

The Bulgarian government made progress toward implementing several of its commitments. However, it made little progress towards opening government. Moving forward, the government could use OGP to enhance its policies by establishing a permanent OGP dialogue mechanism to foster more meaningful policy making between government and stakeholders.

The Open Government Partnership (OGP) is a voluntary international initiative that aims to secure commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The Independent Reporting Mechanism (IRM) carries out a review of the activities of each OGP participating country. This report summarizes the results of the period July 2014 to June 2016 and includes some relevant developments up to September 2016.

The Ministry of Regional Development (MRD) coordinated the OGP process in Bulgaria. However, when the government resigned in July 2014, the Administration of the Council of Ministers under the leadership of the Deputy Prime Minister for Coalition Policy and Public Administration and Minister of Interior assumed coordination of the OGP process. Civil society groups were involved in developing the action plan and implementing some of its activities. Individual public institutions oversaw implementing commitments as well as the parliament, in some cases. Many of the commitments were part of preexisting strategy documents.

The Bulgarian government adopted its third action plan on 11 July 2016.¹ It contains 37 new commitments organized according to several themes: e-government, access to information, open cities, civic participation, public integrity, and open data. The plan addressed some of the top five SMART recommendations from the 2014-2015 mid-term IRM report² and adopted proposals from civil society. It also continues previous efforts, such as the creation of a permanent OGP dialogue mechanism and introduction of a citizen budget by local authorities. Other commitments aim to further the government's efforts to fight corruption through, for example, a better anti-corruption risk analysis system, as well as greater efforts toward a risk based control on public procurement *ex ante*. However, the state fees reform – one of the potentially transformative commitments – was not completed in the second action plan or continued in the third action plan.

Table 1: At a Glance

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	Mid term	End-of-term	
Number of commitments	10	15	
Number of milestones	22	35	
Level of completion			
Completed	0	2	
Substantial	4	6	
Limited	5	6	
Not started	1	1	
Number of commitments with:			
Clear relevance to OGP values	9	14	
Transformative potential impact	2	2	
Substantial or complete implementation	4	8	
All three (🏆)	1	1	
Did it open government?	Major	n/a	1
	Outstanding	n/a	0
Moving forward			
Number of commitments carried over to next action plan	6		

¹ "Republic of Bulgaria National Action Plan July 2016-June 2018," Open Government Partnership, <http://bit.ly/29O05mg>

² "Independent Reporting Mechanism (IRM) Progress Report 2014–2015: Bulgaria," Open Government Partnership, <http://bit.ly/2fa2UBY>

Consultation with Civil Society during Implementation

Countries participating in OGP follow a process for consultation during development and implementation of their OGP action plan.

Outside the two phases of consultations on drafting the initial action plan and expanding it with five additional commitments, the government did not organize consultations with stakeholders on implementation of the plan. Furthermore, even though the government offered a public consultation period, the IRM researcher was unable to find any civil society participation in drafting or discussing any of the five additional commitments added at midterm. The government did not explain to the public how and why it decided to include these additional commitments in the action plan. One of the main challenges for OGP in Bulgaria remains civic engagement. Further awareness raising and involvement with regard to OGP is needed at the national and local levels.

Table 2: Action Plan Consultation Process

Phase of action plan	OGP process requirement (Articles of governance section)	Did the government meet this requirement?
During Implementation	Regular forum for consultation during implementation?	No
	Consultations: Open or Invitation-only?	N/A
	Consultations on IAP2 spectrum	N/A

Progress in Commitment Implementation

The indicators and method used in the IRM research can be found in the IRM Procedures Manual, available at (<http://www.opengovpartnership.org/about/about-irm>). One measure deserves further explanation due to its particular interest to readers and usefulness in encouraging a race to the top among OGP-participating countries. the “starred commitment”(★). Starred commitments are considered exemplary OGP commitments. To receive a star, a commitment must meet several criteria:

1. *It must be specific enough that a judgement can be made about its potential impact. Starred commitments will have "medium" or "high" specificity.*
2. *The commitment's language should make clear its relevance to opening government. Specifically, it must relate to at least one of the OGP values of Access to Information, Civic Participation, or Public Accountability.*
3. *The commitment would have a "transformative" potential impact if completely implemented.*
4. *Finally, the commitment must see significant progress during the action plan implementation period, receiving a ranking of "substantial" or "complete" implementation.*

At midterm, Bulgaria's action plan contained one starred commitment. At the end of term, this commitment's completion was again substantial, thus Bulgaria's action plan retained the same commitment's starred status.

Commitments assessed as star commitments in the midterm report can lose their starred status if at the end of the action plan implementation cycle, their completion falls short of substantial or full completion, which would mean they have an overall limited completion at the end of term, per commitment language.

Finally, the graphs in this section present an excerpt of the wealth of data the IRM collects during its progress reporting process. For the full dataset for Bulgaria, see the OGP Explorer at www.opengovpartnership.org/explorer.

About “Did it Open Government?”

Often, OGP commitments are vaguely worded or not clearly related to opening government, but they actually achieve significant political reforms. Other times, commitments with significant progress may appear relevant and ambitious, but fail to open government. In an attempt to capture these subtleties and, more importantly, actual changes in government practice, the IRM introduced a new variable, ‘Did it open government?’, in its End-of-Term reports. This variable attempts to move beyond measuring outputs and deliverables to looking at how the government practice has changed as a result of the commitment's implementation. This can be contrasted to the IRM's “Starred commitments” which describe *potential* impact.

IRM researchers assess the “Did it open government?” with regard to each of the OGP values that this commitment is relevant to. It asks, did it stretch the government practice beyond business as usual? The scale for assessment is as follows:

- **Worsened:** Worsens government openness as a result of the measures taken by commitment.
- **Did not change:** Did not change status quo of government practice.
- **Marginal:** Some change, but minor in terms of its impact on level of openness.
- **Major:** A step forward for government openness in the relevant policy area, but remains limited in scope or scale.
- **Outstanding:** A reform that has transformed ‘business as usual’ in the relevant policy area by opening government.

To assess this variable, researchers establish the status quo at the outset of the action plan. They then assess outcomes *as implemented* for changes in government openness.

Readers should keep in mind several limitations. IRM End-of-Term Reports are prepared only a few months after the implementation cycle is completed. The variable focuses on outcomes that can be observed on government openness practices at the end of the two-year implementation period. The report and the variable do not intend to assess impact because of the complex methodological implications and the time frame of the report.

General Overview of Commitments

As part of OGP, countries are required to make commitments in a two-year action plan. End of term reports assess an additional metric, ‘did it open government?’ The tables below summarize the completion level at the end of term and progress on this metric. Note that for commitments that were already complete at the midterm, only an analysis of ‘did it open government?’ is provided. For additional information on previously completed commitments, please see Bulgaria IRM midterm progress report.

The second Bulgarian OGP action plan combined seven clusters of initial commitments. Another five were added later. The action plan did not focus on one common theme, but the various commitments could bring a number of improvements to open government in different areas. Many commitments were ambitious. Most focused on improving transparency and procedures for public consultations, while a much smaller number included accountability mechanisms. Less than half the commitments addressed stakeholder priorities, while the rest reflected government priorities. At the end of the action plan period, commitments were at different stages of implementation.

The IRM researcher re-clustered the initial commitments using the criteria “one law — one commitment.” This resulted in a total of 14 commitments (nine initial plus five new). The five additional commitments were assessed for both potential impact and the “did it open government?” metric in this end of term report.

Table 3: Overview: Assessment of Progress by Commitment

Commitment Overview	Specificity				OGP value relevance (as written)				Potential impact				Completion				Mid-term	Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	End-of-term					
I.I. Normative acts amendments				✓	✓	✓		✓			✓				✓							
5. SME test				✓	✓	✓					✓				✓					✓		
2. Improved civic participation in consultative councils			✓		✓	✓		✓		✓				✓					✓			
3. Setting up a Council for Development of the Civil Society				✓		✓					✓			✓		✓			✓			
4. Government debt transparency			✓		✓				✓						✓				✓			
5. Financial information accessibility			✓		✓	✓		✓		✓				✓						✓		
6. Transparency of Underground Resources Act		✓			✓	✓	✓			✓				✓		✓				✓		

7. State Fees Reform				✓	✓	✓					✓		✓				✓			
✪ 8. Improvements to Access to Public Information Act				✓	✓		✓	✓			✓			✓					✓	
9. Adherence to the Council of Europe Convention on Access to Official Documents			✓		✓						✓							✓		
10. Improving the usability of the published data from the daily budget payments system*			✓		✓			✓		✓			N/A						✓	
11. Improving the ex-post control on public procurement contracts*			✓		✓					✓			N/A						✓	
12. Introducing e-procurement*			✓		✓			✓			✓		N/A					✓		
13. Improved system for managing the risk of conflict of interest*				✓	✓			✓			✓		N/A					✓		
14. Introducing the concept and practice of problem solving courts in Bulgaria*		✓			Unclear					✓			N/A					✓		

***Editorial note:** The commitments marked with * are commitments added by the Bulgarian government in July 2015 – at the beginning of the second year of implementation of the action plan. For this reason, there is no midterm completion assessment.

I. Draft Normative Acts Consultation and Impact Assessment Mechanisms

Text of Commitment:

Commitment 1, Milestone 1:

Amendments to the Law on normative acts -proportional adjustment of the minimum mandatory deadline from 14 up to 30 days for organizing public consultation on draft normative acts in accordance with the significance of the problem, the stakeholders concerned and good European practices; improved transparency and procedure of discussing draft normative acts.

Responsible Institution: Ministry of Justice and Administration of the Council of Ministers

Supporting institutions: Not specified

Start date: 1 July 2014 End date: 31 December 2016

Commitment 5:

1. Act for Amendments and Supplementations to normative acts introducing the obligation to conduct a SME test

2. Draft Methodology for SME test

3. Form for SME test

Responsible Institution: Administration of the Council of Ministers, Ministry of Justice, and Ministry of Economy and Energy

Supporting institutions: Not specified

Start date: 1 January 2014 End date: 31 December 2015

Editorial note: This cluster combines commitment 4.1, “Close Partnership Between the Administration and the Civil Society,” milestone 1 (commitment 1.1 in the table below) and commitment 4.2, “Improving Public Services and Legislative Framework – Improved impact assessment of normative acts-introducing a SME test” (commitment 5 in the table below). The Bulgarian version of the action plan introduces additional text for commitment 1.1 and adds “improved transparency and procedure of discussing draft normative acts.”

