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**TITLE:**

**A CRITICAL APPRAISAL OF THE OPEN GOVERNMENT DATA  
STRATEGIES IN AN INTEGRATED EAST AFRICAN COMMUNITY  
(EAC)**

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## **Abstract:**

The East African community (EAC) has a common market in place since 2010, therefore, relevant open governance data strategies transcend Member States national borders, and no open governance data initiative has purely domestic effects. The paper demonstrates that EAC regional cooperation and harmonization on open governance data strategy can overcome Member States national limits in technical expertise, drive, effectiveness and progress. This enhances the capacity of Member States to commit to a stable EAC open governance data strategy and ultimately facilitate infrastructure investment in the region. It increases transparency, efficiency, strengthens EAC citizen engagement and yield new innovative businesses. Therefore, the paper assesses the potential gains from regionalizing open governance data strategy in the EAC. The paper finds that open data seems to be high on the agenda of the EAC. However to date, the number of open data Initiatives in most of the EAC Member States is still limited by the various barriers and obstacles, but the coming years will probably see a large increase of open data initiatives in the EAC. Both civil society organizations and external Partners of the EAC Member States are encouraging the use of open data to increase transparency, accountability and citizen participation. Particularly the Open Government Partnership is promoting open data initiatives in the EAC. The findings from this paper will assist stakeholders in the EAC and Member States in designing an effective regional open governance data strategy.

**Keywords:** Access, governance, transparency, open government data strategy, regional (EAC)

## **1. Introduction**

Open data has been defined by various stakeholders to cover more than just the availability of information. The underlying principle is that the data should be freely available to everyone to use, republish and share as they wish, without restrictions from copyright, patents or other mechanisms of control<sup>1</sup>

Open data has its roots in the Open Government Partnership founded in 2009.<sup>2</sup> It was launched in 2011, initially with a membership of eight countries but which has since grown to 63. In the East African Community (hereinafter, EAC), Kenya and Tanzania are members. Uganda has not yet signed up<sup>3</sup> despite increasing calls to do so.<sup>4</sup> It is a

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<sup>1</sup> Auer, Bizer, Christian Sören, Georgi Kobilarov, Jens Lehmann, Richard Cyganiak, and Zachary Ives. "Dbpedia: A nucleus for a web of open data." In *The Semantic Web*, 722. Springer Berlin Heidelberg, 2007 and OKF-Open Knowledge Foundation. "Beyond Access: Open Government Data & the Right to (Re) use Public Information." 2011.

<sup>2</sup> <http://www.opengovpartnership.org/>

<sup>3</sup> <http://www.opengovpartnership.org/blog/bernard-sabiti/2013/03/11/why-uganda-has->

multilateral initiative that aims to “secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance”.<sup>5</sup> In all its Members, governments and civil societies are working together to develop and implement ambitious open government reforms. Governments of the countries that choose to join the partnership are required to endorse the Open Government Declaration, which means that they have made a commitment to ‘foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government’<sup>6</sup>. Additionally, their participation in the OGP means that they have committed to work with civil society to draw up a National Action Plan (NAP) that will provide the framework promoting open government in their countries, and that they will allow for independent reporting throughout the NAP implementation process through an Independent Reporting Mechanism (IRM).<sup>7</sup>

In the EAC, open data initiative is relatively new. However, the issues that it seeks to address are age-old. They include transparency, accountability, equity, relevance and responsiveness to community needs, and effectiveness and efficiency of governance systems and processes.

The initiatives are made even more complex by the ongoing integration of the EAC. Currently, the EAC has a common market in place since 2010, therefore, relevant open governance data strategies transcend Member States national borders, and no open governance data initiative has purely domestic effects. Some EAC Member States especially Kenya and Tanzania are currently dealing with open governance data strategies as a domestic concern, each with its own distinct and dissimilar approach. The Kenya Open Data initiative (KODI) was launched in July 2011. The purpose of this initiative was to make key government data freely available to the public through a single online portal<sup>8</sup>. The portal hosts more than 400 government datasets. The 2009 census, national and regional expenditure and information on key public services such as education, health and agriculture, were some of the first datasets released.<sup>9</sup> The initiative intends to support greater public sector transparency and accountability, fundamentally changing the nature of citizen-government interaction. Even in the two Member States, government agencies are often reluctant to implement these strategies. A crucial barrier for their

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not-joined-open-government-partnership

<sup>4</sup> <http://www.opengovpartnership.org/es/blog/beatrice-mugambe/2013/06/06/uganda-why-not-join-open-government-partnership>

<sup>5</sup> Open Government Partnership, <http://www.opengovpartnership.org>

<sup>6</sup> Open Government Partnership Declaration available at <http://www.opengovpartnership.org/about/open-government-declaration>

<sup>7</sup> ‘Open Government Partnership Actions Plans’ OGP Webpage: ‘How it Works’ <http://www.opengovpartnership.org/how-it-works/action-plans>

<sup>8</sup> Kwamboka, Linet. “Open Data – How Kenya Did It.” Kenya Open Data Initiative, 2013.

<sup>9</sup> Kenya Open Data Initiative <https://opendata.go.ke>

implementation is the closed culture within governments, which is caused by a general fear of the disclosure of governments' failures and any ensuing political escalation. There is further a lack of understanding of the precise effects of open governance data strategies, which make government agencies hesitant to open up data actively.

In general, there has been an increasing recognition that significant welfare gains could be realized through deep forms of EAC regional integration which entail harmonization of open governance data strategies at the regional level. Implementation of the EAC common market and rapid technological progress especially in mobile wireless technology, have made greater coordination and harmonization of the EAC open governance data strategies more attractive. Moreover, the EAC consists of less wealthy nations and therefore an interest in regionalization is essential as a means to pool resources for the open governance data initiatives.

Therefore the paper assesses the potential gains from a regionalized open governance data strategy in the EAC. The paper finds that open data seems to be high on the agenda for most the EAC Member States. However to date, the number of open data Initiatives is still limited due to the various barriers, but the coming years will probably see a large increase of open data initiatives in the EAC. Both civil society organizations and external Partners of the EAC Member States are encouraging the use of open data to increase transparency, accountability and citizen participation. Particularly the Open Government Partnership is promoting open data initiatives in the EAC.

