question “In your country, how easy is it for companies to obtain information about changes in government policies and regulations affecting their activities”.

Source: IMF, World Economic Outlook Database 2017.

Promoting integrity and transparency in public policy making is a precondition to building inclusive and fair societies and averting policy capture. An important step in this direction is to implement broader anti-corruption measures, such as the ones in place in Thailand (OECD, 2018<sup>[5]</sup>). Nonetheless, to ensure that influence on public policies is wielded correctly and to prevent the capture of public policies by private interests, Thailand could increase its efforts to make policy making more accessible, inclusive and accountable to citizens. In particular, this chapter provides recommendations along the following lines of work:

- Fostering regulations on stakeholder engagement and participation in policy making.
- Promoting transparency and access to information on decision making.
- Strengthening enforcement and regulations awareness raising.

## Fostering regulations on stakeholder engagement and participation in policy making

### ***Thailand could initiate discussions to develop clear and comprehensive regulations on interactions between stakeholders and public officials***

Advocacy and interest groups can bring much-needed information to the policy debate. Transparent and fair competition of interests through legal and legitimate channels during decision-making processes lead to public policies that include constituents' views and concerns, and favour the public interest. However, if there are no effective mechanisms to regulate how private interests influence and interact with policy makers, some interests may have uneven access to decision-making process and capture policies.

Section 77 of the Constitution of the Kingdom of Thailand requires the use of good regulatory practices, such as regulatory impact assessment, stakeholder engagement and ex post reviews. It recognises interactions between stakeholders and policy makers during public decision making, and states that the public and stakeholders should be taken into consideration during law-making processes. In addition, implementing requirements under Section 77, the *Act on Legislative Drafting and Evaluation of Legislation B.E. 2560* (2019) requires the public to be involved in every drafting process.

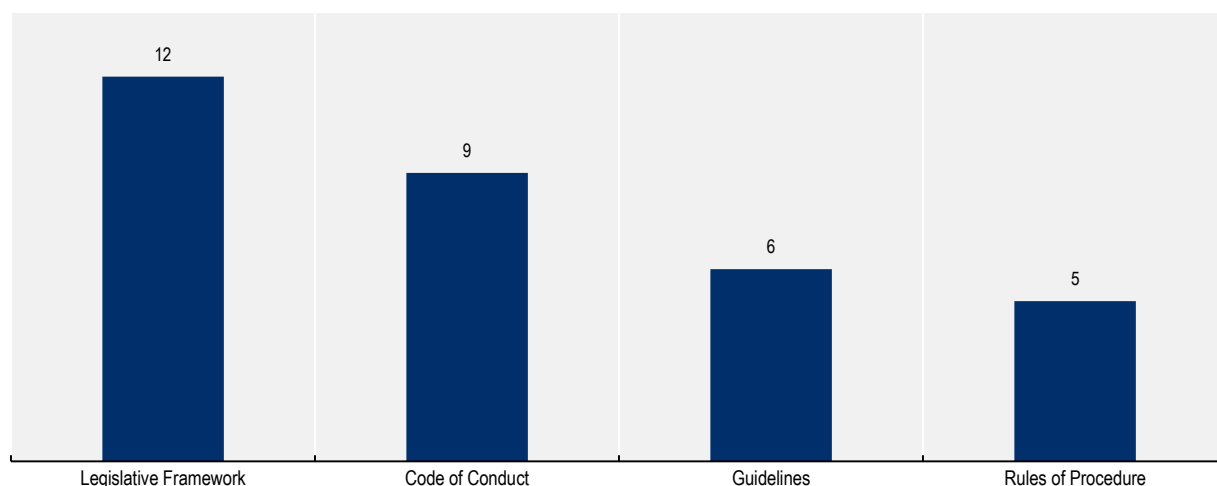
Furthermore, the government of Thailand encourages public agencies to promote stakeholders' participation in decision making through the "Participatory Governance Category" of Public Sector Excellence Awards. The Office of the Public Sector Development Commission (OPDC) gives this award to government agencies committed to the promotion and development of an effective public administration which meets people's needs on the basis of accountability and public participation.

Yet, there are no specific regulations on how the private and the public sector should actually interact during legislative drafting or broader policy making. As evidenced during the interviews conducted by the OECD in Thailand, no official mechanisms are in place to regulate or prevent big companies from contacting ministers and policy makers privately during policy-making processes. Indeed, uneven access to policy making was also raised as a concern by Thai Civil Society Organisations (CSOs), pointing out that only a few private actors and businesses have access to direct communications with policy makers to influence legislation, policies or administrative decisions (Nimitmongkol, 2019<sup>[6]</sup>).

The lack of clear stipulations regulating how the private sector is involved in policy making can lead to potential conflicts of interest and may create opportunities for influencing and developing bias in policies. Hence, many OECD countries have either legislative frameworks, rules of procedure or codes of conduct to regulate interactions between stakeholders and public officials and policy makers (Figure 3.2). For example, in Korea, the *Act on the Prevention of Corruption and the Establishment and Management of the Anticorruption and Civil Rights Commission* includes a specific code of conduct for public officials that regulates interactions with private stakeholders. In Italy, the *Rules of procedure of the Parliament* require that everyone who represents an interest, and interacts with policy makers, should register and report their activities, as well as disclose their interests. In France, according to *Law No. 2016-1691 on transparency, the fight against corruption and on the modernisation of economic life*, the High Authority for Transparency in Public Life (HATVP) manages a public register through which citizens can access information about the identity of interest representatives who try to influence policies, the activities they perform in order to influence, the expenditure related to these activities, as well as public decisions targeted by them.

### Figure 3.2. Many OECD countries regulate interactions between private stakeholders and policy makers

Number of countries by type of regulation



Note: Data is based on 31 OECD member countries.

Source: 2020 OECD Survey on Lobbying.

Following these examples, Thailand could initiate discussions in order to draft specific rules or guidelines to regulate interactions between different stakeholders and public officials during policy making. To ensure policies are made in the public interest and fair interactions during their design, these rules could for example require the disclosure of stakeholders' names and the activities they carry out if they intend to influence policies, or could specify that stakeholders who want to influence policies should be registered.

Alternatively, Thailand could include a directive in the Code of Professional Ethics for the Civil Service or provide a set of rules or principles establishing how public officials and policy makers must be contacted or how they should interact with private stakeholders. For instance, the current drafting of the Code of Conduct for Parliamentarians could be an opportunity to include these dispositions, similar to the one in Spain, which defines the notion of "lobbyist" and establishes an obligation for public officials to disclose information on their meetings with lobbyists. The example of the Code of Conduct for Deputies and Senators in Spain is described in Box 3.1.