	Specificity				OGP value relevance (as written)				Potential impact				Com-pletion		Mid-term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
1.1. Normative acts amendments				✓	✓	✓		✓			✓				✓				✓		
5. SME test				✓	✓	✓					✓			✓	✓				✓		

Commitment Aim

This commitment aimed to improve citizens' participation in the drafting of legislative documents and bring more transparency to the process. At the time the commitment was adopted, the government and all stakeholders involved in drafting the action plan agreed that there was insufficient involvement of civil society in legislative decision-making processes. According to the action plan's ambiguous text, the government set out to revise the Law on Normative Acts (LNA) and to improve the transparency and procedure for discussing draft normative acts through a set of new rules and actions. This vague text left the door open for introducing the previously planned impact assessments of legislation, which would be the cornerstone of the reform. For more information, please see the 2014-2015 midterm IRM report.¹

Status

Commitment 1.1 Midterm: Substantial **Commitment 5 Midterm: Substantial**

Commitment 1.1 concerns the extension of the minimum mandatory deadline for public consultation and an overall improvement in the transparency and procedure on public consultation of draft legislation. The government initiated amendments to the LNA, introducing impact assessments of legislation. The commitment was substantially completed as the government initiated the amending procedure in parliament on 1 September 2015.² The adoption of these amendments was still pending at the time of the writing of this report.

Commitment 5 focused on introducing a mechanism for prior impact assessment of legislation on small and medium enterprises (SMEs), the SME test. SME tests also became part of the draft amendments to the LNA (see above). Other milestones concerned the methodology and form for the SME test. These items were incorporated into the general framework of impact assessment and outlined by a non-mandatory government Guide on Legislation Impact Assessment from 2014.³

For more information, please see the 2014-2015 midterm IRM report.⁴

Commitment 1.1 End-of-Term: Substantial **Commitment 5 End-of-Term: Limited**

After its introduction in parliament, the law's adoption was delayed by more than a year and a half, due partly to its revision by members of parliament. The amended bill was voted into law on 20 April 2016⁵ and took effect on 4 November 2016. The amended law is less precise than what was initially proposed. The key change is the focus and scope of future impact assessments. The new law lacks a proper definition of what is an impact assessment of legislation, the adopted one practically reproduces a part of the definition of the preexisting "motives reports." These documents provide a short explanation or introduction of the intended reforms and do not follow a strict structure or a specific methodology. In addition, the new law, as redacted by members of parliament, creates the opportunity for establishing two different methodologies for impact assessments – one for the executive and one for members of parliament. This means that the goal of introducing common evidence-based approaches for the executive and legislature when drafting new legislation would likely remain unattainable. Thus, the comparison of the different methodologies' assessment results would also be impossible.

Contrary to what was proposed by the executive and civil society in the original bill, prior impact assessments will no longer have to accompany all future draft legislation. They are mandatory only for the bills introduced by the executive. They will also be drafted under two different methodologies. The methodology which will be used by the executive is more detailed. It provides for the analysis of future impact on SMEs, as well as on the added administrative burden, among other things.⁶ Members of parliament, who usually introduce around 70% of the draft new legislation,⁷ adopted⁸ a more lax methodology. It allows them to draft a traditional motives report or a lighter impact assessment.⁹ This would allow members of parliament to formulate new legislation without a clear verifiable relation to

the same points of reference to the public interest as those used by the executive. The result would be a lack of actual change in the practices of members of parliament – by far the largest group of initiators of legislative proceedings. However, parliament adopted into the final act some of the developments proposed in the initial draft of the LNA amendments, welcomed as positive by stakeholders (please see the 2014-2015 midterm IRM report). These are the requirement for all central executive bodies to publish all new draft legislation in the Public Consultations Portal and the requirement for feedback on all rejected proposals after the end of the public consultations period. For these reasons, although the amendments were adopted, the IRM researcher considers the level of implementation of commitment 1.1 to be substantial, but not complete.

The parliament completely dropped the SME test in the new version of the law. It is only covered by the draft secondary legislation, which provides the methodology to be used by the executive. Thus, the level of implementation of commitment 5 drops from substantial to limited.

Did it Open Government?

Commitment 1.1:

Access to Information: Marginal

Civic Participation: Marginal

Commitment 5:

Access to Information: Marginal

Civic Participation: Marginal

By organizing mixed working groups with civil society participation and providing multiple opportunities for consultation on the draft law and bylaws, the government provided more information than usual on its decision-making process (please see the 2014-2015 IRM midterm report). It also fostered participation in drafting the texts through the working groups and through a longer-than-usual consultation period of 20 days.¹⁰ The government increased the transparency of its actions by publishing additional documents for that consultation period, including an impact assessment, a more accessible (consolidated) version of the future law (which included the proposed amendments), a list of the members of the working group, and feedback on the received proposals during the consultation period. Such documents were not usually published or even drafted up to that point. Through these efforts, the government demonstrated its vision of how the LNA's draft amendments should be implemented in the future to improve transparency and participatory practices when making new legislation. However, this was a one-time effort and the reform is largely dependent on the outcomes decided by parliament. The new legislation did not enter into force during this report's assessment period (July 2014-June 2016). In addition, the different methodologies for drafting impact assessments only guarantee improved transparency and civic participation for the draft legislation forged by the executive, but not for the one done by the legislative. For this reason, the IRM researcher considers the change in transparency and civic participation in that period marginal.

Carried Forward?

The commitment was not carried forward in the third Bulgarian action plan.

¹ "Independent Reporting Mechanism (IRM) Progress Report 2014–2015: Bulgaria," Open Government Partnership, <http://bit.ly/2fa2UBY>.

² Information on the draft law amending the Law on Normative Acts, National Assembly of the Republic of Bulgaria, introduced on 1 September 2015, available in Bulgarian at <http://bit.ly/20tgMpq>.

³ "Guide on Legislation Impact Assessment," adopted by decision 549 of 25 July 2014 of the Council of Ministers, Public Consultations Portal, Sofia, 28 July 2015. Available in Bulgarian at <http://bit.ly/1BTWJUJ>.

⁴ "Independent Reporting Mechanism (IRM) Progress Report 2014–2015: Bulgaria," Ibid.

⁵ Law amending the Law on Normative Acts, National Assembly, promulgated on 26 April 2016, available in Bulgarian at <http://bit.ly/2fgMKTE>.

⁶ Decree 301 of 14 November 2016 of the Council of Ministers on the adoption of the Ordinance on the Scope and Methodology for Impact Assessment (ПМС 301/14.11.2016 за приемане на Наредба за обхвата и методологията за извършване на оценка на въздействието), State Gazette, issue 91, 18 November 2016, available in Bulgarian at <http://bit.ly/2jMiBOu>.

⁷ "Survey of the Legislative Activity of the 43rd National Assembly," National Center for the Study of Public Opinion, National Assembly, August 2016, page 4, see also page 16. Available in Bulgarian at <http://bit.ly/2fumVVe>.

⁸ "Rules of Organisation and Procedure of the National Assembly," National Assembly, adopted on 1 November 2016. Available in Bulgarian at <http://bit.ly/2fS66m6>.

⁹ "4 November – Impact Assessment Day" (4 ноември – ден на оценка на въздействието), Economic Policy Review Bulletin, Institute for Market Economics, ISSN 1313 – 0544, 04 November 2016. Available in Bulgarian at <http://bit.ly/2eYje4>.

¹⁰ "Draft Law for amending the Law on Normative Acts," published for public consultation along with a series of additional documents, Public Consultations Portal. Available in Bulgarian at <http://bit.ly/1VKUMIE>.

2. Improved Civic Participation in Consultative Councils

Text of Commitment:

Commitment 1, Milestone 2:

Improved procedure for participation of citizens and citizens' organisations taking part in public consultations:

- **Publishing online information** about composition of the councils, notices of convocation, agendas, minutes, information about decisions made at meetings and their implementation; regular public reports on councils' activities. (The information will be published on web portal on consultative councils www.saveti.government.bg).
- Developing clear **rules**, procedures and criteria **for selection** / nomination **of representatives of citizens' organisations** to consultative and public councils.

Responsible institution: Administration of the Council of Ministers, Central Administration

Supporting institutions: Central Administration

Start date: 1 July 2014

End date: 31 December 2016

	Specificity				OGP value relevance (as written)				Potential Impact				Com-pletion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
Commitment Overview																					
Overall			✓		✓	✓		✓		✓				✓				✓			
2.1. Publishing consultative information			✓		✓			✓		✓				✓				✓			
2.2. CSOs selection			✓			✓				✓			✓					✓			

Commitment Aim

This commitment aimed to improve citizens' participation within the existing public consultations mechanism of consultative councils. The Bulgarian government uses consultative councils for coordination and cooperation on national policies between administrations, local government, civil society, and the private sector. Such councils may be established by every head of an executive body, usually through a decree or an order. The head of executive body also sets rules on the composition, functioning, transparency or leaves them to be set by the council itself. However, there are no common

rules on the composition, participation, functioning or transparency of the councils. The commitment is limited to the councils which have already been set by the central executive bodies (please see the 2014-2015 midterm IRM report). At the time the commitment was adopted the government and stakeholders involved in drafting the action plan¹ agreed that there was “insufficient involvement and participation of the civil society in the decision-making process,”² that is, at the central executive level. The government sought to improve the partnership between the administration, civil society and business by holding sessions of consultative councils within government institutions to ensure better publicity and transparency. The government also aimed at increasing the public’s trust in the consultative councils. This is to be done by two sets of actions: increasing transparency and accountability of the councils, and ensuring the legitimacy of civil society representatives.

Status

Midterm: Limited

During the midterm assessment, implementation of the **first milestone** was limited. In April 2015 the government published an analysis³ of the national level consultative councils laying out which councils were not working and why. The government did not take further steps to improve and unify practices on publishing information regarding the councils, such as their composition, agendas, and minutes. Therefore, the coding for completion was limited. A government expert⁴ interviewed by the IRM researcher explained that the publication of information on the Portal on Consultative Councils depends on each council’s secretariat. Hence, the more active secretariats regularly publish information on their councils’ activities, while others do not update the published information. The IRM researcher was unable to find any information on the number or percentage of councils which regularly update their profiles on the Portal.

The IRM researcher did not find evidence of implementation of the **second milestone** on developing clear rules for selection of representatives of citizens’ organisations for public councils.

For more information, please see the 2014-2015 midterm IRM report.

End –of-Term: Limited

Based on monitoring by the IRM researcher there was no further progress on the implementation of the commitment. Concerning the **first milestone**, the government representative interviewed for this report stated that although the administration has not taken any further steps, it is keeping the implementation of this commitment on its agenda.⁵

Did it Open Government?

