

## Access Info Europe

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Madrid, 5 October 2015

Letter as amended on 9 October 2015

Dear Members of the OGP Steering Committee

Access Info Europe, a civil society organisation working on government transparency in Spain, is hereby submitting a formal complaint in relation to Spain's manifest lack of commitment towards the principles and values of the Open Government Partnership, as well as the specific commitments it made upon becoming a participating country in the OGP.

Specifically, we have identified four key obstacles to transparency, participation and accountability encountered by Access Info when trying to liaise with the Spanish government in OGP related issues:

1. No communications mechanisms have been set up to enable dialogue and facilitate consultation processes with civil society; this includes the absence of an identifiable contact point, website, and proactively published information;
2. In four years there have been only two public consultation exercises, both of which have been severely criticised by civil Spanish civil society organisations. A new consultation on the self-evaluation of the action plan has been disseminated in a very limited way.
3. According to an official answer to an access to information request, only two meetings have been held inside the government relating to the OGP in the past 18 months (one of which was internal, the other with just two civil society organisations);
4. The Spanish government recently refused to provide to Access Info any documents created it about OGP, all of which have been classified as "internal" or "auxiliary" and some of which, the government says, have been destroyed;

We proceed to lay out in detail these problems.

### **1. No web space relating to the Open Government Partnership, no communication with civil society**

The Spanish government has not created any communication channels with civil society about the Open Government Partnership.

There is no publicly available information about who is the contact point. There is no mailing list or dedicated web space. The only meetings have been with a limited subset of civil society organisations and at the behest of those organisations; there have only been two such meetings.

With respect to the information that is publicly available, the only web page where some documents is the biography page of the relevant Secretary of State, José Luis Ayllon (see [here](#)), where we find the two action plans, the auto evaluation, the draft of the second action plan, and the 5 March 2014 agreement with the Ministry of Treasury and Public Administration on the construction of the transparency portal. If one doesn't know that this page exists, it is very hard to find it through searches on Google or even within the government's own website (the words "plan acción gobierno abierto" and similar searches in the government's search engine yield 0 results).

As a result of the lack of information online, it is not even possible to know who is responsible for the OGP within the Spanish government. Access Info Europe knows via its contacts that the person who was coordinating has moved to another job, and that after the responsibility was passed to her successor; we have heard that the responsibility was then passed to another department within the Ministry of the Presidency. There has not been, however, any official information about this and we cannot find any online reference as to who might be the person working on the OGP.

This lack of communication mechanisms and lack of published information about the OGP present serious obstacles to civil society participation.

## **2. Serious deficiencies in consultations**

A further shortcoming is the lack of consultations with the wider public about the OGP commitments and the serious deficiencies in the consultations carried out.

The public consultation for Spain's II Action Plan was carried out in a very limited scope, publicising it only to a few civil society organisations on which the government relied to spread the word and push for a broader public's feedback. This was clearly an insufficient effort by the Ministerio de la Presidencia, although it should be noted that this was a slight improvement compared with the almost inexistent consultation for Spain's 2012 Action Plan.

Access Info also notes that the online form which had been set up for the first action plan auto evaluation public consultation suffered technical problems and, as a result, one could not be certain the comments had been actually sent off.

At time of drafting this letter (late September) we learned that the self-evaluation of the action plan had been posted on the Transparency Portal. The website fails to inform the public when the information was posted, and hence the information that there are 15 days to provide comments but no end date is not particularly helpful.

Access Info Europe was sent an email about the consultation on 24 September. Unfortunately it was sent to our general account – rather than to the address of the staff, even though these addresses have been used to send messages to the government previously – and it came from an email address that had not written to us recently and ended up in spam; we came across it only in early October. We did not receive any other communications, nor (to the best of our knowledge) a message in our role as the coordinators of the 65-member Coalición Pro Acceso.

An email that ends up in spam is regrettable but this would not have been an issue if there had been a more fluid communication with the government and if we had known via multiple communication channels that the consultation was taking place. For example if the answer to our information request sent on 15 September had referred more specifically to the upcoming consultation and the proposed date of launch, the mechanism to be used, and so forth.