### Box 3.1. The Code of Conduct for Deputies in Spain

#### Article 5. Gifts

1. The members of the Parliament shall refrain from accepting, for their own benefit or for their family environment, gifts or gifts of value, favors, services, invitations or trips that are offered by reason of their position or that could be reasonably perceived as an attempt to influence in their conduct as parliamentarians.
2. It is understood included in the previous section that gift, gift or similar benefit that you have an estimated value greater than 150 euros.
3. Members of the Cortes Generales may receive personal gifts from friends and family that have been granted without any connection with their work as parliamentarians. They will also be admissible gifts, discounts, promotions or benefits of a similar nature that are common according to with the uses and customs and whose offer and delivery are unrelated to its activity politics.
4. Gifts and gifts received by a member of the Parliament on official trips of the Chamber or when they act on their behalf, they must be delivered to the Secretariat General of the corresponding Chamber as long as they are offered by reason of said representation and not in a personal capacity and have an estimated value of more than EUR 150. Such gifts will be inventoried and published on the website of the Parliament or Senate.

#### Article 6. Biographical data and agenda

1. A brief review of the biographical data will be published on the website of the respective Chamber, including information on the personal, academic and professional background of the members of the Parliament. In it you can consult all the titles, data and files that the same parliamentarian considers relevant.
2. Likewise, the members of the Chambers shall make their institutional agenda public in the corresponding Transparency Portal, including in any case the meetings held with the representatives of any entity that has the status of an interest group.
3. For these purposes, and as long as the reform of the Regulations to regulate the Registry and the activity of the interest groups in the Chambers are not forthcoming, will be considered an interest group, lobby or lobbyist: those natural or legal persons or entities without legal personality that communicate directly or indirectly with holders of public or elected positions or their staff in favor of private, public, individual or collective interests, trying to modify or influence issues related to the preparation or modification of legislative initiatives.
4. In both cases, as well as with respect to the declaration of economic interests provided for in the Article 4.3, each parliamentarian will be responsible for the veracity, accuracy and timeliness of the published information.

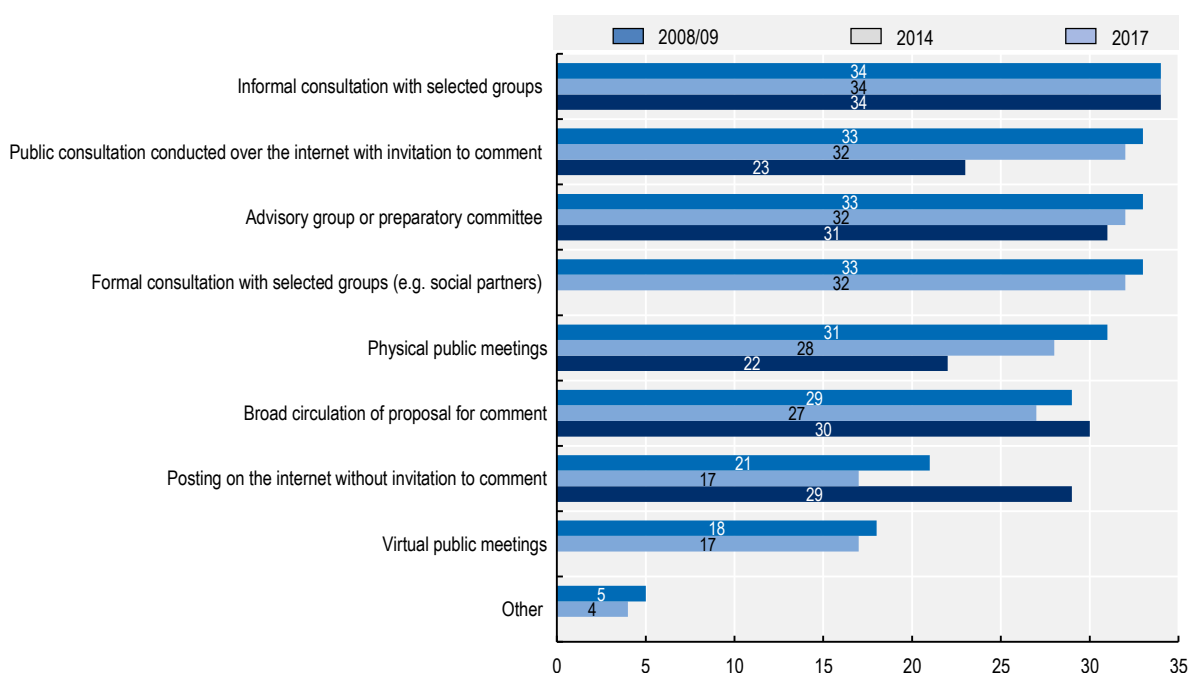
Source: [https://www.congreso.es/public\\_oficiales/L14/CORT/BOCG/A/BOCG-14-CG-A-70.PDF](https://www.congreso.es/public_oficiales/L14/CORT/BOCG/A/BOCG-14-CG-A-70.PDF)

### ***Thailand could include specific guidelines on the processes, methods and timeframes for stakeholder engagement in the new Act on Public Consultation***

Public policies in the public interest require the development of regulations to ensure not only fair interactions during policy making, but also fair participation, by granting all stakeholders equal access and proactively promoting their engagement. Meaningful stakeholder engagement safeguards the public interest, enhances the inclusiveness of policies, inspires ownership over policy outcomes and stimulates

innovative solutions. By involving people in the policy-making process, governments can collect empirical information for analytical purposes, identify policy alternatives, and measure expectations resulting in valuable information on which to base their policy decisions (OECD, 2018<sup>[7]</sup>). OECD countries make use of a variety of tools to consult, both with the general public and targeted stakeholders (Figure 3.3).

**Figure 3.3. Countries engage stakeholders in many ways**



Note: Data is based on 34 OECD member countries and the European Union.

Source: (OECD, 2018<sup>[7]</sup>).

In Thailand, section 77 of the Constitution of the Kingdom states that prior to the enactment of every law, the State should conduct consultation with stakeholders, analyse any impacts that may occur from the law thoroughly and systematically, and should also disclose the results of the consultation and analysis to the public, and take them into consideration at every stage of the legislative process. Hence, the Act on Legislative Drafting and Evaluation of Legislation B.E. 2560 (2019) includes the requirement for a public consultation before every drafting process begins. Public consultation mechanisms include, among others, meetings, interviews, questionnaires, providing input digitally, or inviting different stakeholders to explain or express their opinions (to learn more about stakeholder engagement see forthcoming OECD Regulatory Reform Review of Thailand).

However, formally requiring stakeholder engagement during policy making is not sufficient to ensure effective implementation: broad and updated information and communication of the processes, as well as the timing and scope of engagement are important considerations. For instance, if engagement procedures do not include all relevant stakeholders, or only engage them after drafts and relevant discussions were developed – that is, in the late stages of policy making – stakeholders are likely to feel de facto excluded from the decision-making process and may abstain from participating in the future.