The findings are intended to assist stakeholders in the EAC and its Member States in designing an effective regional open governance data strategy.

To this end, the objective of this paper is the following:

- a) Examine the open governance data initiatives in the five EAC Member states and gather anecdotal evidence of their key features, barriers and drivers for progress and effects. This will give a brief overview of the research results and define key challenges for effective EAC open governance data policy.
- b) Demonstrate that the EAC regional cooperation on open governance data strategy can overcome Member States national limits in technical expertise, drive, effectiveness and progress that enhances the capacity of Member States to commit to a stable open governance data strategy in the EAC and ultimately facilitate infrastructure investment in the region, increases transparency, participation and/or EAC government's efficiency, strengthens EAC citizen engagement and yield new innovative businesses;

- c) Give a critical appraisal of the distinct and dissimilar open governance data initiatives at the EAC Member States level which is a barrier that inhibits opportunities for regional development;

## **2. Principal research question**

With the East African Community (EAC) in the final stages of full integration; what is the most appropriate EAC regional open governance data strategy that would ensure transparency, harmonization and coherence across the EAC Member States borders?

### **Subsidiary research questions:**

- a) Why are some Member States succeeding in opening up their databases and others struggling?
- b) How can open governance data policies contribute to increasing EAC citizens' trust and participation in governments and provide an economic spur?

**Hypotheses:** With the EAC's common market in place since 2010, a corresponding common or regionalized open governance data strategy at the EAC level could be a suitable vehicle to achieve a harmonized open governance data approach that minimizes the distortions that arise from divergences in the EAC Member States distinct and dissimilar open governance data policy initiatives.

## **3. Policy relevance**

The paper demonstrates that EAC regional cooperation and harmonization on open governance data strategy can overcome Member States national limits in technical expertise, drive, effectiveness and progress. This enhances the capacity of Member States to commit to a stable EAC open governance data strategy and ultimately facilitate infrastructure investment in the region. It increases transparency, efficiency, strengthens EAC citizen engagement and yield new innovative businesses. The objective of the paper is to identify if common issues and challenges to the accessibility and reusability of open government data in the EAC, and if common solutions can be designed. This paper addresses some of the legal, cultural and institutional challenges limiting the availability of public data for any type of use in the EAC. Availability for any type of use requires both unrestricted accessibility and reusability.

In doing so the paper gives a critical appraisal of the key features, barriers and drivers for progress and effects of EAC open governance data policies. The findings

will assist stakeholders in the EAC in designing an effective regional open governance data strategy that enhances regional development.

#### **4. Methodology:**

**Data sources:** The sources includes relevant literature from research and academic institutions and third-party databases, published and grey, on the evolution and functioning of open governance data programmes in the EAC. More data information is gathered from key institutions involved in generation of data and information including Government ministries and institutions responsible for planning and economic development, generation of national statistics, Information Communication and Technology (ICT); local governments; civil society organizations; private enterprises, especially those that are involved in developing applications; and, agencies that are implementing pilot programmes in the EAC.

**Data collection methods:** The research is conducted through a desk review research. This is intended to identify the main issues and processes linked to the open governance data landscape and the key players in the EAC. The review of literature seeks to establish existing links between information access and resource prioritization on one hand and the role of data on the other. Further, the desk review examines the political economy factors such as the legal and institutional frameworks for the functioning of open governance data programmes in the five EAC Member states. Specifically, the desk review attempts to investigate the genesis of open governance data in the EAC, describing the status of implementation of the programmes, gaps, cross border barriers and their impacts.

This paper begins by providing a brief background of the open government process in the EAC. In doing so, it discusses the current open government landscape and the challenges the Member States are facing to date. It then analyses the state of the open government initiatives and the existing barriers to open data in the EAC. Lastly, it shares some conclusions and recommendations for enhancing EAC's experience with the open government data initiatives, which ultimately rests on strengthening the government-civil society partnership.

#### **5. An overview of the East African Community (EAC)**

The East African Community (EAC)<sup>10</sup> is the regional intergovernmental organisation of the Republics of Kenya, Uganda, the United Republic of Tanzania, Republic of Burundi and Republic of Rwanda (Member States) with its headquarters in Arusha, Tanzania.

The principal source of EAC law is the Treaty for the Establishment of the East African Community (the "Treaty").<sup>11</sup> The Treaty was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the Original three Partner States – Kenya, Uganda and Tanzania. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007.

According to the Treaty, the main objective of the EAC is to widen and deepen the integration process. Article 5(2)<sup>12</sup> of the Treaty establishes the objectives to be the formation and subsequent evolution of a Customs Union, a Common Market, a Monetary Union and finally a Political Federation, under the overarching aim of equitable development and economic growth amongst the Member countries.

The entry point of the integration process is the Customs Union. It has been progressively implemented since 2004; in January 2010 the EAC became a full-fledged Customs Union. One critical aspect of the implementation has been the establishment of an interconnected ICT solution for a regional customs system.<sup>13</sup>

The EAC Common Market Protocol<sup>14</sup> entered into force in July 2010, providing for the following freedoms and rights to be progressively implemented: free movement of goods, persons, labour, services and capital; as well as a right of establishment and residency. The Community has since then commenced negotiations for the establishment of the East African Monetary Union. The negotiations for the East African Monetary Union, which commenced in 2011, and fast tracking the process towards East African Federation all underscore the serious determination of the East African leadership and citizens to construct a powerful and sustainable East African

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<sup>10</sup> <http://www.eac.int/>

<sup>11</sup> The Treaty entered in force on 7th of July 2000, and was amended on 14th December 2006 and 20th August 2007. The full text is to be found at <http://www.eac.int/treaty/>

<sup>12</sup> Article 5(2): In pursuance of the provisions of paragraph 1 of this Article, the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared.

<sup>13</sup> Except for Kenya, EAC countries are using the UNCTAD ASYCUDA system for custom automation.