Access to Information: Did not change

Civic Participation: Did not change

The commitment did not open government further as compared to the starting point. The public and consultative councils are forums for consultation that the government has been using for several years. In the opinion of stakeholders,⁶ however, these councils are often ineffective and suffer from low trust (please see the 2014-2015 midterm IRM report). The government’s own analysis of national-level consultative councils indicates that there are several inactive councils that can be closed, but it does not provide new public information on the councils’ activities as detailed in the commitment language. It also does not provide clear future actions to be accomplished. Despite this first step toward potentially raising the effectiveness of the public councils, this action did not change the status quo of government practices.

Carried Forward?

The third Bulgarian national action plan includes a commitment that encompasses both incomplete milestones and adopts several of the IRM midterm report recommendations.

In commitment 4a.1.1, the incomplete milestones have been introduced as a part of a commitment focused on improving civic participation more broadly and not only through the means of consultative and public councils.⁷

¹ "Index of Citizen Participation in Bulgaria," Citizen Participation Forum and Bulgarian Center for Not-for-Profit Law, 2015, page 5: "The levels of citizen participation in Bulgaria are not high; it is not efficient enough; it is sporadic and often misunderstood in the wider public. Although painstakingly and slowly, however, it does change the political, economic and social context." See <http://bit.ly/2eJTdpm>.

² Republic of Bulgaria. "Second Action Plan of the Republic of Bulgaria on the Open Government Partnership Initiative." See <http://bit.ly/2fValfy>.

³ Administration of the Council of Ministers, "Analysis on optimizing and actualizing the national level consultative councils," adopted by decision of the Council for the Administrative Reform on 17 April 2015, Portal on Consultative Councils. Available in Bulgaria at <http://bit.ly/1NpX0FI>.

⁴ Ivan Nikolov, expert in "Economic and Social Policy" Directorate of the Administration of the Council of Ministers, in-person interview, Council of Ministers building, Sofia, 29 September 2015.

⁵ Iskren Ivanov (expert in the "Modernisation of the Administration," Directorate of the Administration of the Council of Ministers), interview by IRM researcher, 30 August 2016.

⁶ Bulgarian School of Politics "Dimitry Panitza," "Study on the existing consultative councils and internet forms for civic participation in Bulgaria," Bulgarian School of Politics "Dimitry Panitza", New Bulgarian University, Sofia, October 2014. Available in Bulgarian at <http://bit.ly/1hXpwCK>. See also "Index of Citizen Participation in Bulgaria," *Ibid.*, page 7.

⁷ "Bulgaria Third National Action Plan," Open Government Partnership, <http://bit.ly/29O05mg>.

3. Setting up a Council for Development of the Civil Society

Text of Commitment:

Commitment 1, Milestone 3:

Amendments to the Non-profit Legal Entities Act - setting up a Council for Development of the Civil Society in pursuance of the Strategy Supporting the Development of Citizens' Organisations in Bulgaria for the period 2012-2015.

Responsible Institution: Administration of the Council of Ministers, Ministry of Justice

Supporting institutions: Not specified

Start date: 1 December 2012

End date: 31 December 2015

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
				✓		✓					✓			✓				✓			

Commitment Aim

This commitment aimed to improve citizen organizations' (CSOs) participation in policy making related to the civil society sector. At the time the commitment was adopted the government and stakeholders involved in drafting the action plan¹ agreed that there was "insufficient involvement and participation of the civil society in the decision-making process"² at all levels. The government, therefore, sought to improve the partnership between the administration, civil society, and business sector by setting up a Council for the Development of Civil Society. This was to be done by amending the Non-Profit Legal Entities Act as set out by the Strategy for the Development of Citizens' Organisations in Bulgaria for the period 2012-2015 (the Strategy).³

According to the Strategy (a non-legally binding document), the Council should be a direct interface between the CSOs and the government. It should include government and CSO representatives who would collaboratively draft the state's civil society policy, although the government would have the final word on its adoption. The Council should also be part of a new mechanism of state financing for CSOs. The Strategy does not provide the clear parameters of this financing. However, the Council's role would be to determine the priorities for financing in the civil society sector and to overview and evaluate the funding activity which is to be carried out by a separate body ("a fund"). For this reason, the council's composition and functioning should be defined in the Non-Profit Legal Entities Act, the law regulating the "birth and life" of CSOs.

Status

Midterm: Limited

The amendments to the Non-Profit Legal Entities Act were extensively discussed and co-created by civil society and public institutions in the period, September 2014 to October 2015 (please see the “What happened” section in the 2014-2015 midterm IRM report). However, in October 2015, when introducing the bill in parliament and after the period of public consultation, the Council of Ministers dropped the amendments concerning the Council. This was due to opposition on the part of the Ministry of Finance for unspecified “financial reasons.”⁴

For more information, please see the 2014-2015 midterm IRM report.

End-of-Term: Substantial

CSOs continued pressing government and parliament to reintroduce amendments relating to the Council in the law.⁵ A group of members of parliament from the ruling coalition parties took up the initiative and gained the needed political support by persuading the Minister of Finance.⁶ In March 2016, they introduced new amendments to the Non-Profit Legal Entities Act that provided for the establishment of a Council and an undefined annual allocation (fund) from the state budget for NGO projects of public interest.⁷ These amendments were voted into law in September 2016, although the new law will not take effect until 1 January 2018.⁸ A number of details of the implementation, such as its actual composition, functioning, decision-making process, and so on, are left to a bylaw which, according to the law, should be adopted by mid-2018. However, if the government fails to adopt the bylaw by that point, it will suffer no legal sanction as a result.

The actions on the commitment ended after the assessment period under consideration in this report and the law will be implemented a year and a half after the end of the action plan cycle. Crucial questions on the establishment, powers, and functioning of the Council are left to be decided by a future bylaw. In addition, the Bulgarian legislation is unstable and laws are often amended, sometimes even before entering into force.⁹ For these reasons, the IRM researcher considers the commitment substantially, but not fully, completed.

Did it Open Government?

Civic Participation: Did not change

In the IRM researcher’s opinion, the commitment could potentially improve civic participation. However, there was no change in government practices during the reporting period.

This commitment operates in a context of low levels of trust in official institutions¹⁰ and between public bodies and civil society organizations (please see the 2014-2015 midterm IRM report). In addition, many stakeholders and politicians have continuously raised concerns as to the lack of transparent and fair rules for government financing for NGOs.¹¹ Currently, the state budget subsidizes a number of NGOs annually, but this is not done under any specific public criteria.¹²

The amendments also provide for a third reform aimed at both alleviating the administrative burden and increasing transparency of NGOs (their registration will be centralized in the Registry Agency like private companies). This would allow the increased transparency of NGO finances, similar to the one offered by the Commercial Register.

So far, there is a lack of consensus on the outcome of the reform. Some CSOs, like the Citizen Participation Forum, are cautiously optimistic after the adoption of the law, which is seen as a first step toward implementing the Strategy.¹³ Others, like the Workshop for Civic Initiatives Foundation, criticized the vagueness of the texts relating to the composition and functioning of the Council, the

operation of the fund, and aspects of the property of the “public-benefit” CSOs.¹⁴ The Confederation of the Independent Trade Unions in Bulgaria (a trade union), the Association of the Industrial Capital in Bulgaria (an employers organization), and the Bulgaria Chamber of Commerce and Industry (chamber of commerce and employers organization) criticized the new registration regime for CSOs and asked to be excluded from it.¹⁵ The Bulgarian Industrial Association (business union) criticized aspects of the accounting changes that would ensue with the new registration regime and asked for measures to allow easier accounting on “for-profit” activities.¹⁶ As detailed in the 2014-2015 midterm IRM report, the Institute for Market Economics (a libertarian economic policy think tank) considers the Council and fund risk ineffective, since the effort and time necessary for organizing their work would probably be too high.¹⁷

Most of these organizations declared support for the Strategy, including in their written statements (except for the Institute of Market Economics). Hence, if the government implements the amendments as planned by the Strategy and recommended by stakeholders,¹⁸ and establishes an effective Council and a transparent and fair state fund for civil society initiatives, it would transform the policy field of civic participation.

Carried Forward?

The third Bulgarian national action plan includes two commitments related to the present one.

Commitment 1.1.6 pertains to CSO registration reform. This reform would have a direct effect on decreasing the administrative burden and transparency on civil society entities and, thus, improve their ability to actively participate in public life.

Commitment 4b.1.1 is a continuation of the strategy for developing CSOs, initiated in Bulgaria’s first action plan, partly implemented in the second action plan by the new legislation, and to be updated through the third action plan by the new Council, according to the new law. Thus, the three OGP action plans foster the continuous development of the government’s policy on civil society organizations.

¹ “Index of Citizen Participation in Bulgaria,” Citizen Participation Forum and Bulgarian Center for Not-for-Profit Law, 2015, page 5: “The levels of citizen participation in Bulgaria are not high; it is not efficient enough; it is sporadic and often misunderstood in the wider public. Although painstakingly and slowly, however, it does change the political, economic and social context.” See <http://bit.ly/2eJTdpm>.

² Republic of Bulgaria. “Second Action Plan of the Republic of Bulgaria on the Open Government Partnership Initiative.” See <http://bit.ly/2fVa1fv>.

³ “Strategy supporting the development of civil society organizations in the Republic of Bulgaria for the period 2012-2015,” adopted by Protocol no. 33.23 of the Council of Ministers on 05 September 2012, Public Consultations Portal. Available in Bulgarian at <http://bit.ly/1m3tVWB>.

⁴ Verginia Micheva (deputy Minister of Justice), Minutes from the Legal Committee session of 31 August 2016, National Assembly. Available in Bulgarian at <http://bit.ly/2cqXO3T>.

⁵ See Minutes of the Public Council with the parliamentary Interaction with Non-Governmental Organizations and Citizens’ Complaints Committee from 21 July 2016, National Assembly. Available in Bulgarian at <http://bit.ly/2ddjvjkp>.

⁶ Grozdan Karadjov (Member of the National Assembly), Minutes from the Legal Committee session of 31 August 2016, National Assembly. Available in Bulgarian at <http://bit.ly/2cqXO3T>.

⁷ “Draft Law for amending the Non-profit Legal Entities Act,” National Assembly, 10 March 2016. Available in Bulgarian at <http://bit.ly/2cwphPP>.

⁸ “Law for amending the Non-profit Legal Entities Act,” National Assembly, promulgated on 13 September 2016. Available in Bulgarian at <http://bit.ly/2fo0G1C>.

⁹ See the continuous analysis on legislating in Bulgaria in “Legal Barometer” (Юридически барометър), Center for Legal Initiatives, issue 13, January-June 2016. Available in Bulgarian at <http://bit.ly/2fatkUj>, and the previous issues at <http://bit.ly/2g2V0fs>.