Additionally, the Rule of the Office of the Prime Minister on Public Consultation B.E. 2548 (2005) states that public consultations are in general optional, and only compulsory if the expected impact on the public is high. This leaves considerable room for discretion to ministries concerning engagement processes. Indeed, a study conducted by the Reform Commission of the Office of the Council of State found that 90%

of Thai legislation related to trade was based on a closed government control system, that consultation was uncommon, and that legal initiatives presented vague, broad subjects which did not address focused or specific topics and did not provide evidence or data for support (Ongkittikul and Thongphat, 2016<sup>[8]</sup>). Accordingly, stakeholders do not have easy and timely access to all information regarding consultations or are not familiar with the many channels and ways used for engagement. Further, evidence from other OECD governance reviews also points to the fact that public consultation— when carried out —is not dynamic and aims at complying with regulations rather than on extracting value from these exercises (forthcoming OECD Open and Connected Review of Thailand). Consultations often appeared to be announced at short notice, and organised without a standardised protocol (forthcoming OECD Regulatory Reform Review of Thailand).

In order to reform regulations and strengthen stakeholder engagement, the Government of Thailand established the Committee for Revising the Rule of the Office of the Prime Minister on Public Consultation. The draft for the new Public Consultation Act includes some dispositions that are broader than current regulations. For example, it requires State agencies to always disseminate information and consult with affected people whenever a project deals with “quality of environment, health, sanitary condition, the quality of life or any other material interest”. However, the disposition is rather vague and the government of Thailand could use the opportunity to consider including specific and detailed guidelines on the processes, methods and timeframes, which could be applied broadly to the general regulatory processes. Moreover, as included in Section 11 of the Act on Legislative Drafting and Evaluation of Legislation B.E. 2560 (2019), the development of a central database system to provide all stakeholders with open, timely and relevant information, would further encourage the Thai citizens’ engagement in participation processes. The Digital Government Agency plans to establish and manage a centralised web-portal that will host information prepared by the regulators on the underlying principles and rationale for considered legislative measures even before legal drafting has started. This platform could benefit from some experiences in OECD countries (Box 3.2).

### **Box 3.2. Online websites on participation and stakeholder engagement**

#### **The Scottish government webpage on public consultations**

The Scottish Government has a webpage which includes information on all the consultations that have been made and that are open to participation. The website provides an overview and reasons for the consultation, access to the consultation papers and allows for online participation. In addition, the website provides detailed information on past consultations in a user-friendly way, covering the issue for consultation, responses and how the input was used. It presents information on the individual contributions and answers provided for each input. Further, people are able to register for a mailing list, through which they receive information on forthcoming consultations and updates on the ongoing processes.

#### **The Finnish’s webpage “Demokratia”**

The Ministry of Justice of Finland established “Demokratia”, a website presenting all the different channels for influencing public decision making at different territorial levels (including the supranational). It also includes a list of issues that are part of ongoing discussions, with direct links to opportunities for participation. Among the initiatives, there is a nationwide youth advocacy service that allows young people to easily submit suggestions and participate in different consultation processes.

Source: Scottish Government (2020), Scottish Government consultations (website), <https://consult.gov.scot/> (accessed on 15 September 2020); Finnish Government (2020), “Discover the different channels for influencing”, <http://www.demokratia.fi/en/home/www.demokratia.fi/en/home/> (accessed on 15 September 2020).



## Promoting transparency and access to information on decision making

### ***Thailand could consider including in the new Official Information Law guidance for citizens requesting public information and a more detailed mandate and requirements for the Information Commission***

Transparency has been proven as a key element in anti-corruption policies. It provides people and civil society organisations with the opportunity to monitor and hold public servants and representatives to account. Moreover, there is a strong correlation between public trust in politicians and transparency in government policy making (OECD, 2017<sup>[1]</sup>). Granting citizens the right to know, and regulations on access to public information are important tools to curb corruption.

Transparency consists of both active and passive actions on the part of the government. On the one hand, governments need to proactively make information public, allowing individuals to access and use this information (active transparency). This includes the publication of open government data by public sector organisations. As discussed in the *OECD Open and Connected Review of Thailand*, this could also help in preventing corruption and policy capture. Section 59 of the Constitution of the Kingdom of Thailand establishes that *the State shall disclose any public data or information in the possession of a State agency, which is not related to the security of the State or government confidentiality*, and shall ensure that the public can conveniently access such information.

On the other hand, transparency is also about responding to requests for information by individuals, e.g. through access to information laws (passive transparency). In Thailand, the right to information is granted through the *Official Information Act B.E 2540* adopted in 1997, and Section 41 of the National Constitution recognises that: *“A person and community shall have the right to be informed and have access to public data or information in possession of a State agency as provided by law”* (Box 3.3).

#### **Box 3.3. Access to information in Thailand**

The *Official Information Act B.E 2540* (1997) gives people the opportunity to access broad information about various government operations. It is seen as a precondition for the people to exercise their political rights, as well as to better promote people’s interests.

The State bodies liable under the Act include central, provincial and local administrations, state enterprises, professional supervisory organisations, independent agencies of the state and other agencies.

The Act details the information that can be accessed, and is disclosed proactively or upon request, such as the authority structure and contact location of government agencies, laws, regulations, cabinet resolutions, plans, projects, annual expenditure budgets, or the results of a decision having a direct effect on the private sector, among others. Any person who deems that a government agency is not disseminating such information has the right to make a complaint to the committee.

Moreover, the Act also details the information that cannot be accessed, such as information that causes damage to national security, impairs law enforcement, etc.

In addition to the Official Information Act, there other relevant laws that regulate access to information, including the *Licensing Facilitation Act B.E 2558* (2015) and the *Public Procurement and Supplies Administration Act B.E. 2560* (2017). The Licensing Facilitation Act requires government agencies to create and disclose manuals for approval of licenses, which must contain the details about rules, procedures, conditions of documents or evidence used to submit the requests and duration of approval.