<sup>14</sup> Article 47 provides that Partner states undertake to approximate their national laws and to harmonize their policies and systems, for purposes of implementing the Protocol.  
[http://www.eac.int/advisory-opinions/cat\\_view/68-eac-common-market.html](http://www.eac.int/advisory-opinions/cat_view/68-eac-common-market.html)

economic and political bloc. The ultimate objective, to establish an East African Political Federation, is targeted for 2016.<sup>15</sup>

The structure of the EAC promotes decision-making through consensus. Each State has the authority to veto details of regulations formed under the Treaty. Once consensus is reached and regulations passed, they are binding on all Partner States. Each State may still, however, achieve regulatory goals through its own individual domestic policies.

The Treaty obliges the Partner States to plan and direct their policies and resources with a view to creating conditions favourable to regional economic development<sup>16</sup> and through their appropriate national institutions to take necessary steps to harmonize all their national laws appertaining to the Community.<sup>17</sup>

Harmonization is one of the key concepts espoused by EAC. With particular respect to the integration of laws, Article 126<sup>18</sup> of the Treaty and Article 47<sup>19</sup> of the Common Market Protocol both call for the harmonization of national legal frameworks.<sup>20</sup>

It should be emphasized that two different law systems are applied among the participating countries: Kenya, The United Republic of Tanzania, and Uganda follow a common law system, while Burundi and Rwanda both subscribe to a predominantly civil law system.<sup>21</sup> This has led to somewhat divergent legislative

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<sup>15</sup> The timelines were provided by the 13th Ordinary Summit of Heads of State in 2011.

<sup>16</sup> Article 8(1)

<sup>17</sup> Article 126(2)b

<sup>18</sup> Article 126: Scope of Co-operation

1. In order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty, the Partner States shall take steps to harmonize their legal training and certification; and shall encourage the standardization of the judgments of courts within the Community.

2. For purposes of paragraph 1 of this Article, the Partner States shall through their appropriate national institutions take all necessary steps to:

(a) establish a common syllabus for the training of lawyers and a common standard to be attained in examinations in order to qualify and to be licensed to practice as an advocate in their respective superior courts;

(b) harmonize all their national laws appertaining to the Community; and

(c) Revive the publication of the East African Law Reports or publish similar law reports and such law journals as will promote the exchange of legal and judicial knowledge and enhance the approximation and harmonization of legal learning and the standardization of judgments of courts within the Community.

3. For purposes of paragraph 1 of this Article, the Partner States may take such other additional steps as the Council may determine.

<sup>19</sup> Article 47: Approximation and Harmonization of Policies, Laws and Systems

1. The Partner States undertake to approximate their national laws and to harmonize their policies and systems, for purposes of implementing this Protocol.

2. The Council shall issue directives for purposes of implementing this Article.

<sup>20</sup> The Sub-Committee on the Approximation of Laws in the EAC Context

<sup>21</sup> Membership of the EAC is shifting Rwanda and Burundi towards a common law approach.



practices and procedures between the groups of countries, and may have contributed to slowing down the process of harmonization efforts in the region.

The EAC has institutional frameworks at the Community level that includes the following:

- a) Summit which consists of the Assembly of Heads of State and Government whose function is to provide overall strategy and political direction.
- b) The Council consisting of the Ministers responsible for regional co-operation of each Partner State whose function is to Coordinate and formulate policies.
- c) The East African Court of Justice tasked to ensure adherence to law in the interpretation and application of and compliance with the EAC Treaty. The Court has jurisdiction over the interpretation and application of the Treaty and may have other original, appellate, human rights or other jurisdiction upon conclusion of a protocol to realize such extended jurisdiction.
- d) The East African Legislative Assembly tasked with the Community legislative powers, any legislative decision by the assembly which is gazetted by Summit will supersede and take precedence over any other related national law.
- e) The Secretariat headed by an appointed Secretary General.<sup>22</sup>

The EAC's aspiration and goal is to use regional integration to promote peace, stimulate economic growth, achieve solidarity for its peoples, and strengthen its international profile/stature. The EAC is using regional integration as a vehicle for promoting peace, in order to enhance the prospects for positive economic results. In short, the EAC is focussed on making the East Africa's economies more mutually interdependent among its constituent Member States. To this end, the EAC's aims and objectives include the following:

- establishing a Customs Union, a Common Market,
- subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, and political and other relations of the Partner States.
- Accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which is equitably shared.<sup>23</sup>

Against this background, creation of an enabling legal and regulatory environment has been identified as a critical factor for the effective implementation of e-government and e-commerce strategies at national and regional levels. To achieve

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<sup>22</sup> Article 9 of the Treaty establishing the East African Community( hereinafter the EAC Treaty)

<sup>23</sup> See Part 1 of the Treaty establishing the European Union and Chapter 2 of the treaty establishing the EAC

operational efficiency of such strategies, strong back up support is needed in terms of legislation and regulation.

In view of the foregoing, policies and regulatory frameworks of most sectors have been aligned to this objective. Those that have harmonised policies and regulatory frameworks include fisheries, transport, higher education and finance. They have regulatory frameworks and institutions at the EAC level unlike the telecommunication sector.<sup>24</sup>

## **6. ICT developments in the EAC**

There are two key areas that have been particularly important in building the ICT capacity in the EAC; they include the improved fibre-optic links between the region and the rest of the world and the expansion of mobile telephony and related services, notably mobile money.<sup>25</sup> In July 2009, the first under-sea fibre optic cable network, SEACOM,<sup>26</sup> reached Kenya, the United Republic of Tanzania and Uganda. It was soon thereafter connected with Rwanda.<sup>27</sup> This marked the beginning of an era of radically faster and cheaper Internet use in the EAC.