¹⁰ “Distrust and quality of democratic institutions in Bulgaria,” report part of the project “Problems of Transition: Enhancing Trust in and Independence of Liberal Democratic Institutions,” Center for Liberal Studies (an independent NGO), 2015. Available in Bulgarian at <http://bit.ly/2g7oJD5>. See also “Assessment of the Work of the Government” and the other major institutions, Alpha Research (an independent private agency for marketing and social research), August 2009-September 2016, <http://bit.ly/2etSuxB>.

¹¹ See the discussion in the Minutes from the Legal Committee session of 31 August 2016, National Assembly. Available in Bulgarian at <http://bit.ly/2cqXO3T>.

¹² See, for example, Annex no. 4 to Article 49, par. 1 of the 2016 State Budget Act, National Assembly, State Gazette, 7 December 2015. Available in Bulgarian at <http://bit.ly/1NZDDGG>.

¹³ Anna Gencheva, "The amendments of the Non-profit Legal Entities Act are adopted at second reading in the Legal Committee" ("Промените в ЗЮЛНЦ са приети на второ четене в правната комисия"), Citizen Participation Forum, 01 September 2016. Available in Bulgaria at <http://bit.ly/2jynvla>.

¹⁴ "Workshop for Civic Initiatives Foundation with a statement on the proposed amendments of the Non-profit Legal Entities Act" ("ФРГИ с позиция по повод внесените промени за изменение на ЗЮЛНЦ"), Workshop for Civic Initiatives Foundation, 1 April 2016. Available in Bulgarian at <http://bit.ly/2jnoyll>.

¹⁵ Statements on the Draft Law for amending the Non-profit Legal Entities Act, National Assembly, 16 March 2016. Available in Bulgarian at <http://bit.ly/2d2ZC2s>.

¹⁶ Idem. Ibid.?

¹⁷ Svetla Kostadionova, Executive Director of the Institute for Market Economics (IME), in-person interview, IME office, Sofia, 23 September 2015.

¹⁸ "Index of Citizen Participation in Bulgaria," Ibid., page 16.

4. Government Debt Transparency

Text of Commitment:

Commitment 2:

1. *Implementation of the Government Debt Management Strategy for the period 2012-2014*
Start date: 1 January 2012 End date: 31 December 2014
2. *Developing, approval by the Council of Ministers and implementation of a Government Debt Management Strategy for the period 2015 - 2017*
Start date: 01 December 2014 End date: 01 December 2017
3. *Publishing a bulletin on Government Debt on the web site of the Ministry of Finance*
Start date: Monthly End date: Not specified
4. *Publishing an Annual Review of Government Debt on the web site of the Ministry of Finance*
Start date: Yearly End date: Not specified
5. *Publishing the official information about the consolidated debt and guarantees on the State governance section on the web site of the Ministry of Finance*
Start date: 1 January 2014 End date: Quarterly/Annually

Responsible Institution: Ministry of Finance

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Com-pletion		Mid-term	Did it open government?					
														End of term							
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
			✓		✓				✓						✓			✓			
		✓			✓				✓							✓		✓			
		✓			✓				✓				✓					✓			
				✓	✓				✓							✓		✓			
				✓	✓				✓							✓		✓			
				✓	✓				✓							✓		✓			
				✓	✓				✓							✓		✓			

Did it Open Government?

Access to Information: Did not change

The commitment's implementation did not change government's practice. The commitment was designed to promote and inform the public on documents the MoF was already publishing regularly under its legal and international obligations. It did not aim to bring change, but to demonstrate through the action plan the possibilities of access and use of the financial information on government debt already provided regularly through existing channels.

Carried Forward?

The commitment was not continued through the third Bulgarian action plan.

¹ Experts from "Government Debt and Financial Markets" Directorate in the Ministry of Finance, in-person interview for the mid term IRM report, Ministry of Finance building, Sofia, 23 July 2015

² "Government Debt Management Strategy 2015–2017," Ministry of Finance. Available in Bulgarian at <http://bit.ly/2dmUEex>.

³ "Consolidated debt of 'General Government' sector," Ministry of Finance. Available in English at <http://bit.ly/1Jjr0hn>.

⁴ "Guaranteed debt of 'General Government' sector," Ministry of Finance. Available in English at <http://bit.ly/23wwbYu>.

⁵ "Government Debt Monthly Bulletin," Ministry of Finance. Available in English at <http://bit.ly/1Kl0lKt>.

⁶ Comments by the Bulgarian government of the pre-publication version of this report, e-mail correspondence with the IRM, March 2017.

5. Financial Information Accessibility

Text of Commitment:

Commitment 3

1. Carry out a survey among users of the accessibility, intelligibility and comprehension of the public information published by the Ministry of Finance

Start date: 1 September 2014

End date: 31 December 2014

2. Developing a concept paper for enhancing the accessibility, intelligibility and comprehension of the public information published by the Ministry of Finance

Start date: 1 January 2015 ...

End date: 31 May 2015

3. Implementation of concept paper measures for increasing the accessibility, intelligibility and comprehension of the public information published by the Ministry of Finance

Start date: 1 June 2015.....

End date: 31 January 2016

Responsible Institution: Ministry of Finance

Supporting institutions: Not specified

Commitment \ Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
Overall			✓		✓	✓		✓	✓					✓					✓		
5.1. Public Information Survey			✓			✓			✓							✓			✓		
5.2. Concept Paper			✓		✓				✓				Unable to tell from government and civil society						✓		
5.3 Implement concept paper			✓		✓			✓	✓				✓						✓		
													Unable to tell								

Commitment Aim

The commitment aimed to increase the accessibility and comprehension of information published by the Ministry of Finance (MoF). According to the action plan, the information published on the ministry's website is very technical and can be understood only by a limited number of users with specific knowledge. The commitment set out to present the information in a more accessible way to allow a wider range of users to understand it.

Status

Midterm: Limited

Milestone 5.1 was completed. At the beginning of January 2015, MoF conducted on its website a survey¹ among anonymous users (individuals who visited the MoF website) to collect feedback and proposals for website improvements. The survey is a customer satisfaction questionnaire with mostly closed questions and one open question. From the results,² there were no answers to the open question asking for proposals for improvement of the webpage. The number of respondents to the survey was not disclosed. According to government sources, Milestone 5.2 – an initial concept paper in the form of a technical assignment on reforming the institution's website – was drafted in November 2014. As this document was neither published nor communicated to the IRM researcher, the level of completion of this milestone was unclear. According to the action plan, Milestone 5.3 aimed to implement the measures in the concept paper. The new MoF's website was launched on 8 July 2015, after the period of implementation under review in the progress report, and was therefore coded as “not started” for implementation in the midterm period (1 July 2014-30 June 2015). The commitment's overall implementation for that period was limited. For more information, please see the 2014-2015 midterm IRM report.

A new “Open Governance” section was also created with data on daily budget payments (Electronic Budget Payments System or SEBRA; for more information see [Commitment 10](#) in this report). The ministry expected to upload data in open format from the Central Municipal Debt Register in this section.³

End-of-Term: Limited

The commitment's completion level is limited, as it was for the midterm, since the IRM researcher was unable to determine what was set out in the concept paper (Milestone 5.2) or the extent to which it was implemented through Milestone 5.3. It should be noted that the ministry refurbished its website, which now provides a number of important sets of information and services to citizens and business. The new version of the website was launched on 8 July 2015. It features a new design, including a new navigation menu, and a new mobile version. A separate section on the landing page, “Draft New Legislation,” allows easy access to public consultations, making it easier for users to submit their comments and proposals.⁴ Existing legislation is systematized in a new section also on the landing page “Legal Framework,” where users can search for documents by type.⁵ The MoF published in the “Open Governance” section information in open data format on the total debt of each municipality from the Central Municipal Debt Register⁶ — the total amount without further details, and information on the macroeconomic forecast,⁷ which was already available though not as machine readable data.

Did it open government?

Access to Information: Marginal Civic Participation: Did not change

The ministry publishes important information, which the commitment sought to make more accessible to citizens. The survey among users, which was conducted only on the institution's website offered a one-time opportunity for civic participation in the website's future. The IRM researcher could not

obtain information as to how these results were considered. The survey did not, however, change the usual administrative practice, since the MoF has been carrying out such surveys and publishing their results since 2010.⁸

The IRM researcher had difficulty gathering stakeholders' opinions and specific comments on this commitment's implementation, since it was entirely government led. The MoF initiated, drafted, and implemented the commitment without consultation and cooperation with stakeholders, outside of the aforementioned survey. Stakeholders who regularly use the ministry's site for their work stated that the new website failed to achieve the goals set out in the commitment's text. It was more of a facelift than a real reform. They also criticized how the citizen survey and consultation with stakeholders was carried out. They believed it should have been better promoted and possibly carried out on a centralized level via the Public Consultation Portal. The Institute for Market Economics' team members suggested that the ministry develop and publish in the respective sections more general explanatory texts on the different and complex financial procedures and terminology, in order to make the published information more accessible to regular citizens.⁹

The ministry's new website added new data that lacked details or that were already available in a different format, and improved the website's accessibility from different IT devices. For these reasons, it is the IRM researcher's opinion that the MoF website's overhaul is improving access to information through pro-active publication, though on a marginal level.

The IRM researcher considers the development of the MoF's website a generally positive step and efforts, such as publishing information in an open data format or providing more explanatory text regarding complex financial information, should be further encouraged.

Carried Forward?

The commitment was not continued in the third Bulgarian action plan.

¹ Results of the "Survey assessing the accessibility and comprehension of the information on the Ministry of Finance's website" (Анкета за оценяване на достъпността и разбираемостта на информацията на интернет страницата на МФ), Ministry of Finance, 2015. Available in Bulgarian at <http://bit.ly/1UtW7hB>.

² Ibid.

³ "Open Governance," Ministry of Finance. Available in Bulgarian at <http://bit.ly/1NE5IC4>.

⁴ Section "Draft New Legislation," Ministry of Finance. Available in Bulgarian at <http://bit.ly/1E60Hzi>.

⁵ Section "Legal Framework," Ministry of Finance. Also available in English at <http://bit.ly/1PDO8tU>.

⁶ "Municipal Debt Register," Ministry of Finance. Available in Bulgarian at <http://bit.ly/2cj6aQd>.

⁷ "Macroeconomic forecast," Ministry of Finance. Available in Bulgarian at <http://bit.ly/2cr3o1b>.

⁸ "Your opinion on our work" – annual online surveys ("Вашето мнение за нашата работа"), Ministry of Finance, 2010 – 2016. Available in Bulgarian at <http://bit.ly/2fRo19k>.

⁹ Desislava Nikolova, chief researcher, Macroeconomics, Public Finance and Kaloyan Staykov, researcher, Finance, Public Finance, Macroeconomics from the Institute for Market Economics (IME), in-person interview, IME office, Sofia, 10 September 2015.