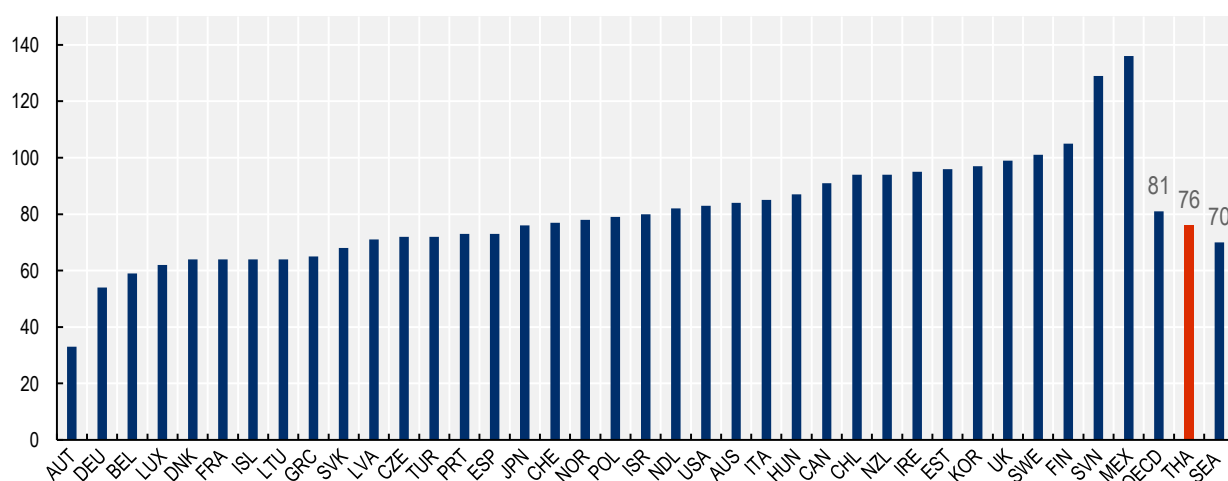
The Organic Act on Anti-corruption requires government agencies to disclose information on procurement projects through the electronic channels for public access.

Source: Inputs provided by the Secretariat of the Cabinet and ARTICLE 19 (2015), “The Right to Information in Thailand”, <https://www.article19.org/resources/the-right-to-information-in-thailand/> (accessed on 15 September 2020).

According to the Global Right to Information Index (RTI), the legal quality of Thailand’s Official Information Act –scoring 76 points- is below the OECD average, but slightly above the average score of other South East Asia countries included in the RTI (Figure 3.4).

**Figure 3.4. In terms of its legal framework, Thailand’s Right to Information regulation is slightly below the OECD average and above the Southeast Asia average**

Right to Information Rating 2018

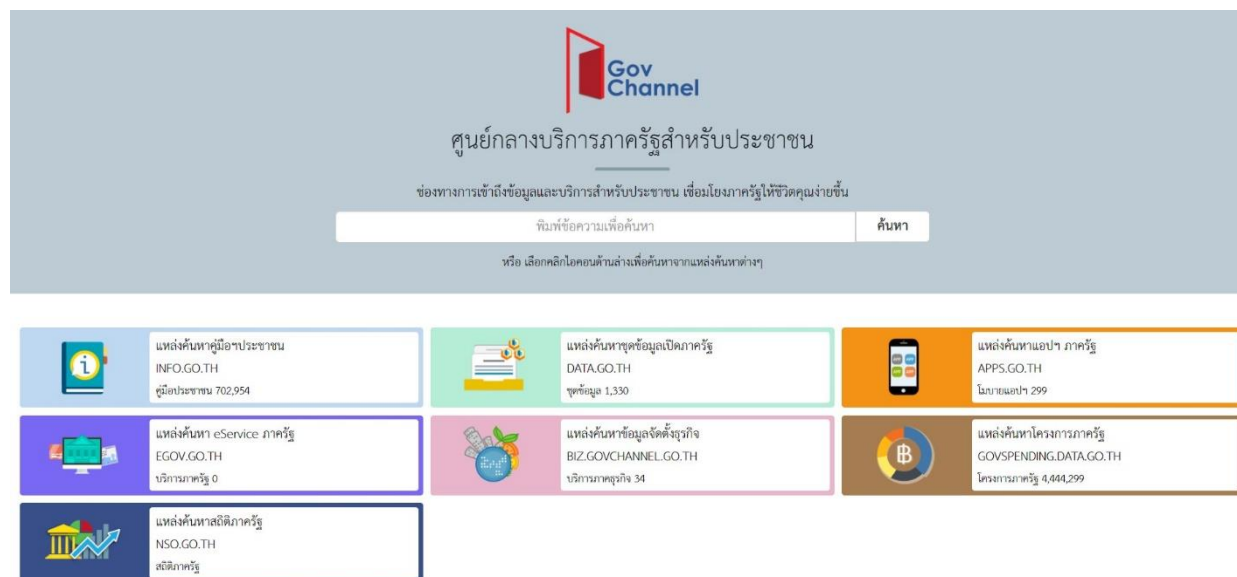


Note: The maximum achievable composite score is 150 and reflects a strong RTI legal framework. The global rating of RTI laws is composed of 61 indicators measuring seven dimensions: Right of access; Scope; Requesting procedures; Exceptions and refusals; Appeals; Sanctions and protection; and Promotional measures. Southeast Asia (SEA) countries are: Brunei, Cambodia, East Timor, Indonesia, Laos, Malaysia, Myanmar (Burma), Philippines, Singapore, Thailand and Vietnam. No data available for Brunei, Cambodia, Laos, Malaysia, Myanmar (Burma) and Singapore.

Source: Access Info Europe (AIE) and the Centre for Law and Democracy (CLD), Right to Information Rating.

In addition to the legal framework and as part of the measures to publish government information, Thailand has created the Government Service Center (GovChannel), which allows the public to access some information online, even if not all government information and data are made accessible on the same website, and multiple exemptions to disclosure remain (Figure 3.5). The platform is a first step to increase discoverability by federating the access to public sector information, data and services through one single domain.

Figure 3.5. Thailand's Government Service Centre website



Source: Thai Government (n.d.), Thailand's Government Service Centre website, [www.govchannel.go.th/](http://www.govchannel.go.th/) (accessed on 15 September 2020).

Thailand's *Official Information Act B.E 2540* (1997) allows people to request official information from a State agency, while protecting individuals' privacy rights and the possibility to express their opinions. However, the law does not provide guidance or detailed procedures to request information. For instance, the law is very vague with regard to deadlines and rules on extension, and the institution receiving requests is not obliged to transfer the request in case information cannot be obtained. Additionally, the Ministry of Interior of Thailand has developed a policy that links data from various government agencies to ID cards, which means citizens can use only their ID card to request information, thus reducing in practice the scope of the regulation that currently applies to all natural persons. These elements could obstruct the implementation of the Act and individuals' actual requests for information, as confirmed by the findings and recommendations on access to information of the forthcoming *Open and Connected Government Review of Thailand*.

In this regard, Thailand could take advantage of current discussions on the Official Information Act reform to include dispositions that could guide citizens requesting public information. In Mexico, for example, the *General Law on Transparency and Access to Public Information* states that all proceedings concerning the right of access to information must be substantiated in a simple and expeditious manner. Any person, by themselves or through a representative, can request access to information via the Transparency Unit, the National Platform, at the office or offices designated for this purpose, via email, mail, courier, verbally or by any means approved by the National System (Article 122, Mexico's *General Law on Transparency and Access to Public Information*).