In 2010, the second submarine fibre optic cable system, EASSy became operational along the East and South African coasts to service voice, data, video and Internet needs of the region.<sup>28</sup> It links South Africa with Sudan, with landing points in Mozambique, Madagascar, the Comoros, the United Republic of Tanzania, Kenya, Somalia, and the Republic of Djibouti. This made it more economical to connect the eastern and southern coast of Africa with high-speed global telecommunications network. Average mobile penetration in the EAC had reached 40 subscriptions per 100 inhabitants in 2010, with the highest level noted in Kenya (61) and the lowest in Burundi (14)<sup>29</sup>

Telecommunication companies now see data as the future main revenue generator<sup>30</sup>

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<sup>24</sup> For instance, Lake Victoria Fisheries Organization, East African Community Civil Aviation Safety and Security Oversight Agency (CASSOA), The Inter-University Council for East Africa (IUCEA) and The East African Development Bank.

<sup>25</sup> See UNCTAD Report, Mobile Money for Business Development in the East African Community: A Comparative Study of Existing Platforms and Regulations, June 2012 (UNCTAD/DTL/STICT/2012/2, available at [http://unctad.org/en/PublicationsLibrary/dtlstict2012d2\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dtlstict2012d2_en.pdf)

<sup>26</sup> <http://www.seacom.mu/>

<sup>27</sup> Daily Nation newspaper on the web, 23rd July 2009. The cable covers some 17,000 kilometres.

<sup>28</sup> <http://www.eassy.org/index-2.html>. The cable covers some 10,000 kilometres.

<sup>29</sup> Source: UNCTAD, based on ITU World Telecommunication/ICT Indicators, 2011

<sup>30</sup> Nyabiage, Jevans. The future: Battle for inland fibre optic cables set to shape telecommunications Industry. June 2013.

From the foregoing, the continuing growth in ICT is presenting a number of opportunities and alternative options in the delivery of services both from public and private sectors. The value delivered over these technologies regarding service delivery is growing, especially in terms of efficiency and effectiveness. Because of these capabilities, the demand for transparency and accountability through the use of ICT is increasing.

## **7. The open data landscape in the EAC**

Until recently, large amounts of public (and other) data in all the EAC Member States were not only closed to public users but even when available were either incomplete or presented in forms that made it difficult for the public to use, for example providing budgets in the print media in illegible font size.

Generally, data is considered truly open if it possesses the following key features: completeness, access, license to reuse and license to redistribute. Various governments will open up for several reasons, but the general ideal remains the same: “open government data has proven time and again that it not only promotes greater accountability, but also pushes government agencies to provide services more effectively”<sup>31</sup>. There are a number of areas where open government data has the potential to create value, including; transparency and democratic control, participation, improved or new private products and services, improved efficiency and effectiveness of government services, and impact measurement of policies.<sup>32</sup>

The rise to prominence of open data has coincided with a renewed emphasis on the role of data and information in the field of EAC regional Development. This increased importance is largely a result of advances in ICTs, and the increasingly ubiquitous mobile phone. The use mobile phone in the EAC has not only become one of the most rapidly adopted technologies in history,<sup>33</sup> but has also proven itself as a significant tool for improving data collection.<sup>34</sup> The recognition of this value is being reflected in various initiatives and calls for a ‘data revolution’ for sustainable development, with greater focus on improving statistics and information capabilities to track progress, increase data-driven decision making and strengthening accountability across the EAC region.

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<sup>31</sup> Gregg Brown (June 7, 2013) Open Data and Emerging Democracies: Considering Kenya. OPENING PARLIAMENT <http://blog.openingparliament.org/post/52384767815/open-data-and-emerging-democracies-considering-kenya>

<sup>32</sup> Ibid

<sup>33</sup> The Mobile Economy 2014. <http://www.gsmamobileeconomy.com>

<sup>34</sup> Mobile Based Technology for Monitoring & Evaluation: A Reference Guide for Project Managers, M & E Specialists, Researchers and Donors. <http://www.theclearinitiative.org/mobile-based-tech.pdf>

As indicated in the introduction section, open data is still new in the EAC and currently there is no EAC regional open data strategy. Most Member States have relatively new and fewer open data initiatives, which differ from one Member State to another.

Kenya has a government run open data initiative, and was the first country in Sub Saharan Africa to establish an open data portal. The Kenya Open Data Initiative (KODI) is housed in the Ministry of Information Communication and Technology (ICT), and is managed by the Kenya ICT board. In addition to KODI, there are several other initiatives that make data readily available and accessible.

Tanzania was among six African countries that joined the Open Government Partnership (OGP) and in the context of this; the government is in the process of establishing open data platform.<sup>35</sup>

Rwanda is in the pilot stages in the process of introducing open government data and is therefore also in the process of establishing open data platform.<sup>36</sup>

Uganda does not yet have a national government-led open data portal, but like Kenya, has several initiatives that contribute to providing free and accessible data and information. These initiatives are government sector-led and also from civil society organisations. Ugandan ministry of finance of collaborating with the with Ugandan and international civil society organisations as well as with the multilateral organisation UNICEF to create the Uganda Open Development Partnership Platform which seeks to create an open data platform, to promote the development of applications and to facilitate the data use by citizens<sup>37</sup>

Open government data policies and strategies from Burundi are not accessible so far and or too limited to provide any sound research results.

Therefore this paper focuses on the three main EAC Member States: Kenya, Uganda and Tanzania as their open data initiatives are more advanced and currently in progress of implementation.

## **8. Assessment of the open governance data strategies in the EAC**

As demonstrated above, the ongoing implementation of open data strategies in some Member States in the EAC is in order to increase transparency, participation and/or government efficiency. The commonly accepted premise underlying these strategies

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<sup>35</sup> <http://www.opengov.go.tz/>.

<sup>36</sup> Agreement between the White House and the Rwanda Government on creating an open Data Platform Pilot: <http://www.whitehouse.gov/blog/2012/06/22/growing-open-government-movement>

<sup>37</sup> Uganda Open Data Platform: <http://www.opendev.ug/>

is that the publishing of government data in a reusable format can strengthen citizen engagement and yield new innovative businesses.

However, as demonstrated in the preceding section, open data strategies are relatively new, or non-existent in the various Member States in the EAC, therefore evidence of the expected impact is still limited as many issues still remain unsolved. Based on the state of play in the various Member States, this section examines common issues that need to be addressed in order to move to more and better regional accessibility and reusability of public data in the EAC. It is argued that various Member States are at different stages in their open data strategies and initiatives.