6. Transparency of Underground Resources Act

Text of Commitment:

Commitment 6:

1. Adoption of Amendments and Supplementations to the Mineral Resources Act

Start date: 1 January 2012 ...

End date: 31 December 2014

2. Adoption of an Ordinance on the scope and the procedure for exercising and approval of the control results over the granted permits for prospecting and exploration or exploration only, and granted concessions for mining mineral resources

Start date: 1 January 2014

End date: 31 December 2015

Responsible Institution: Ministry of Energy

Supporting institutions: Not specified

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Com-pletion		Mid-term End of term	Did it open government?					
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
Overall		✓			✓	✓	✓			✓				✓		✓			✓		
6.1. Mineral Resources Act amendment		✓			✓	✓	✓			✓					✓				✓		
6.2. Mineral resources ordinance		✓			✓					✓			✓					✓			

Commitment Aim

This commitment sought to improve the management of natural resources and prevent social conflicts through greater transparency and public control. To achieve these goals, the government set out to ensure the transparency of the results of prospecting and exploration permits and over granted concessions for mining of mineral (and non-mineral) resources. The means of this reform were the adoption of amendments to the Mineral (Underground) Resources Act (URA) and the establishment of a new bylaw – an ordinance on the approval and control of permits for prospecting and exploration, as well as concessions on mineral (underground) resources.

Status

Midterm: Limited

The commitment's language is not sufficiently specific and requires interpretation in order to determine the types of amendments targeted. Concerning the first milestone, the implementing government focused on reforming the extractive industries' waste management rules in the URA. An expert from the Ministry of Energy¹ identified four provisions in the amended law that implement this milestone. They include requirements on transparency and civic participation in all periods of the procedures on granting permits, exploiting, and managing extractive industries' waste facilities. The amendments had been drafted but not adopted by the end of the first year of implementation; therefore, the level of completion as of June 2015 was substantial.

Milestone 6.2 focused on adopting a bylaw detailing the procedures of control on issuing permits for exploration of underground resources, and on the concessions for exploitation of underground resources. In June 2015, its implementation was not started.

For more information, please see the 2014-2015 midterm IRM report.

End-of-Term: Substantial

A Ministry of Energy official stated that the amendments to the URA² relating to waste management were adopted into law in July 2015 and were being implemented,³ thereby completing this milestone. In complying with the new legal provisions, the ministry has upgraded its website and publishes more information on the management of underground resources, including exploration permits and concessions contracts.⁴ The website also publishes a public register of the permits issued for management of extractive waste facilities.⁵ The IRM researcher did not find evidence of publication of three other sets of data that are part of the URA amendments: the information on applications for waste management permits; the list of closed extractive industries' waste facilities; and the list of all events affecting the stability of extractive industries' waste facilities. However, the milestone's expected outcome was the adoption of the amendments to the law, which is why the IRM researcher considers the milestone to be completed.

Concerning Milestone 6.2, the Ministry of Energy official explained that it was delayed.⁶ Currently, the National Assembly is reviewing the Concessions Act.⁷ After adopting it, the Ministry of Energy will propose another set of amendments to the URA relating to the concessions contracts on underground resources and their control. Based on the adoption of these amendments, a new bylaw detailing the procedures of control of exploration permits and concessions for exploitation will have to be drafted. The implementation of this milestone is thus projected after the action plan's assessment period and is coded as not started.

Did it Open Government?

Access to Information: Marginal

Civic Participation: Did not change

Public Accountability: Did not change

As a result of the implementation of the new rules, the Ministry of Energy has published more information on already issued permits for waste management facilities and concessions contracts. However, the improvement in access to information is marginal. The Ministry published, so far, the list of the three waste facilities' permits issued until 2015. There have been no clear improvements in civic participation and government accountability in practice and the issues related to the control of the contracts remain unresolved.⁸

The interviewed stakeholders, whose opinions are detailed hereafter, do not consider the developments in transparency sufficient to considerably improve the government's practice. They stress the need to improve civic participation and public accountability in the mining waste policy field.

The amendments to the URA are implementing an EU directive on mining waste.⁹ An expert from the environmental NGO, Balkani Wildlife Society,¹⁰ criticized the government's approach to implementation as being too formalistic and too literal with the EU directive's text, which is itself unclear. The directive should be used as a framework, and the government should have gone further in drafting the text of the amendments to the URA. The law does not provide detailed procedures for participation—it only copies the framework provisions of the directive and Aarhus convention.¹¹ The stakeholder noted that the procedures' periods are too short and, in his opinion, the government did too little to actively seek the public's opinion in discussing the draft amendments.

According to a civil society expert with significant mining sector expertise,¹² the precautionary principle in the Bulgarian mining legislation has always been seriously undermined. The law does not consider environment protection organizations or even local authorities, such as municipalities, as interested parties in the decision-making process on awarding concessions contracts, including for managing waste facilities. These actors can participate in environment impact assessments (EIAs). However, this does little to prevent environmental damage, since there is no legal obligation to take into account or address stakeholders' opinions in the EIAs. Public authorities do not exercise sufficient control over implementation of the EIAs' requirements or even the concessions contracts. In the expert's opinion, the controlling and other public bodies are entirely oriented toward satisfying and safeguarding investors' interests to the detriment of the environment and human health.¹³

According to a government report,¹⁴ the underground resources legislation needs to address issues such as the lack of competition procedures in awarding concessions contracts, lack of oversight of such contracts, and lack of transparency of issued permits.

The topic of concessions contracts' control is important for Bulgarian society and needs further attention. The online public consultation on a new Concessions Act gathered an unusually high level of participation from different stakeholders. Many of them expressed different opinions on the need to subsequently reform the rules surrounding control over concessions contracts in the URA, as it closely related to the Concessions Act.¹⁵ This is clear evidence of high public interest in the policy field. The IRM researcher considers that public debates on future amendments of the URA could also be organized under the Bulgarian OGP process – possibly on meetings of a future OGP permanent discussion forum.

Carried Forward?

The commitment was not continued through the third Bulgarian action plan.

¹ Ivelina Mihailova, (at the time of the interview) senior inspector in the "Natural Resources and Concession Contracts" Directorate of the Ministry of Energy, in-person interview, Ministry of Energy building, Sofia, 23 July 2015.

² Law amending the Underground Resources Act, National Assembly, promulgated on 21 July 2015, available in Bulgarian at <http://bit.ly/2g9Yf3O>.

³ Stanislav Stankov (Acting director of Natural Resources Concessions and Control Directorate in the Ministry of Energy), e-mail correspondence with IRM researcher, 01 September 2016.

⁴ "Activities of the United Body for Government of Underground Resources" section (the single body on underground resources governance/management), Ministry of Energy, available in Bulgarian at <http://bit.ly/2ddlaun>.

⁵ Public register of the issued permits for management of extractive waste facilities, Ministry of Energy, available in Bulgarian at <http://bit.ly/2cZajXX>.

⁶ Stanislav Stankov, *ibid*.

⁷ "Draft Law on Concessions," National Assembly, introduced on 09.06.2016, available in Bulgarian at <http://bit.ly/2cUEayt>.

⁸ "A state on a concession contract" ("Държава на концесия" –), Vladislava Peeva, Mediapool, 29.08.2016. available in Bulgarian at <http://bit.ly/2cuDAWP>.

⁹ “Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC - Statement by the European Parliament, the Council and the Commission,” EUR-Lex. Available at <http://bit.ly/1s8HqXm>.

¹⁰ Andrey Kovatchev, expert from Balkani Wildlife Society, in-person interview, Sofia, 25 September 2015.

¹¹ “UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters, done at Aarhus, Denmark, on 25 June 1998”, UNECE. Available at <http://bit.ly/1QiMrGC>. Bulgaria is party to the Convention. The Convention is also part of EU legislation and mandatory for all EU member-states – the “Aarhus package,” European commission. Available at <http://bit.ly/1RAYIEM>.

¹² Daniel Popov (mining expert in the Centre for Environmental Information and Education – an NGO), interviewed by IRM researcher, 6 October 2016.

¹³ Ibid.

¹⁴ For more see “report on: analysis of the concessions act, subsurface resources act, black sea coast development act, water act and proposals for measures for prevention of corruption,” Center for Prevention and Countering Corruption and Organized Crime, 10/17.06.2014. Available in English at <http://bit.ly/2cuCjPH>.

¹⁵ Comments on the “Draft of the Concession Act”, Public Consultations Portal, 19 April 2016. Available in Bulgarian at <http://bit.ly/2cUKJku>.

7. State Fees Reform

Text of Commitment:

Commitment 8

1. Draft State Fees Act
2. Draft Specialised Methodology for Impact Assessment on introduction and change of state fees
3. Draft Methodology for calculation of fees
4. Draft Uniform Tariff of Fees

Responsible Institution: Administration of the Council of Ministers

Supporting institutions: Ministry of Finance, Ministry of Economy and Energy with the participation of civil society

Start date: 1 March 2013

End date: 30 September 2014

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
Overall				✓	✓	✓						✓		✓				✓			

Commitment Aim

According to the action plan, the commitment sought to promote “citizens’ participation, openness and transparency in the development of a new State Fees Act.” The original act regulates the establishment and calculation of fees for all administrative services provided by the central administration. The 1951 State Fees Act was adopted under Bulgaria’s totalitarian regime and under the Constitution abolished in 1991.¹ An impact assessment of the act² and a World Bank report on “Reforming the regime on state fees” in Bulgaria³ identified a number of serious problems and recommended the adoption of a new government policy on state fees, including specific measures for increasing transparency and public participation.

The action plan added that the proposed new State Fees Act would achieve these goals via good management through a new fees policy, and avoidance of unjustifiable financial burden on citizens and businesses. The government would also guarantee the implementation of efficient and effective social and economic policy by means of fees based on a system of principles and clear rules.

The milestones for this reform were drafting a new State Fees Act (Milestone 1) that comprises methodology for conducting an impact assessment of new state fees including a civic participation element (Milestone 2); a common methodology for calculating state fees (Milestone 3); and a uniform tariff for (some) state fees (Milestone 4).

Status

Midterm: Limited

In 2011, the Administration of the Council of Ministers started a costly three-year project aimed at building a new efficient fees policy, based on clear rules.⁴ In 2014, it resulted in the creation of a reforms package, which included a new State Fees Act and other documents. The reforms were published for public consultation in August 2015. By the time of the writing of the midterm report, the government had not adopted the drafts and the bill had not yet been introduced in parliament. For more information, please see the 2014-2015 midterm IRM report.

End-of-Term: Limited

At the time of the writing of this report, the government has not adopted the drafts and consequently the bill has not been introduced in parliament.