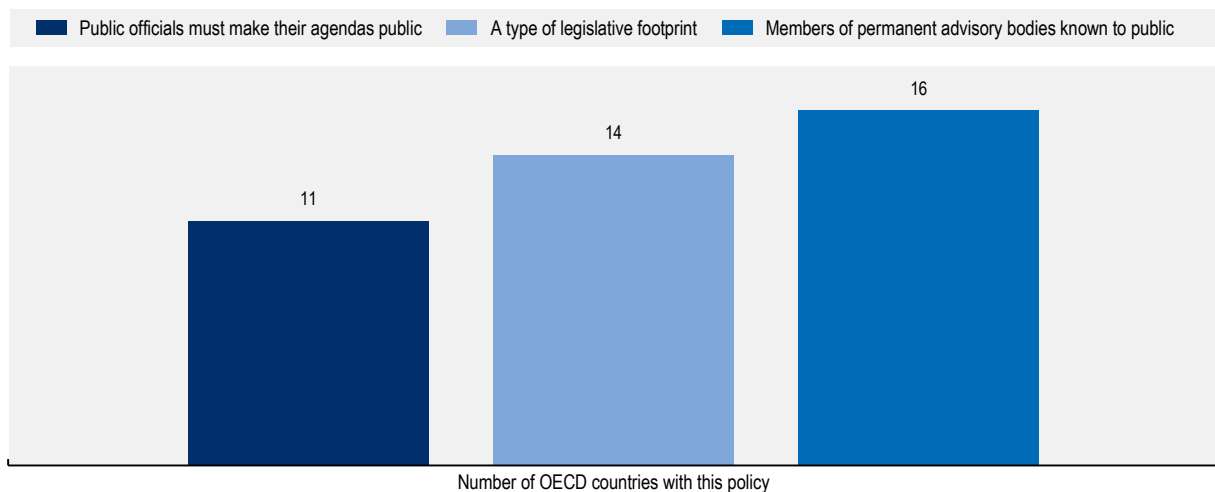
On the other hand, concerning the mandate and organisation of the Official Information Commission, it has been noted that it has a very small number of staff and approximately convenes three to four times per year. Furthermore, the Commission does not issue binding decisions and does not have a mandate or authority over other agencies. In addition, the Official Information Commissioner –the head of the Commission, who functions as a chairman for the Board - is appointed by the Prime Minister and dependent on the Prime Minister's Office, hence he/she changes when the government does. All these elements affect not only the independence but also performance of the Commission turning the outcomes of their studies and decisions into mere declarative statements with no enforcement power.

In order to ensure an effective implementation of the legislative framework, the government of Thailand may strengthen and further promote the independence of Thailand’s Information Commissioner. Effective oversight bodies should be independent from the government, have their own budget and appoint their members based on specific appointing requirements and criteria. In this context, and also as part of the reform of the Official Information Law, Thailand could consider the case of the Information Commission in Indonesia. Commissioners are experts, nominated by the president, but appointed by the Parliament (Articles 30 and 31 of the Public Information Disclosure Act). Further, the Commission’s decisions are binding (Articles 39 and 46), it is assigned its own budget and it is able to request additional budget from the Parliament if necessary (Article 29).

### ***Thailand could consider providing a legislative footprint and making legislative discussions open to the public***

During the last decade, in parallel with the global decline of trust in governments, an increasing number of countries have introduced tools and regulations to enhance the transparency and integrity of the public decision-making process, for example the disclosure of “legislative footprints” (Figure 3.6). A legislative footprint is a document that details the time, identity and subject of a legislator’s contact with a stakeholder (Berg and Freund, 2015<sup>[9]</sup>). It enables public scrutiny of the entire legislative process. As a way to strengthen transparency, many OECD countries have made public the names of organisations and people who policy makers have met with and consulted while drafting legislation, or those to whom they have disclosed discussions and interventions held within committees and parliamentary bodies (Box 3.4).

**Figure 3.6. OECD countries’ policies for transparency in policy making**



Source: OECD PMRI 2018.

### Box 3.4 Legislative footprint in Germany

In Germany, federal government decisions are prepared for by way of written cabinet submissions. The covering letters must contain:

- a brief outline of the matter and a statement of the reason for proposing the decision
- details of which federal ministries were involved and with what results
- the results of consultations with associations, particularly their main suggestions
- the outcomes resulting from the input from *Länder* (state) governments and any problems expected – especially if a Bundesrat (parliamentary) procedure is required
- the opinions of the federal government commissioners, federal commissioners, and federal government co-ordinators involved
- the foreseeable costs and budgetary effects of implementing the proposed decision.

Source: (OECD, 2014<sup>[10]</sup>).

In Thailand, according to Section 77 of the Constitution of the Kingdom of Thailand, the State should ensure that the public has proper access to laws and is able to understand them easily. This is echoed by section 5 of the *Act on Legislative Drafting and Evaluation of Legislation B.E. 2560* (2019), which states that the government shall provide the public easy access to legislation so they can understand and comply with the law correctly. However, the main objective of these dispositions is to underline the responsibility of citizens to comply with legislation by ensuring comprehensibility, rather than to foster transparency in decision making. In this sense, though the public can have access to legislation, they cannot access information on the decision-making processes.

In order to foster citizens' trust in government through transparency, Thailand could therefore provide complete information on different legislative stages and gear the information provided towards promoting transparency in decision-making processes. To this end, the Office of the Council of State is planning to develop a new website and have it ready by the end of 2020. This platform is being designed to support various regulatory policy tools and become the country's central legal database. Meanwhile, as an initial step, the website of the National Assembly could be updated in order to systematise all the available information. In particular, it should be ensured that all links are functioning properly and that all information is presented in a user-friendly way, grouping data by topic, status, etc. Additionally, the Secretariat of the House of Representatives could consider the inclusion of a disposition within legislative regulations making available to the public additional information on the legislative process, similar to the majority of OECD countries. For example, this could include information on discussions in Commissions or Assembly, or meetings with experts and stakeholders.