Further, open data is currently regulated by different laws and policy frameworks governing data of a different nature, in the various Member States. This has resulted to fragmented regional approach to open data policy initiatives with several institutions often with overlapping and confusing jurisdictions. This also prevails at the national level in some cases. Therefore there is a need for a common techno-legal framework that can be defined to address legal, cultural and institutional challenges in a cross-sectorial manner.

Important questions addressed in this section are: What is an appropriate open data strategy for governments? Why are some governments succeeding in opening up their databases and others struggling? How can open data policies contribute to increase citizens' trust and participation in government and provide an economic spur?

### **8.1. Benefits of open government data in the EAC**

Generally, the benefits of opening up public data in the EAC are hard to deny. The availability of data held by public bodies increases the transparency and accountability of the public sector and enables public participation.<sup>38</sup> It enables citizens to know their rights and obligations, and to enjoy the benefits of a better service delivery by the public sector and a return on investment from their tax contributions.<sup>39</sup> Public data can be used by citizens to start communicating with each other and build a collective consciousness.<sup>40</sup> Next to these social benefits, opening up

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<sup>38</sup> Access Info. (2010, November) Beyond access: Open government data and the right to reuse, Access Info website. [Online]. Available: [http://www.access-info.org/documents/Beyond\\_Access\\_10\\_Aug\\_2010\\_consultation.pdf](http://www.access-info.org/documents/Beyond_Access_10_Aug_2010_consultation.pdf)

<sup>39</sup> C. Darch and P. Underwood, Freedom of Information and the Developing World: The Citizen, the State and Models of Openness. Cambridge: Chandos Publishing, 2009.

<sup>40</sup> E. Longworth. (2000, November) The role of public authorities in access to information: the broader and more efficient provision of public content. Unesdoc, UNESCO. [Online]. Available: <http://unesdoc.unesco.org/images/0012/001210/121051e.pdf>.

public data also encourages economic growth and innovation<sup>41</sup>, for instance with regard to public welfare, environmental issues, public health, scientific research and cultural heritage. Such data is an essential resource for many information products and services. Finally, the public sector itself can also profit from increased access to public data produced by other services.<sup>42</sup> The combination of datasets can increase serendipity for decision-making, and attention for making data available will lead to better internal data management and information preservation policies and practices.

This potential remains underdeveloped in the EAC. For instance, in most Member States, public data often stay locked within one public body and are not made available to other parties. Next, even if they would be available, the data are often difficult to find and even more difficult to use, due to the restrictive use conditions and/or charges that may be attached to them as demonstrated in the sub-section here below. This is caused by insufficient and unclear legislation, lack of knowledge of existing contractual and technical tools and barriers within the public sector.

Accessibility is defined as the possibility to read without legal (law and licence), economic (fee or subscription) or technical (registration or closed format) barriers<sup>43</sup> other than having a computer with internet access and standard software. The possibility to reuse goes further than mere access, as it implies the data can legally, economically and technically not only be read but also mined, incorporated or otherwise transformed to produce new data.

## **8.2. Obstacles to Opening Data in the EAC**

A look at the current state of open government across the EAC Member States reveals two distinct trends:

- Firstly, Member States are increasingly adopting laws on access to information, transparency and public participation in policy-making due to rising domestic regional and international demands.
- Secondly, these very same governments are at the same time placing restrictions on media and civil society. Civil society thus faces a significant challenge: it needs to take a stand in defense of its role and space in society

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<sup>41</sup> H. Yu and D. G. Robinson, The new ambiguity of open government, *UCLA Law Review Discourse* vol. 54, no 1, pp. 178-208, 2012.

<sup>42</sup> Access Info. (2010, November) Beyond access: Open government data and the right to reuse, Access Info website. [Online]. Available: [http://www.access-info.org/documents/Beyond\\_Access\\_10\\_Aug\\_2010\\_consultation.pdf](http://www.access-info.org/documents/Beyond_Access_10_Aug_2010_consultation.pdf)

<sup>43</sup> M. Dulong de Rosnay, from free culture to open data: technical requirements for open access, in *Intelligent Multimedia. Sharing Creative Works in a Digital World* (D. Bourcier, P. Casanovas, M. Dulong de Rosnay, C. Maracke Eds.). Florence, Italy: European Press Academic Publishing, 2010, pp. 47-66.

vis-à-vis national governments, but at the same time work with these national governments to bring about change.

Even though the momentum for opening up government data in the EAC Member States has been growing considerably and continuously in the last few years, many barriers still remain and a large part of the potential of public sector data still remains unfulfilled. In this sub-section, we discuss the main common issues and barriers that need to be tackled to develop a true open data ecosystem in the EAC. These issues and barriers do not only relate to legal conflicts, but also to the political and institutional landscape and other cultural factors. Some examples of the obstacles discussed include overlapping regulations, licensing incompatibilities, competition aspects and liability concerns and practical barriers, such as lack of awareness and resources, or technical restrictions.

#### *A. Divergences on focus of the strategic plans in the various EAC Member States*

When comparing the ongoing open government data strategies in the three EAC Member States, it appears that the focus of the strategic plans differs. For instance, whereas the emphasis of the Kenyan government is on transparency to increase public engagement, Uganda underscores the opportunities that open data offers for the development of new products and services. Tanzania's main focus is in the Health, Education and Water sectors.

The table below illustrates the key programmes, stakeholders involved and motivations for open data policy of the EAC countries studied.