Based on continuous monitoring and informal talks with sources wishing to stay anonymous, the IRM researcher believes that the Ministry of Finance and probably other public institutions, are, thus far, less inclined to support the adoption of a new state fees legal framework. There is no official government position on the issue.

Did it Open Government?

Access to Information: Did not change

Civic Participation: Did not change

The reform package was not adopted and, therefore, brought no change to the current policy field. The IRM researcher considers that implementing the commitment could have had a transformative effect on the state fees policy field, particularly in introducing mandatory impact assessments for future state fees. Publishing these impact assessments would have given citizens and business clear data and a better understanding of the government's reasoning. These data could also have been used during the mandatory public consultation periods over new state fees tariffs.

Carried Forward?

The commitment was not continued through the third Bulgarian action plan, even though it is an important area in need of reform and further efforts from the government.

¹ "State Fees Act," Lex.bg. Unofficial version available in Bulgarian at <http://bit.ly/1QKZIIY>.

² "Ex post Impact Assessment of the State Fees Act," Public Consultations Portal. Available in Bulgarian at <http://bit.ly/ZytadQ>.

³ World Bank. 2009. Bulgaria - Reforming the regime of states fees. Better regulation series; volume no. 4. Washington, DC: World Bank. Available at <http://bit.ly/1VvpfFm>.

⁴ "Fees policy in line with social relations - a condition for good governance", project no. K11-I3-I/27.04.2011, funded by the ESF under Operational Programme "Administrative capacity," Unified Management Information System for the EU Structural Instruments in Bulgaria. Available at <http://bit.ly/1rbMQ08>.

✪ 8. Improvements to Access to Public Information Act

Text of Commitment:

Commitment 7, Milestones 1-3:

1. Amendments and supplementations to the Access to Public Information Act.

These amendments are targeted at:

Improvement of the openness of and facilitation of access to public information through:

- Broadening the scope and making the obligation for publishing **information more detailed**
- Strengthening coordination and control **for law provisions enforcement**
- **Transposing the Directive 2013/37/EU** amending Directive 2003/98/EC on re-use of public sector information - amendments and future actions envisaged

Start date: 1 January 2014

End date: 31 July 2015

2. Preparation of technical guidelines for the provision of public information held by institutions in an open format

Start date: 1 January 2014

End date: 31 December 2015

3. Prioritising the information in an open format (registers, reports, etc.) - report on prioritised registers, reports, statistics, etc., which can be provided in an open format

Start date: 1 January 2015

End date: 31 December 2015

Responsible Institution: Administration of the Council of Ministers, Ministry of Transport, Information Technology and Communications, and all other administrations

Supporting institutions: Not specified

[emphasis added]

Note: This is a starred commitment because it is measurable, clearly relevant to OGP values as written, has a transformative potential impact, and was substantially or completely implemented.

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term			Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed		Worsens	Did not change	Marginal	Major	Outstanding
Overall				✓	✓		✓	✓				✓			✓						✓	
8.1. More detailed access to information				✓	✓			✓				✓			✓						✓	
8.2. Law provision enforcement			✓		✓			✓				✓		✓					✓			

have tackled the need for training of civil servants who have responsibilities in this policy field, including through a commitment in the next OGP action plan.

The **second milestone** focused on improving administrative control over the APIA's implementation. There was limited implementation in this regard. The new bylaw (see below) introduced provisions on oversight of the publication of open data. However, they replicate the APIA's existing regime and are not likely to change the administration's practice. Also, the new amendments to the Electronic Governance Act put in place stronger overview mechanisms on proactive transparency of information published online, but this law is yet to be implemented.⁶

The **third milestone** is substantially implemented. The reform of the APIA introduced the EU directive on the reuse of public sector information. However, at the end of June 2016, after the deadline set by the law, the Council of Ministers has not yet adopted the tariff setting the limit for state and local fees on providing information for reuse.

The **fourth milestone** to prepare technical guidelines for the provision of public information was fully completed. Completion was established through the adoption by the government on 20 June 2016 of the "Ordinance for the standard requirements for the reuse of public sector information and for its publication in open format," and publication of the "Technical guidelines for uploading of data in open format on the Open Data Portal."⁷ The ordinance, a bylaw, is setting the official licenses for reuse of the published information, based on Creative Commons, and the rule by default is unlimited reuse.

The **fifth milestone** to prioritize the information to be released in an open format was completed. In February 2016, the government organized an online consultation on the new data sets to be published as open data in priority. There was little civil society participation, since only one proposal coming from a CSO was posted.⁸ In late March 2016, the Council of Ministers outlined a plan for the publication of 304 sets as open data in priority.⁹ A draft government report, published in late September 2016, identifies 211 data sets already published, 93 to be published on schedule until the end of 2016, and 49 behind schedule out of the 304 listed in the government's March 2016 decision.¹⁰ However, different government bodies have embraced the open data efforts and started publishing open data sets on their own initiative. As of June 2016, more than 900 open data sets have been published on the Open Data Portal.

The IRM researcher identified a case where the draft government open data sets report is stating untrue information. Contrary to what the report is declaring under item 220 (page 25), the Executive Environment Agency does not publish hourly updated open data on the quality of the air from its automatic measuring stations. This error in the draft report does not mean that the entire document is wrong. However, the IRM researcher sees in this example the need for a better, possibly independent control on the reporting. So far, both the implementation and reporting on the publishing of new open data sets is the responsibility of each individual public body. There is no verification or control at the central level or outside the responsible bodies.

Did it Open Government?

Access to Information: Major
Civic Participation: Marginal
Public Accountability: Did not change

Since 2000, Bulgaria has had efficient access to information legislation, offering more legal guarantees for the reactive transparency mechanism (i.e., for access to information provided on request).¹¹ The government decided to use the momentum of the upcoming EU legislation and to promote the proactive transparency mechanisms through developing open data. The access to information saw a major change in government openness through the new legal guarantees for more information to be mandatorily published (milestones 1 and 4) and through the large amount of opened data sets (milestone 5). Civil society and journalists are using certain open data sets increasingly and with some

impact. For example, investigative journalists created a simple search engine on past public procurement contracts, which made it easier to find multiple contracts awarded to the same companies; a CSO organized a competition, which produced several apps using open data; a citizen created multiple visualizations of data related to voting, schools, pollution, road accidents, and so on.¹² So far, the administration's efforts show a major improvement in access to proactively published information. However, the IRM researcher was unable to find studies or stakeholders' opinions clearly analyzing the use of the open data sets, especially in relation to their cost, to prove that the government's open data efforts have led to an outstanding change in transparency.

In different meetings and informal talks, the IRM researcher observed low confidence by civil society that open data alone, and without better control mechanisms, could improve public accountability. This low level of confidence might explain the low level of civic participation in the consultation process on deciding which data sets should be opened in priority (commitment 5). As a result, the IRM researcher determined that this commitment resulted in only a marginal change in public participation as it relates to government practice.

Carried Forward?

Yes. The third Bulgarian national action plan includes two commitments related to the present one:

2.1.1. Coordination and support in the process of revising the internal procedures for providing access to public information in accordance with the Freedom of Information Act and establishing clear mechanisms and responsibilities for pro-active provision of information and internal control and

2.1.2. Conducting trainings for the administrative officials and the units responsible for information provision concerning the amendments to the Freedom of Information Act.

¹ "Directive 2013/37/EU of the European Parliament and the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information," EUR-Lex, available at <http://bit.ly/1obvj1q>

² "Access to Public Information Act," Access to Information Programme, available in an unofficial English version at <http://bit.ly/1sebjW4>.

³ Open Data Portal of the Republic of Bulgaria, <http://bit.ly/1RRb6UP>.

⁴ Information on "Draft law for amending the Access to Public Information Act", National Assembly, 29 April 2015. Available in Bulgarian at <http://bit.ly/1WS4AN3>.

⁵ "In the beginning of the reforms" („На границата на промените"), Gergana Jouleva, Monthly FOI Newsletter, Issue 4(148) 2016, Access to Information Programme, April 2016. Available in Bulgaria at <http://bit.ly/2d90pgl>.

⁶ "Law amending the Electronic Governance Act", National Assembly, 16 June 2016. Available in Bulgarian at <http://bit.ly/2doTDSE>.

⁷ See both documents and others in "Open data" („Постановление на Министерския съвет № 147 от 20 юни 2016 година за приемане на Наредба за стандартните условия за повторно използване на информацията от общественния сектор и за нейното публикуване в отворен формат" и „Технически насоки и инструкции за качване на данни в отворен формат на Портала за отворени данни"), "Publications" section, Public Consultations Portal. Available in Bulgarian at <http://bit.ly/1kZub96>.

⁸ Draft List of the Data Sets to be Published as Open Data ("Проект на Решение на Министерския съвет за приемане на Списък с набори от данни по приоритетни области, които да се публикуват в отворен формат"), "Public Consultations" section, Public Consultations Portal, 22 February 2016. Available in Bulgarian at <http://bit.ly/1OulH0v>.

⁹ "List of the Data Sets for Publication in 2016 with Priority" ("Списък с приоритетни набори от данни за публикуване през 2016 г. в отворен машинно-четим формат (PMC 214/2016"), "Publications" section, Public Consultations Portal, 25 March 2016. Available in Bulgarian at <http://bit.ly/2dcF7g6>.

¹⁰ "Draft Decision of the Council of Ministers for adoption of the Progress Report on the Implementation of Decision no. 214 of the Council of Ministers of 25 February 2016 on the Adoption of the List of Data Sets in Priority Fields, to be Published in an Open Format" (Проект на Решение на Министерския съвет за приемане на Доклад за напредъка по изпълнението Решение № 214 на Министерския съвет от 25.02.2016 г. за приемане на списък с набори от данни по приоритетни области, които да се публикуват в отворен формат), Public Consultations Portal, 20 September 2016. Available in Bulgarian at <http://bit.ly/2dypAY2>.

¹¹ See the annual government "State of the administration report" („Доклад за състоянието на администрацията"), Annual report, Administrative Register (available in Bulgarian at <http://bit.ly/2kf5mVWw>). Also see an analysis in "15 years of APIA implementation" („15 години прилагане на ЗДОИ"), Gergana Jouleva, Monthly FOI Newsletter, Issue 8(152) 2016, Access to Information Programme, August 2016 (available in Bulgaria at <http://bit.ly/2jcpQSh>).

¹² A few examples: 1. The search engine "Bulgarian Public Sector Contracts" for the period 01.01.2007 - 31.12.2015, Data from opendata.government.bg (Договори за обществени поръчки в България), Bivol.bg, available in Bulgarian and English at <http://bit.ly/2diYx5n>; 2. Open Data Instruments and visualization, Boyan Yurukov (Боян Юруков), <http://opendata.yurukov.net/>; Several apps and projects, based on open data, Open Data Expo, NGO Links (НПО Линкс), <http://bit.ly/2dJDqrK>.