### ***Thailand may consider requiring policy makers to make their agendas open and accessible to the public***

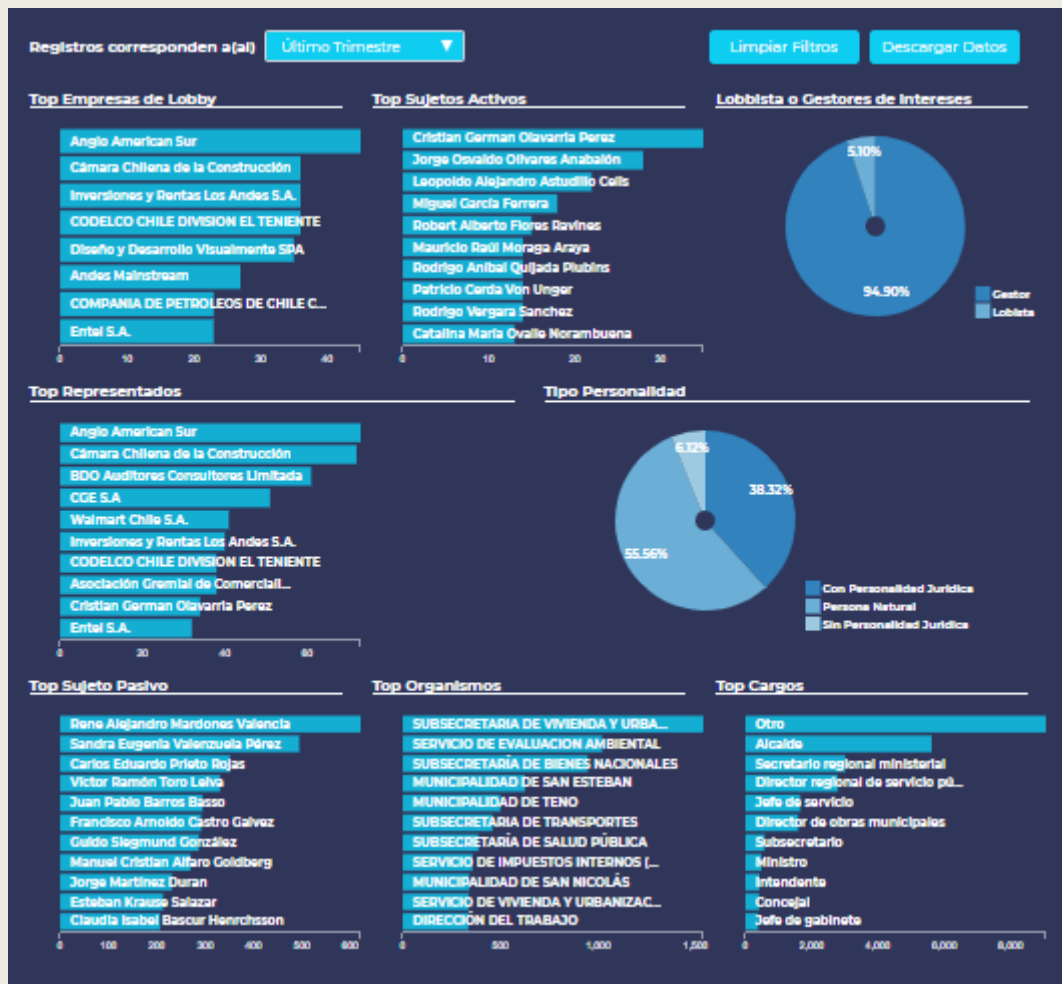
Opening policy makers' agendas could allow individuals and organisations to know which interest representatives or groups have had access to policy makers, and when they have been approached. This could increase transparency with regards to how policy-making processes are influenced by various interests, beyond the legislative processes or safeguards that may already be in place. Further, it could strengthen enforcement of regulations, complementing specific dispositions to promote integrity and avert the capture of decision-making processes.

Indeed, many OECD countries require that public officials that are involved in regulatory processes make their agendas available to the public. In Spain, for example, all members of Government are required to disclose their professional agendas, detailing all their daily meetings. The agendas can be accessed online through the webpages of the entities or through the Official Transparency Platform. In Chile, the Council

for Transparency manages an online website, where all the information on public officials' meetings is made public (Box 3.5).

### Box 3.5. Online information on public officials' meetings and hearings in Chile

As part of enforcing and implementing *Law No. 20.730*, the Council for Transparency in Chile developed an online platform to give access to data on public officials' hearings and meetings.



All the information can be searched and filtered by policy maker, stakeholder, or date, and it is possible to download the datasets to go through and/or reuse the data collected by the Council. Moreover, the online tool allows users to visualise time trends, compare information according to ministries and see infographics on companies, types of interest, etc.

Source: Consejo para la Transparencia, InfoLobby (n.d.), <https://www.infolobby.cl/#/busqueda-simple> (accessed 19 March 2020).

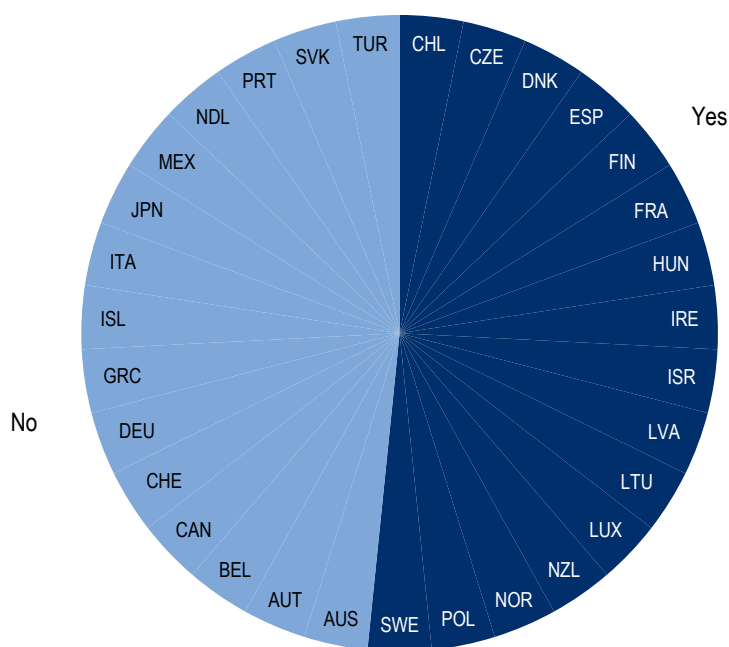
However, in Thailand there are no regulations or guidelines that require or suggest that public officials involved in regulatory processes make their agendas available to the public. In this regard, and taking the opportunity of current discussions on amending the *Official Information Act B.E 2540* (1997), the Thai Government could consider including such a disposition in the new draft. Additionally, a similar requirement could be discussed in the Ethics Committee of the House of Representatives and included in the rules of procedure or the future code of conduct for parliamentarians.

**Thailand could consider increasing the level of transparency with respect to the composition and activities of advisory bodies in the executive and legislative branches**

Many governments establish and use advisory groups, such as committees, boards, or commissions, to inform public decision making through the provision of specific advice, expertise and recommendations. These groups are made up of public and/or private sector members and/or representatives from civil society, and may be created by the executive, legislative or judicial branches of government or government subdivisions.

Despite their relevance in decision making, there are not many regulations on these advisory bodies in OECD countries. Most OECD countries make members of advisory bodies public (Figure 3.7), but there are only a few countries that establish specific requirements for their composition, or that require members to disclose their interests. For instance, only 20% of lobbyists state that they have to disclose their interests and activities if they are part of an advisory board (2020 OECD Survey on Lobbying). In fact, the capture of these advisory groups by private interests to exert influence has been identified as an emerging risk to the integrity of policy making. When, for example, corporate executives advise governments as members of an advisory group, they act not as external lobbyists or stakeholders, but as part of the policy-making process with direct access to decision makers (OECD, 2014<sub>[10]</sub>).