<b>EAC Member State</b>	<b>Program</b>	<b>Objectives</b>	<b>Main focus sectors</b>	<b>Responsible Authority</b>
Kenya	The Kenya Open Data initiative (KODI)	The purpose of this initiative was to make key government data freely available to the public through a single online portal and helping in propagating better governance through the implementation	Education, health and agriculture	Ministry of Information Communication and Technology (ICT), and is managed by the Kenya ICT board

		of the new constitution <sup>44</sup>		
Uganda	Uganda does not yet have a national government-led open data portal. There are several initiatives that contribute to providing free and accessible data and information. These initiatives are government sector-led and civil society organisation-led. However the Government has recently launched the Open Data Readiness Assessment (ODRA) <sup>45</sup>	ODRA study aims to develop an action plan that provides recommendations for the government on how to implement a national open data initiative.	Health, education, water, agriculture, energy and minerals, and roads and infrastructure.	Coordinated by the Finance ministry, in partnership with the National Information Technology Authority (NITA) and the World Bank
Tanzania	Government initiatives that are currently being implemented in Tanzania. One of such initiatives is the African Peer Review Mechanism (APRM) an African Union led programme aiming at strengthening governance	The intention is to make Government business more open to its citizens in the interest of improving public service delivery, government responsiveness, combating corruption and building greater trust	Health, Education and Water sectors.	The various Ministries of Water, Education and Health

<sup>44</sup> Mutuku, Leonida, Jessica Colaco, and Rhoda Omenya. "An Evaluation Report on the Open Data Pre- Incubator." Research, iHub, Nairobi, 2013.

<sup>45</sup> <http://www.cipesa.org/2015/02/uganda-government-launches-open-data-readiness-assessment-study/>



	<p>among African countries. Under this initiative, a country conducts self-assessment, done by an independent team which is drawn from various stakeholders including academia, parliamentarians, private sector, civil society and ordinary citizens. Ultimately, the AU panel validates the report.<sup>46</sup></p>			
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Some other general findings from the key ongoing programs include:

- a) There are a number of initiatives in the EAC Member States that provide various types of data and information to the public. Some of these initiatives do not know of the existence of similar initiatives within the Member States and in the rest of the Member States.
- b) Some of these initiatives, although considered open data initiatives by the researchers (because they make available data to the public), do not fit the open definition of open data.<sup>47</sup> However these initiatives attempt to make data readily available in all various formats that users can analyze. In addition to data, these initiatives provide information that would support citizen participation in decision making.
- c) In Uganda, Open Data initiatives have mainly been off-line and stand alone, while in Kenya and Tanzania, they are ICT based and more interlinked.

#### ***B. Legal constraints affecting the availability of open data in the EAC***

Uganda has legal frameworks in place that would drive the open data initiative in Uganda. The most important is the Freedom of Information Act, 2005.

<sup>46</sup> <http://www.opengovpartnership.org/country/tanzania/action-plan>

<sup>47</sup> According to the Open Definition (<http://opendefinition.org/>) "A piece of data or content is open if anyone is free to use, reuse, and redistribute it – subject only, at most, to the requirement to attribute and/or share-alike."

In Kenya, the Freedom of Information law is still a Bill. This however did not deter the establishment of KODI.

The right to seek, obtain and disseminate information is provided for under Article 18 of the Constitution of the United Republic of Tanzania of 1977.<sup>48</sup>

While many open data initiatives do not have an explicit legal basis, they are all embedded in existing legal frameworks relating to freedom of information, re-use of public sector information and the exchange of data between government bodies. While all these regulations stimulate the availability of public sector data, the lack of clarity with regard to their interaction causes uncertainty on the conditions and limits on the possible use of the data. The following are vivid examples:

In Kenya, the Official Secrets Act, a legal provision possible within the old constitution, gave government the right to withhold data from the public. The new constitution, promulgated in 2010 under the coalition government, contradicted the Secrets Act, as it required public institutions to allow access to information that they held. Article 35, section 1 to 3 of this new constitution explicitly gives citizens the right to access public information; "Every citizen has the right of access to information held by the state...The state shall publish and publicize any important information affecting the nation".<sup>49</sup>

However, four years after the open data platform's launch, the initiative still faces a major barrier; public institutions continue to refuse to post their information while claiming ownership. While access to information is enshrined in the bill of rights it is not institutionalized in law. The current legal framework does not explicitly define what information citizens can access, how public institutions can avail data to the public, or the consequences to be faced for their violation or failure to comply. A draft bill is still pending in parliament but the need for an Access to Information Law to action the above constitutional right is necessary to adequately support the National Kenya Open Data Initiative.<sup>50</sup>

Similarly in Tanzania, due to lack of a specific law on the right of access to information that would compel the state to disseminate information in its custody more frequently or as and when requested, Tanzanian citizens hardly enjoy these constitutional guarantees.<sup>51</sup> Efforts to have an access to information law have stalled

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<sup>48</sup> The Constitution of the United Republic of Tanzania of 1977 as amended from time to time, 2008 version.

<sup>49</sup> Majeed, Rushda. "Disseminating the Power of Information: Kenya Open Data Initiative, 2011-2012." *Innovations for Successful Societies*. 2012. <http://www.princeton.edu/successfulsocieties/content/superfocusareas/traps/ME/policynotes/view.xml?id=206>

<sup>50</sup> Wokabi, Charles. "Kenya open data initiative has hit a dead end, says PS." *Daily Nation*. 2012. <http://www.nation.co.ke/business/news/Open-data-initiative-has-hit-a-dead-end/-/1006/1617026/-/n18uhrz/-/index.html>

<sup>51</sup> Tanzania Information Access Challenge, [http://www.tanzaniagateway.org/docs/tanzania\\_information\\_access\\_challenge.pdf](http://www.tanzaniagateway.org/docs/tanzania_information_access_challenge.pdf)

since 2006, when the Freedom of Information Bill (2006)<sup>52</sup> was first introduced by the government. Since 2011, the Tanzanian Constitution has been going through a review process. The Proposed Draft Constitution of the United Republic of Tanzania<sup>53</sup> contains more elaborate and explicit provisions on freedom of expression, freedom of information and media freedom. These are stipulated under Articles 29 and 30 respectively.

Other laws impacting open data access in Tanzania include:

- The National Security Act of 1970 which gives the government discretionary powers to classify information and thereby regulate access to it under Section 5(1) of the Act;
- The Public Service Act of 2002<sup>54</sup> which prohibits unauthorized disclosure of information by members of the Public Service Commission and Public Servants
- The Public Leadership Code of Ethics Act of 1995<sup>55</sup> provides the categories of public leaders and underscores the principles and ethical values which they should abide by. Generally, this Act does not contain any provisions which curtail the freedom or right to access information to citizens. But the Regulations made under this Act - Public Leadership Code of Ethics (Declaration of Interests, Assets and Liabilities) Regulations<sup>56</sup> - limit access and sharing of information.