9. Adherence to the Council of Europe Convention on Access to Official Documents

Text of Commitment:

Commitment 7, Milestone 4:

Starting the procedure for adherence to the Council of Europe Convention on Access to Official Documents

Responsible Institution: Administration of the Council of Ministers, Ministry of Transport, Information Technology and Communications, and all other administrations

Supporting institutions: None

Start date: 1 January 2014

End date: 31 December 2016

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term		Did it open government?				
															End of term						
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
			✓		✓						✓		✓					✓			
													✓								

Commitment Aim

Over the coming years, in line with EU policy, further efforts will be required to introduce open data by the administration. To these open data efforts, the government added a target on starting the procedure for adherence to the Council of Europe Convention on Access to Official Documents.

Status

Midterm: Not started

To begin the process of adhering to the convention, countries must follow a series of steps, as highlighted in Council of Europe official documents.¹ According to government sources, no measures on the implementation had been taken. Thus, the IRM researcher considered its level of completion not started. For more information, please see the 2014-2015 midterm IRM report.

End-of-Term: Not started

At the writing of this report, the government has not taken any visible steps toward ratifying the convention. There is no official government position on the issue, stating reasons or arguments for not ratifying the convention so far.²

Did it Open Government?

Access to Information: Did not change

The commitment was not carried out and did not change the government's openness. Currently, there is no specific international legal standard on access to information legislation. If Bulgaria had ratified the convention, it would have entered into force and offered an extra layer of protection for Bulgaria's right to know legislation, as well as a push for more transparency throughout Europe.

Carried Forward?

The commitment was not continued through the third Bulgarian action plan.

¹ Appendix 2 (Item 1.2d), Council of Europe Convention on Access to Official Documents, *Adopted by the Committee of Ministers on 27 November 2008 at the 1042bis meeting of the Ministers' Deputies*, Council of Europe, <http://bit.ly/1P24Bsk>.

² "Why the Bulgarian governments do not ratify the Convention on Access to Official Documents" („Защо българските правителства не ратифицират Конвенцията за достъп до официални документи?"), Gergana Jouleva, Monthly FOI Newsletter, Issue 2(146) 2016, Access to Information Programme, February 2016. Available in Bulgaria at <http://bit.ly/2dxtCT9>.

10. Usability of Daily Budget Payments System Data

Text of Commitment:

1. Introducing a uniform open format of publishing budget payments data and uploading the complete dataset on the open data portal

Responsible institution: Ministry of Finance

Supporting institution(s): Not specified

Start date: 1 June 2015

End date: 31 December 2015

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
			✓		✓			✓	✓				N/A						✓		
																✓					

Context and Objectives

This commitment aimed at increasing the level of fiscal transparency and accountability by introducing a uniform open data format for publishing the budget payments data, and uploading these data sets to the Open Data Portal.¹ At the time the commitment was adopted, government presented the data as a broad summary of payments that required additional expertise and resources by users for further processing.² Experts from the Ministry of Finance³ pointed out that the 2015 Decree of the Council of Ministers on budget procedure rules⁴ set out the scope of the published data (i.e., it is a set of rules that guarantees that the data can be compared historically).

The Ministry of Finance (MoF) executes aggregated control on budget spending in real time through the Electronic Budget Payments System (SEBRA). SEBRA is a system established in 2001 for monitoring and managing payments initiated by the respective first and second level budget entities within the limits of payments previously set.⁵ Daily since 2012, the MoF has been publishing on its website an excerpt from SEBRA of the aggregated budget payments for the previous day. There are no statistics available of the use of this data outside the administration.

With this commitment, the government set out to create a template for the publication of the data, which would be reusable with free and open software. Moreover, the MoF would use this new template to upload the aggregated data to a single spot for consultation – the government Open Data Portal. The government showed the IRM researcher that it had received demands from civil society to publish the data from SEBRA in one place and in an open and machine-readable format.

Todor Galev,⁶ an experienced analyst from civil society who has been working with SEBRA data since it was first published, welcomes the government's efforts to improve the publication of the data, but does not believe they will yield greater added value. The data published on the Open Data Portal are still practically impossible to correlate with other budgetary data, such as government subsidies for the municipalities, making it challenging to compare and analyze them. The entire history of the SEBRA publications would be useful for a comparative analysis, but it is not available in open data and is not published on the Open Data Portal. There are also problems with the structure of the open format (.csv) files, which are often faulty when reused and need to be fixed before they can be analyzed through data base software.

The potential impact of the commitment is minor. The SEBRA data have been aggregated since 2001 and published since 2012. Since its inception, it does not correlate to other budgetary data (budgets and budget reports) because of differences in the respective templates' categories of information filled in. This issue of the possibility to understand the data in comparing it to the budget procedure has not been addressed by the commitment. Since the SEBRA data could not be linked to other budgetary data at the outset of this commitment, the potential impact of its publication as open data is minor. In Galev's view, the MoF could achieve a bigger impact in terms of transparency and accountability if, instead of the SEBRA data, it publishes the reports on the Unified Budget Account and/or more detailed data on the different expenditures of the municipalities that it collects and assembles in a single database.⁷

Completion

The commitment is being implemented since 22 May 2015, that is, before its inclusion in the action plan.⁸ The MoF has been publishing the aggregated data from the SEBRA in an open format (.csv) on the Open Data Portal daily. The data are structured in detail under the payments types codes used in SEBRA and for every individual budget spending system.

In implementing the commitment, the MoF with the help of the Administration of the Council of Ministers has designed a uniform open format template for publishing the data. The MoF publishes the data both in closed format template (i.e., Excel) on the Ministry's website and in an open format on the Open Data Portal. The public body has published a thorough description of the scope and codes of the data.⁹ The administration also put in place technical guarantees that the information published on the ministry's website and on the Open Data Portal is exactly the same.¹⁰

Did it Open Government?

Access to Information: Marginal

The IRM researcher considers that in implementing the commitment the government has brought a marginal improvement in its transparency practices relating to the budget payments. According to Galev, the SEBRA data deliver a lot of information, some of it unique, but because it is impossible to link it to other data, their uses are limited to extracting a few indirect indicators ("proxy data") for possible irregularities in budget management. He recommends that the publication of the data on the Portal be made open and machine-readable, in a way that the data do not need fixing before reuse. In addition, the publication could be completely automated and provide excerpts for different periods – monthly, quarterly, bi-annually, and annually. For better usability of the data, Galev suggests that the MoF modify its templates so that the SEBRA data match and could be compared to the data on the Unified Budget Account.

The government noted that SEBRA's payment coding would create the possibility for errors in initiating payments in SEBRA and deteriorate the quality of the data, if it were changed according to the recommendation above.¹¹ The government suggests that "the necessity to generate such data in SEBRA, for the purposes of transparency and public awareness, should be assessed in the context of all the information and data on the budget expenditures that are available and published in accordance with PFA (Public Finances Act), as well as the necessary costs for the development of additional functionalities in the system."¹²

Next Steps

The commitment was completed and was not continued through the third Bulgarian action plan.

¹ See Open Data Portal of the Republic of Bulgaria at <http://bit.ly/IRRb6UP>.

² Bulgaria July 2015 Update to Second Action Plan.

http://www.opengovpartnership.org/sites/default/files/NAP2_New_Commitments_EN_Final.docx.

³ Experts from "Public Relations and Protocol" and "Treasury" directorates of the Ministry of Finance, e-mail exchange from 21 July 2016 and in-person interview with IRM researcher, 27 July 2016.

⁴ Article 68 of the Decree of the Council of Ministers on the execution of the state budget for 2015 (Постановление № 8 на Министерския съвет от 16 януари 2015 г. за изпълнението на държавния бюджет на Република България за 2015 г.), Ministry of Finance. Available in Bulgarian at <http://bit.ly/2dTssRC>.

⁵ "SEBRA, Presentation", BORICA – BANKSERVICE. Available in English at <http://bit.ly/2eFv9sn>.

⁶ Todor Galev (Senior analyst, Economic Program, Center for the Study of Democracy – an independent interdisciplinary public policy institute and Bulgaria's largest NGO), interviewed by IRM researcher, 14 September 2016.

⁷ Idem. Ibid.?

⁸ "Payments in SEBRA and other payments in BNB", Open Data Portal of the Republic of Bulgaria, the date of the first publication is 22 May 2015. Available in Bulgarian at <http://bit.ly/2egDCy5>.

⁹ "Scope of the daily published information on budget payments" (Обхват на публикуваната ежедневна информация за плащанията на бюджета), Ministry of Finance. Available in Bulgarian at <http://bit.ly/2eFGF7d>.

¹⁰ Experts from "Public Relations and Protocol" and "Treasury" directorates of the Ministry of Finance, e-mail exchange from 21 July 2015 and in-person interview with IRM researcher, 27 July 2015.

¹¹ Comments by the Bulgarian government of the pre-publication version of this report, e-mail correspondence with the IRM, March 2017.

¹² Comments by the Bulgarian government of the pre-publication version of this report, e-mail correspondence with the IRM, March 2017.

11. Improving the Ex-post Control on Public Procurement Contracts

Text of Commitment:

1. Drafting a Guide containing uniform control mechanisms aimed at avoiding overlapping checks and ensuring equal treatment of violations

Start date: 1 July 2014

End date: 31 December 2015

2. Analysis of established violations (including conflict of interest) in public contracting and the sanctions imposed

Start date: 1 July 2014

End date: 31 May 2015

3. Drafting a matrix of indicators and periodic monitoring of irregularities in relation to the practice of imposing administrative sanctions

Start date: 1 July 2014

End date: 31 December 2016

Responsible institution: Ministry of Finance, Public Financial Inspection Agency

Supporting institution(s):

Editorial note: This commitment is part of the commitments added by the Bulgarian government in July 2015 – after the midterm mark and at the beginning of the second year of implementation of the action plan. For this reason, there is no midterm completion assessment.

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
Overall			✓		✓					✓						✓			✓		
11.1. Guide on control mechanisms			✓		✓					✓						✓			✓		
11.2. Analysis of violations			✓		✓					✓						✓		✓			
11.3. Matrix of indicators			✓		✓					✓						✓			✓		

Context and Objectives

This commitment aimed to improve control over awarding and implementing public procurement contracts and introducing a uniform practice of control and accountability ex-post. Ex-post refers to control over the awarding and execution of these contracts after the event.

The IRM researcher was unable to determine, through desk research and interviews with government and civil society stakeholders, who proposed this commitment. The political decision on formulating this additional commitment in the action plan remained unexplained for the IRM researcher and the public in general.