**Figure 3.7. In most OECD countries members of advisory bodies are known to public**



Source: OECD PMRI 2018.

In Thailand, various advisory bodies are established within the executive to support, advise and inform ministries and governmental agencies. They vary in objective, scope and functioning. There are institutionalised, long-term bodies, such as the Joint Public and Private Sector Consultative Committee (composed of senior public officials responsible for economic affairs, and private representatives, such as the Thai Chamber of Commerce, the Federation of Thai Industries, and Thai Bankers Association), and other more informal and ad-hoc entities, such as the sub-committees within the National Research Council. The members of these advisory bodies are generally appointed by the government.

Additionally, both the House of Representatives and the Senate have the power to establish 'ad hoc committees' when they deem it reasonable and necessary to address parliamentary affairs that are not under the scope of any particular standing committee, or overlap with the powers and duties of multiple standing committees. Concerning appointments to these committees, the National Constitution (Section 128) states that if a bill concerns certain social groups (children, youth, women, elderly, disabled or handicapped), one third of the committee must comprise either people belonging to the social group concerned by the bill, or representatives from private organisations who deal with this social group. Similarly, if a bill is introduced through a petition, the appointment rules of ad hoc committees stipulate a quota requiring one third of the committee to consist of representatives of people who signed the petition.

Despite their varied relevance and duration in the Thai institutional framework, these advisory bodies in the executive and legislative branches are key in decision making, and should therefore be subject to high standards of transparency and integrity. However, the OECD fact-finding mission to Thailand found that the information pertaining to members of these different committees is not available to the public, and neither are the reports on assessment evaluations, minutes of meetings, or transcripts of discussions that were held. These elements may impact on the performance of the advisory bodies, undermining their expertise and advice, affecting the transparency of decision-making processes, and increasing capture risks.

Hence, the government of Thailand could develop strict and clear regulations regarding its advisory bodies and establish transparency criteria for their composition and advice provided to policy makers. For instance, these rules could extend the scope of some related dispositions of the National Constitution in order to make it applicable to all government committees within the Executive branch. Section 129 of the National Constitution requires the Legislative branch to include in its Rules of Procedure that ad-hoc committees should disclose minutes of sittings or committees' reports, findings and studies. Therefore, and similar to most OECD countries (Figure 3.7 above), information on members of committees, as well as all relevant documents, minutes or agendas, should be made available to the public. This could strengthen transparency in decision making, promote accountability of advisory groups, and diminish capture risks.

Additional measures could include the requirement to balance the composition of advisory boards in terms of private stakeholders' participation, by including representatives from different sectors, organisations, etc. For example, only representatives from big and well-known chambers or associations are invited to participate in the Joint Public and Private Sector Consultative Committee at the national level. However, even if advisory boards include local experts or local-level representatives, there is no guarantee that a plurality of interests are represented in discussions. Another example of a measure Thailand could consider is an outright ban on industry payments to committee members, a proposal currently being discussed in Switzerland.

## **Strengthening enforcement and stakeholder engagement awareness raising**

In order to make a stronger impact and achieve real outcomes, a comprehensive legislative framework to promote transparency and integrity in public decision making needs to be complemented by measures to raise awareness about the available information and the existing engagement mechanisms. In addition, the framework needs to be enforced to ensure that public officials respect these mechanisms, and that rules and regulations are implemented and complied with.



### **Thailand could further its efforts to centralise and systematise all information (including statistical data) concerning public consultations by developing a single platform**

The Public Consultation Advisory Committee in Thailand, which includes government representatives and qualified persons appointed by the Council of Ministers, monitors and provides feedback on public consultations held in the country. According to the *Act on Legislative Drafting and Evaluation of Legislation B.E. 2560* (2019), once a public consultation has been held, the State agency in charge of the process has to consider the inputs for further drafting and has to enumerate at least the general topics and opinions including the reasoning provided by each participant of the public consultation. Further, the State agency has to provide, publish and present an impact assessment report. The Office of the Council of State can require the stakeholder engagement to be conducted again if needed, or inform the relevant government agency to do so.

As mentioned above, the Council of State is currently developing a single platform that will centralise and organise all information related to different public consultations. However, until now this information is still being disaggregated by State agencies, and hence there are no overall statistics or data on public consultations held in the country. The lack of centralised and co-ordinated data may undermine the best practice principle on performance assessment (OECD, 2014<sup>[11]</sup>) as well as hinder access to this information by the general public.

Many OECD countries compile and analyse information regarding stakeholder engagement processes. They collect information and produce statistics on participants of consultations (that is the case in Canada, France, Greece, among others), publish reports on the performance of consultation practices related to draft regulations (such as in Estonia, Switzerland or the United Kingdom), or even develop indicators on the functioning of consultations (in Japan, Slovenia or Mexico, among others) (OECD, 2018<sup>[7]</sup>).

In this sense, the Thai government's initiative to systematise all information concerning public consultations and make it available to the public should be continued and could be furthered by the development, compilation and analysis of statistical data. Some OECD countries' websites provide suitable examples (Box 3.6). This would allow for the identification of trends, weaknesses and comparative analysis regarding issues, agencies and mechanisms. It could even allow the government and many stakeholders to assess the impact of their engagement on different regulations and foster trust in government.

#### **Box 3.6. Single platforms containing information on consultations**

The *Consulting with Canadians* website centralises and presents all data on public consultations. Users of the platform can filter and sort information by subject, status, entities or key words. Furthermore, the website provides access to all records, and presents data in a systematised and downloadable user-friendly format.

The UK government website includes a section on Public Consultations held by government entities, presenting information about openings, and listing all public consultations that have been or are due to be held in the country. Information can be sorted by date, topic, or sub-topic.

In a similar vein, the statistics website of the government of New Zealand, *StatsNZ*, gathers all the information on public consultations carried out in the country. The data is organised by date, though users can also filter information by topic.

Source: <https://www.canada.ca/en/government/system/consultations/consultingcanadians.html>; <https://www.gov.uk/>; <https://www.stats.govt.nz/consultations/?sort=5>.

### ***Thailand may develop awareness-raising campaigns and communication efforts to strengthen citizens' rights to introduce legislation***

In addition to engaging stakeholders during decision-making processes and allowing citizens to provide their inputs on different initiatives, governments sometimes grant their citizens the right to propose initiatives and hence to proactively engage in shaping the public agenda. This is the case in the majority of OECD countries, which provide citizens with the possibility to present draft initiatives of legislative bills (2020 OECD Survey on Lobbying).