Our research has shown that there have been a handful of tweets from the Transparency Portal referring to the self-evaluation (two on 25 September, two on 29 September), of which one mentions the consultation. There has been no mention on the government's Facebook account (the Portal does not have a Facebook account). We have not found media coverage of the consultation.

### **3. Few internal meetings**

Given the Spanish government's failure to provide proactively any relevant information about how the government is advancing with implementation of the action plan, Access Info Europe has requested such information.

On 4 July 2015, Access Info submitted an access to information request with the aim of obtaining an insight into the decision-making processes around the OGP and to get an update on status. The request asked for details of all meetings held by the government with respect to the OGP in the past 18 months (2014, and 2015 to date).

In response we were told that, during that period, the Ministry of the Presidency (Spain's cabinet office) had held only two meetings; one was in January 2014 with representatives of government departments, the other was in April 2014 with civil society groups Access Info and Civio. In addition a government representative attended the OGP regional summit in Dublin. We were informed that there were no minutes of any of these meetings.

Access Info Europe is concerned that there have been so few meetings inside the government unit responsible for the OGP. Even if much of the work were being done by different ministries, it is rather unusual that the central coordinating body is not discussing the OGP in its internal meetings nor is it holding meetings with other government departments.

### **4. Refusal to disclose OGP-related documents**

Recognising that a lack of meetings may, of course, mean that much of the internal discussions related to OGP have taken place in writing, by means of memos, reports, emails, and the like, Access Info Europe decided to request such documents in our quest to find out what the Spanish government is actually doing to advance its OGP commitments.

We submitted a further request on 4 August asking for any other documentation held by the Ministry of the Presidency related to the OGP. On 15 September 2015, the Ministry of the Presidency issued a formal refusal to make public documents, reports, memos, letters or email correspondence created or received by it from any ministries on the implementation of the 2012 and 2014 OGP national action plans.

The only documents provided were, in the main part, already in the public domain, such as a copy of the 2014 action plan, the government's evaluation of the 2012 action plan, along with letters from the OGP Secretariat to the Spanish government (but not the replies) and documents that are already on the OGP website.

Access Info notes that the refusals were based on the highly problematic Article 18 of Spain's weak transparency law (entered into force 9 December 2014), which gives government departments the right to refuse to process requests for much internal documentation. Civil society and international experts have criticised this provision since it was first introduced into the law for being out of line with international standards.

Furthermore, even if the government is possibly complying with the letter of the law in refusing this information, Access Info sees it as concerning that documents relating to the OGP have been classified as "internal" and/or "drafts" and/or "ancillary" (the refusal notice is not entirely clear which).

We were not given a list of the refused documents, but have learned from sources that some of the ministries have submitted reports to the Ministry of the Presidency on the implementation of the action plan, and we may presume that emails have been exchanged as well.

To deny access to any such information demonstrates a clear lack of commitment to the open decision making approach on which the OGP is predicated. Civil society is thus left in the dark, without any information at all on what the Spanish government is doing. Participation is blocked, our ability to engage in public debate on the how to advance transparency, participation and accountability in Spain is reduced, and co-creation of solutions to transparency challenges is impossible.

### **Conclusion and call on OGP to act**

Access Info already raised its concerns in 2014 about the lack of will the government was showing towards opening up participation processes as part of their OGP obligations. The results obtained from Access Info's recent access to information requests, detailed above, only confirms Spain is still not willing to embrace civil society's contributions and make them part of their OGP national decision-making process.

While the Spanish government continues to systematically refuse any substantial information regarding their OGP activities, it blocks any kind of communication channel with civil society organisations and therefore leaves no space for any kind of participation. We believe this conduct radically opposes the OGP's core values, to which nonetheless Spain is supposedly committed to.

We urge the OGP Steering Committee to look into the way in which Spain is running its engagement with the OGP process, and in particular the lack of communication and consultation with civil society and the public.

Yours faithfully



Helen Darbishire  
Executive Director  
Access Info Europe