In Uganda, Access to Information Act provides for many exceptions to access to information including; if the information 'prejudices national security', costs are also allowable if the officer in charge has to incur costs to provide information, and it gives the information officer up to 20 days to respond to an information request. (Sections 15, 16, 17 and 18 on 'Deferral of request', 'Decision on request and notice', 'Extension of period to deal with request', and 'Deemed refusal of request' respectively). These clauses are subject to abuse by officials who are reluctant to release information.

### C. Licensing constraints

The various National legal frameworks entail different formal requirements for requests; different policies on charging and licensing, etc., making it difficult for the user to know which regime his or her use of data will fall under. Currently, it is

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<sup>52</sup> The United Republic of Tanzania, (2006), Draft Bill for the Freedom of Information, [http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/tanzania/draft\\_foi\\_bill\\_2006.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tanzania/draft_foi_bill_2006.pdf)

<sup>53</sup> Tanzania Draft Constitution, [http://www.constitutionnet.org/files/tanzania\\_draft\\_constitution\\_2013-english.pdf](http://www.constitutionnet.org/files/tanzania_draft_constitution_2013-english.pdf)

<sup>54</sup> The Public Service Act, 2002, <http://bunge.parliament.go.tz/PAMS/docs/8-2002.pdf>

<sup>55</sup> Code of Ethics, <http://polis.parliament.go.tz/PAMS/docs/13-1995.pdf>

<sup>56</sup> Government Notice no. 261 of 2001

unclear what a user is allowed to do with data he or she obtains under freedom of information regimes, and when he or she will rather be subject to re-use regulations. This does not only cause concern to the users, but may also cause reluctance in public sector bodies to fully open up their data without any guarantees on the legal basis for doing so. They may be tempted to impose stricter re-use conditions covers any possible use or make less information proactively available out of worry what could be done with the data that is disseminated.

Divergences in licensing conditions across the EAC Member States raise mainly the risk of fragmentation of open data at all levels, both within the Member States and at EAC cross borders, if the licenses and conditions for reuse are mutually incompatible. Indeed, a number of services are based on multiple datasets (e.g., mashups) for which managing heterogeneous conditions of reuse is very challenging. This risk is linked to an incomplete openness of data if re-use or commercial use of the data is limited by the licenses.

For instance, in Kenya, datasets are openly licensed on the portal without restricting how it can be reproduced and re-used. However sources of data such as NGOs and public institutions sometimes require formal applications for permits to access the data and restrictions on how it can be used.

Moreover, most of the data available on the Member States' open data platforms is not sufficient information on crucial sectors for which the applications are made. For this reason, applicants spend a lot of time obtaining supplementary data from the source ministries, with some of them demanding for licenses or permits in order to produce the data.

For instance, The-Star-Health lacked crucial information for its application, including data on the number of registered doctors in Kenya, and the national health insurance scheme, National Hospital Insurance Fund (NHIF)<sup>57</sup> data. To overcome this, Code4Kenya<sup>58</sup> had to directly contact the local Doctors' Union.<sup>59</sup> A future challenge however arises on how to constantly keep this data updated without making individual requests and rely on goodwill each time.

Ideally in a common EAC market, data sharing between EAC governments should be harmonized, streamlined and integrated. However, such an overarching approach does not allow for much differentiation in charges and use conditions, so it only works if open data is adopted as the starting point.

#### ***D. Competition***

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<sup>57</sup> National Hospital Insurance Fund <http://www.nhif.or.ke/healthinsurance/>

<sup>58</sup> <http://www.code4kenya.org/>

<sup>59</sup> The Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) <http://www.kmpdu.org/>

Besides legal obstacles to opening data in the EAC, cultural and institutional reasons are slowing down the process. On the one hand, open data is seen as an unfair competitor for private providers and on the other hand, the public sector could sometimes consider commercial reuse of open data an unfair appropriation of the common good.

Open government data is being felt as an attack to private sector business model and a possible distortion of competition. Large companies have started to build up their own databases, either because they could not get access to comparable public sector data or because these data were not suitable for their purposes. Examples of this are smart databases created by companies such as Konza Technocity-Innovation.<sup>60</sup> These companies have made very large investments in their databases, and would understandably be unhappy if comparable government databases would be made openly available for any use, including use by possible new competitors and business clients. Comparable concerns are also arising with regard to e.g. company registers, address data, and other large databases for which private sector alternatives have been developed over the years. For such databases, conflicts arise between the interests of potential new users of openly available government data and existing private sector market players. In these cases, the question arises if the market players will be able to call on the rules of competition law to prevent damage to their business models, or whether the interests of society will prevail on their commercial interests. These questions require more insight in the role of the state on the information market and the scope of their task to provide information to the public.<sup>61</sup>

Problems are also emerging when public bodies fear the competition of the private sector. This fear takes the form of reluctance of public institutions to authorize commercial reuse or in other words, concern that others may free ride and commercialize their data, which they have spent considerable time and public resources on. Hence, they do not want these data, which belong to the public, to be used for commercial gain.

On the other side of the spectrum, there is a set of public bodies that are very willing to make their data available for use, but preferably not under open conditions, or under a marginal or no cost regime. These public bodies' core business is often to create and disseminate data, and their business model often requires them to charge for providing data to the users or recover costs.

### *E. Liability*

Closely related to the fear of public bodies to lose control over their data, is their concern for the possible liability they might incur if their data is altered, erroneous,

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<sup>60</sup> [www.konzacity.go.ke](http://www.konzacity.go.ke)

<sup>61</sup> K. Janssen, *The availability of spatial and environmental data in the European Union. At the crossroads between public and economic interests*. Alphen a/d Rijn: Kluwer Law International, 2010.

not updated, not suitable to be used for particular purposes or misused, causing damage or loss to other people.<sup>62</sup> Public bodies do not realize their data are useful for other purpose than what they were created or collected for, or believe that their data is of insufficient quality to let any third parties use them (unless additional investments are made, which are not willing to do or let others do it in their place). Their response to this concern is either to refuse to make the data available, or to impose strict licensing conditions and liability waivers, in order to maintain control over what happens with the data once they are out of their hands.