In Thailand, since 1997, a number of eligible voters have been granted the right to introduce bills directly to the National Assembly. The proposed bill must be related to the rights and liberties of people, or fundamental State policies, and requires the support of at least 10 000 citizens.

However, during the OECD fact-finding mission, the Office of the Council highlighted that after more than ten years of implementation, bills initiated by the electorate have proven to be impractical as a method of introducing draft laws, since they rarely pass the National Assembly due to a lack of technical and political support from the government. Public officials mentioned that only ten draft bills have been presented by citizens' initiatives. None of these have ever been successful though, for various reasons, including for example technical problems regarding the fact that bills must be related to and do not contradict any other pre-existing laws.

In this regard, the government of Thailand could consider implementing awareness-raising and communication efforts in order to make citizens more mindful of the requirements that need to be fulfilled in order to introduce legislation, and develop their capabilities to proactively engage in policy making. This could serve the purpose of both educating people on the role of Parliament, as well as encouraging them to participate in legislative processes. Current programs and campaigns carried out in some OECD member and non-member countries could be used as guidance (Box 3.7).

#### **Box 3.7. Awareness-raising programs and campaigns**

There are many ways and channels to develop awareness-raising initiatives. They may include more traditional methods such as printed flyers and posters, or online advertisements, social media campaigns, and interactive videos. Further, these initiatives can be promoted by the government itself, or through joint efforts with civil society organisations.

For instance, the UK Parliament runs the annual Parliament Week. It engages citizens from across the UK in order to discuss democracy, and citizen power, and encourages them to get involved. People who sign up receive a kit packed with goodies including an activity booklet, bunting, and a ballot box among others. They may be grouped by age and interests, and take part in many different activities, including:

- Q&A sessions, quizzes and lively debates
- creating petitions and campaigning for change
- making videos and posting online
- debating issues and holding votes
- themed assemblies and school council elections
- baking, crafting and colouring
- visits from MPs, Members of the House of Lords, local councillors or mayors, MSs, MLAs and MSPs.

Further, the program also includes a competition for a Parliament Award, and people can sign up to be included in the program mailing list to receive all information related to the initiative. In 2019, over 1.2 million people were part of the event.

Source: (ParlAmericas, n.d.<sup>[12]</sup>), Toolkit: Citizen Participation in the Legislative Process, <https://www.ukparliamentweek.org/en/>.

Additionally, the Thai government may consider developing an initiative that provides direct incentives for citizens to proactively engage in public life, similar to the European Citizens Initiative in the EU (Box 3.8).

### **Box 3.8. European Citizens Initiative**

In 2011, the EU developed the European Citizens Initiative (ECI). This initiative encourages civic society participation by (1) making information on the many initiatives citizens pursue available to be presented and discussed in Parliament, and (2) facilitating connections between initiatives' supporters within different countries.

The ECI allows the European Commission to consider proposals for legislation on issues that have the signatures of at least a million EU citizens. In order to register an initiative, at least 7 EU citizens living in 7 different EU countries have to team up to support an issue. The ECI offers help by granting access to a database of registered users of the website.

Once an initiative is accepted, the Commission translates the initiative into all official languages, and then allows twelve months for the initiative to collect one million signatures. Next, these statements of support have to be validated and within the following three months, the initiative must be submitted to the Commission (together with the information on the support and funding received).

Until March 2020, there have been 96 registration requests, 72 initiatives registered and 5 successful initiatives.

Source: European Union (2020), "European Citizens' Initiative Week", <https://europa.eu/citizens-initiative/en> (accessed on 23 March 2020).

## Proposals for action

The analysis of the Kingdom of Thailand's policies aimed at promoting transparency and integrity in public decision making has shown that the country's legislative framework on the issue is incipient. In addition, there are practical concerns related to the enforcement and implementation of the regulations in place. The proposed reforms required to improve the quality of the framework and introduce a more coherent approach to promote transparency and integrity in decision making can be summarised as follows:

### Fostering regulations on stakeholder engagement and participation in policy making

- Thailand could initiate discussions and work on developing specific rules or guidelines to regulate interactions between different stakeholders and public officials during policy making. Alternatively, it could include a directive in the Code of Professional Ethics for the Civil Service or provide a set of rules or principles establishing how public officials and policy makers must be contacted by or interact with private stakeholders. For instance, the current drafting of the Code of Conduct for Parliamentarians could be an opportunity to include these dispositions.
- The government of Thailand could use the discussions on the new Public Consultation Act to consider including specific guidelines on the processes, methods and timeframes of public consultations. Further, it would benefit from a centralised system to organise consultations such as the planned online platform currently in development, to provide stakeholders with all relevant information on engagement processes.

### Promoting transparency and access to information on decision making

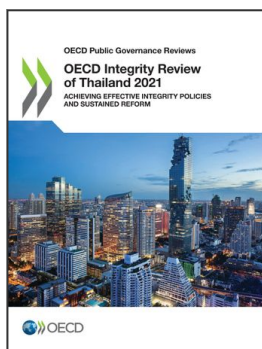
- Thailand could take advantage of current discussions on the *Official Information Act B.E 2540* (1997) reform to include dispositions that could guide citizens requesting public information. Besides, and in order to ensure effective implementation of the legislative framework, the government of Thailand could strengthen and further promote the independence of Thailand's Information Commissioner by creating specific requirements for the Commissioner's appointment and assigning an independent budget to the post.
- Further, in order to foster citizens' trust in government, it would be key for the government to provide complete information throughout the different legislative stages, and gear the information towards promoting transparency in decision-making processes. The ongoing development of a platform including this information will be extremely beneficial in this regard. Meanwhile, as an initial step, the National Assembly website could be updated in order to systematise all available information and provide a more user-friendly platform.
- Within the context of the current discussions on amending the *Official Information Act B.E 2540* (1997), the government of Thailand could also consider including a disposition or guideline that would require or suggest that public officials involved in regulatory processes make their agendas available to the public. A similar requirement could be discussed for the House of Representatives and included in the rules of procedure or the future code of conduct for parliamentarians.
- Thailand could consider extending provisions of Section 129 of the National Constitution to most government committees within the Executive branch. Hence, information on members of committees would become available to the public, as well as all the relevant documents, minutes or agendas. Additional measures could include the requirement to ensure balance with respect to the composition of advisory boards in terms of private stakeholders' participation, or implement a ban on industry payments to committee members.

**Strengthening enforcement and stakeholder engagement awareness raising**

- Thailand could further its efforts to centralise and systematise all information concerning public consultations by developing a single platform including statistical data, which would allow for the identification of trends and weaknesses, and comparative analysis of issues, agencies and mechanisms.
- The government of Thailand could consider implementing awareness-raising and communications initiatives to make citizens more mindful of the requirements that need to be fulfilled in order to initiate legislation, and develop their capabilities to proactively engage in policy making.

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