#### ***F. Other barriers:***

- The interest and the capacity of actors particularly members of Parliament, policy makers and the ordinary citizens to access data are still low, this is mostly due to the lack of interest in data and lack of knowledge and appreciation of the importance of data in decision making;
- Limited technology is also a blocker to not only the supply of open data, but also demand and use. Open data is often promoted through online communication technologies, which means that those who are not ICT empowered may not be able to benefit from open data.

## **9. Conclusions and recommendations**

### **Recommendations:**

The preceding sections have examined the various initiatives and barriers to open up access to data in the EAC. The examples given here shows many issues still need to be tackled before the open data ecosystem can be a true success. Some of these issues are specifically related to a particular Member States, but most are common and could be addressed by a unified EAC framework aiming at waiving most obvious difficulties.

### **Towards a common EAC Techno-Legal Framework for Open Data?**

As demonstrated in the introductory section, the EAC has had a common market since 2010, therefore, relevant open governance data strategies transcend Member States national borders, and no open governance data initiative has purely domestic effects.

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<sup>62</sup> <http://sunlightfoundation.com/blog/tag/reasons-not-to-open-data/>

The findings above show the need for clear guidelines on how to deal with the relationship between open data, overlapping legal and regulatory frameworks, competition, and tort and liability law. The development of an inclusive and harmonized framework at the EAC level is necessary to reach the full potential of open data.

Otherwise, contradictions between the various Member States' fields of law will prevent data to be fully accessible and reusable at the EAC level. Therefore, in addition to guidelines on open formats and metadata and the provision of repositories, we recommend to the EAC to develop a single licensing scheme. It will avoid governments to have to develop their own license. Because it will be drafted according to EAC law, it will avoid potential conflicts between open licenses.<sup>63</sup> The purpose is to include in a single document conditions related to the waiving of copyright and database right allowing the broadest extend of accessibility and reusability.

With regard to competition issues, clear guidelines should be made for public bodies to determine which are their core tasks and a decision tool to determine whether they should undertake a particular commercial activity or not and under which circumstances they may have an effect on the market.

Liability and tort law are the elephant in the room of open licenses as most of them organize a full disclaimer of liability for the data provider.<sup>64</sup> In the same time, many governments include a provision to limit the alteration of data, which is contradictory with processing it. A regional debate in the EAC must be opened to make sure the burden of responsibility is neither preventing to provide the data nor to modify it.

In order to support and guide the above said development of a common open government data in the EAC, different set of principles could be adopted as inspiration for the EAC as they have been put forward by several non-governmental organisations.<sup>65</sup> Many of these principles have been picked up by governments to shape and guide their open government data initiatives. For the EAC to consider its data open it should be made public in a way that complies with the principles below:

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<sup>63</sup> M. Dulong de Rosnay. (2010, December) Creative commons licenses legal pitfalls: Incompatibilities and solutions, study of the Institute for Information Law of the University of Amsterdam. Sciences de l'Homme et Société. [Online]. Available: <http://halshs.archives-ouvertes.fr/halshs-00671622/>

<sup>64</sup> M. Dulong de Rosnay, Open content licenses without representation: Can you give away more rights than you have? *European Journal of Law and Technology (EJLT)*, vol. 4, no. 3, 2013.

<sup>65</sup> These Eight Open Government Data Principles were defined and put forward for governments' consideration in December 2007, during an Open Government Working Group Meeting held in Sebastopol (California, United States), which gathered 30 open government advocates and was organized by Public.Resource.Org, with sponsorship from the Sunlight Foundation, Google and Yahoo: [http://resource.org/8\\_principles.html](http://resource.org/8_principles.html) adopted in December 2007

- a) ***Complete***: All public data are made available. Public data are data that is not subject to valid privacy, security or privilege limitations.
- b) ***Primary***: Data are as collected at the source, with the highest possible level of granularity, not in aggregate or modified forms.
- c) ***Timely***: Data are made available as quickly as necessary to preserve the value of the data.
- d) ***Accessible***: Data are available to the widest range of users for the widest range of purposes.
- e) ***Machine processable***: Data are reasonably structured to allow automated processing.
- f) ***Non-discriminatory***: Data are available to anyone, with no requirement of registration.
- g) ***Non-proprietary***: Data are available in a format over which no entity has exclusive control.
- h) ***License-free***: Data are not subject to any copyright, patent, trademark or trade secret regulation. Reasonable privacy, security and privilege restrictions may be allowed.

## **Conclusion**

Open government data is rapidly emerging as a focus area in the EAC integration and development circles. Interest has been catalysed by initiatives that illustrate the potential impact of 'openness' in governance, service delivery and public sector data on the development challenges that most constrain the region.

However, there are barriers to accessing information that are exacerbated by claw-back clauses and interference with open data access across the EAC. It can be adduced that the right to information and access to information in the EAC is scattered in different pieces of legislation and sometimes drafted, by and large, to suit the needs of particular national entities. There is pertinent need to enact a framework legislation that will provide for access to information and cater for all stakeholder information needs.

The paper also demonstrates that – although some of the EAC Member States have defined open data strategies – individual government agencies are often reluctant to implement these strategies. A crucial barrier for their implementation is the closed culture within EAC governments, which is caused by a general fear of the disclosure of government failures and any ensuing political escalation.

Another important research result yielded by the paper is the lack of understanding of the precise effects of open data strategies, which make government agencies hesitant to open up data actively. More insight into the multiple impacts of open data (e.g. economic, social and democratic impacts) could be one of the keys to establish



successful and effective open data policies. By assessing and addressing both positive and negative impacts, government agencies will be enabled to choose deliberately a certain strategy, focus and instruments.

In conclusion, the acquisition of more knowledge on the positive and negative effects (e.g. economic, social and democratic effects) of the open data phenomenon in the EAC could strengthen a well-informed debate, remove governments' reluctance and help them to develop an effective common EAC policy.

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