As pointed out by EU institutions, Bulgaria has a long history of weaknesses in public procurement rules, which “are considered as an important source of corruption.”¹ The commitment is part of the National Strategy for Development of Public Procurement 2014-2020 (the Strategy; a non legally binding document).² It was adopted as a result of the government finding an unsystematic practice of ex-post control over public contracts and lack of consistent analysis of established violations.³

There are two bodies that exercise control over public procurement contracts – the Public Financial Inspection Agency (PFIA), an administration under the minister of finance and part of the executive,⁴ and the Bulgarian National Audit Office (BNAO), an independent body reporting before the National Assembly.⁵ The commitment seeks to introduce a uniform practice of control and accountability for these two institutions.

According to the Strategy, the development of a uniform system of indicators for periodic reporting violations and imposed administrative sanctions would be of significant benefit for optimizing ex post control. It would help develop the monitoring of awarding and contract execution practices, and facilitate the spotting of trends in practice and the tracking of infringements and errors committed by the contracting entities. Finally, the uniform approach to reporting the results of the monitoring would help government keep statistics on the oversight activities.⁶

The IRM researcher believes that the commitment’s potential impact is minor as it fails to enhance PFIA’s efforts toward deterrence and prevention of procurement rules’ violations. According to stakeholders with vast experience in the field of public procurement,⁷ the guide could improve the communication between the PFIA and the BNAO. However, there are other serious issues of ex post control related to PFIA’s hierarchical subordination to the Minister of Finance. A recent EU-funded anticorruption report pointed out that, despite the agency’s increased capacity in tackling procurement problems, it is subject to constant political interference. This results in limited deterrence and prevention effects. The violations of the public procurement rules continue to be widespread.⁸

According to government, the PFIA disagrees with the findings of this anticorruption report, claiming that it does not reflect objectively the actual situation at present. “Having a limited capacity PFIA operates a significant number of checks of vital public interest including major public contracts.”⁹

In relation to the reporting indicators, the interviewed civil society experts¹⁰ stated that the improvement of collection and reporting of control data ex post is important for the instruction and preparation of all public procurement actors. However, the reporting indicators fail to indicate the exact causes of the violations of the law. The new indicators categorize violations into four broad categories, but in the IRM researcher’s opinion, this will not be enough to list the exact causes of the infringements, since one category could include a number of violated legal provisions. Interviewed stakeholders also explained that a true interlinking between the different public registers and data sets related to public procurement, such as the Commercial register, the Administrative register, and the different data sets published by the PFIA and BNAO, would have a stronger impact on improving risk-based control and prevention.

The specificity of the commitment's text is medium, since it lists three actions and deliverables with a timetable, but without a specific description of their procedures for adoption, their goals and expected outcomes changing the administrative practices.

Completion

According to the interviewed experts from the PFIA,¹¹ the first completed milestone was drafting the analysis of public procurement legislation violations and the administrative and court practices on the imposed sanctions (**milestone two**). The analysis covers three years – 2013, 2014, 2015. It provides the number of established violations under each provision in the Public Procurement Act (PPA) for each year. It also provides the annual numbers of issued individual administrative sanctions, as well as how many of them were challenged in courts and how many were repealed or confirmed. The analysis outlines some of the reasons for repealing these sanctions, such as the frequent changes in the PPA and some contradictory court practice on different provisions. The analysis is an internal document which the PFIA did not publish, but which it provided to the IRM researcher. The experts stated it had two goals: (1) to inform the formulation of the administrative sanctions provisions in the new Public Procurement Act (adopted in February 2016, in force since April 2016);¹² and (2) to serve as the basis for establishing uniform indicators for the periodic accountability reports of the PFIA and the BNAO. The PFIA and BNAO finalized the analysis in 2015.

Using the analysis' outcomes and conclusions, the PFIA then implemented the **third milestone**, that is, drafting and adopting the new "Indicators for reporting violations in the awarding and execution of public procurement contracts and the imposed administrative sanctions by the BNAO and the PFIA" on 28 October 2015. PFIA published the indicators on its website.¹³ They cover 16 categories of data similar to the analysis, including the numbers of inspections/audits carried out, the numbers of procurers and procedures inspected, the numbers and broad types of violations established, the number of imposed administrative sanctions, the amounts of fines imposed and collected, the number of sanctions challenged before the court, the numbers of the repealed and confirmed ones, and the number of pending cases. These indicators will be used for structuring the data in both PFIA's and BNAO's annual public reports, as well as in PFIA's quarterly public data releases on carried inspections.

In early 2016, the PFIA together with the BNAO drafted and adopted the public "Guide on uniformisation of the ex-post control in the field of public procurement,"¹⁴ thereby fulfilling **milestone one**. This document provides an overview of the control functions carried out by the two institutions, the characteristics of control ex-post, the guidelines on how to carry out the inspections, and the new common checklists for inspections.

The interviewed government experts explained that both the guide (milestone 1) and the reporting indicators (milestone 3) will be applied throughout the next two years, since many procurement procedures will still be carried out under the old Public Procurement Act (PPA). The guide and indicators provide a lot of new and useful data to be gathered and which will be included in the annual public reports of both bodies.

Did it Open Government?

Access to Information: Marginal

The publication of the guide and reporting indicators for the institutions' public reports have a marginal effect on improving the government's information disclosure practices related to control of public procurement. The guide and new common indicators that the institutions use provide information on how inspections are to be carried out. They will also produce comparable data on the violations found and the inspections carried out. However, they would fail to provide the necessary information on the causes of the infringements, because they do not go into sufficient detail. In addition, the new guide and reporting indicators are only short-term documents. The PFIA and BNAO will use them only in the next two years and only for the procedures started before April 2016. Meanwhile, in order to

implement the new legislation after April 2016, they will need to establish new versions of the guide and reporting indicators. The implementing institution also failed to gather enough feedback on the existing practices of civil society and the private sector in order to respond better to the needs of public procurement actors.

Next Steps

The third Bulgarian national action plan addresses some of the stakeholders' and EU institutions' recommendations. It focused on commitments related to the new PPA and to the projected improvement of the risk assessment in early public procurement phases. The plan includes two commitments related to the *ex ante* control of public procurement:

“1.1.9. Development of a Centralized Public Procurement System containing all modules including e-evaluation and e-submission of bids. Prepare and employ a centralized tender documentation. Strengthening the role of the Central Public Procurement Authority via the e-procurement system” and

“5.1.5. Amendments to the Public Procurement Act introducing an obligation for applicants for large contracts to disclose their beneficial owners and undergo preliminary checks”

¹ BULGARIA: Technical Report *Accompanying the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification mechanism*, (SWD(2012) 232 final), European commission, 18.7.2012, pages 27 and 28, <http://bit.ly/2dvPccK>.

² National Strategy for Development of Public Procurement 2014 – 2020 and Plan for implementation of the strategy, measures 12.3, 13.1 and 13.2, Public Consultations Portal, 11 July 2014. Available in Bulgarian at <http://bit.ly/2eBNwPL>.

³ Bulgaria July 2015 Update to Second Action Plan.

http://www.opengovpartnership.org/sites/default/files/NAP2_New_Commitments_EN_Final.docx

⁴ “The Agency,” Public Financial Inspection Agency. Available in English at <http://bit.ly/2dkZkok>.

⁵ “About us,” Bulgarian National Audit Office. Available in English at <http://bit.ly/2eiN5Kg>.

⁶ National Strategy for Development of Public Procurement 2014 – 2020, Ibid., page 49.

⁷ Plamen Nemchev (Director) and Atanas Roussenov (lawyer in the Public Procurement Center – a NGO), interviewed by IRM researcher, 12 September 2016.

⁸ “The Bulgarian public procurement market: Corruption risks and dynamics in the construction sector”, Ruslan Stefanov, Stefan Karaboev, Center for the Study of Democracy, ANTICORRP, 10 June 2015, page 22, <http://bit.ly/2evZs21>.

⁹ Comments by the Bulgarian government of the pre-publication version of this report, e-mail correspondence with the IRM, March 2017.

¹⁰ Plamen Nemchev and Atanas Roussenov, Ibid.

¹¹ Petya Petkova (Director of “Planned Inspection Activities in the Field of Public Procurement Directorate” of the PFIA) and Anelia Yordanova (Head of Department “Inspection Activities Analysis” of the PFIA), interviewed by IRM researcher, 11 July 2016.

¹² Public Procurement Act, National Assembly, promulgated on 12 February 2016. Available in Bulgarian at <http://bit.ly/2equCdy>.

¹³ “Indicators for reporting violations in the awarding and execution of public procurement contracts and the imposed administrative sanctions by the Bulgarian National Audit Office and the Public Financial Inspection Agency,” Public Financial Inspection Agency, published at a later date in 2016. Available in Bulgaria at <http://bit.ly/2dOkPKq>.

¹⁴ “Guide on uniformisation of the ex-post control in the field of public procurement carried out by the Bulgarian National Audit Office and the Public Financial Inspection Agency,” Public Financial Inspection Agency, date of final adoption 03 February 2016. Available in Bulgarian at <http://bit.ly/2e6hdqp>.

12. Introducing e-procurement

Text of Commitment:

1. *Adoption of Amendments and Supplementations to the Public Procurement Act regulating e-procurement*
Start date: 01 March 2015 End date: 01 March 2016

2. *Deployment of the first module for electronic contract notices of the unified e-procurement platform*
Start date: 01 January 2016 End date: 31 December 2016

Responsible institution: Public Procurement Agency

Supporting institution(s):

Editorial note: This commitment is part of the additional commitments added by the Bulgarian government in July 2015 – after the midterm mark and at the beginning of the second year of implementation of the action plan. For this reason, there is no midterm completion assessment.

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
Overall			✓		✓			✓			✓				✓		✓				
12.1. Reform of the PPAAct			✓		✓			✓			✓					✓	✓				
12.2. Launching the e-notices module			✓		✓			✓	✓				✓				✓				

Context and Objectives:

This commitment sought to improve Bulgaria's e-procurement rules and practices. According to the action plan, "the current e-procurement system entails a risk of abuse given the strong subjectivity involved, the insufficient transparency of procedures and the lack of standardized work processes in implementing the different stages of the procurement procedure."¹ The new rules will be implemented via a new e-procurement platform that will improve access to public procurement procedures (calls), reduce the administrative burden and costs for businesses, and ensure effective public control. From monitoring, interviews conducted for this report, and desk research, the IRM researcher was unable

to find any civil society participation in the drafting of this commitment or determine who proposed this commitment.

The responsible institution for the implementation of this commitment is the Public Procurement Agency (the Agency), which is an executive body currently subordinated to the Minister of Finance and not the former Ministry of Economy and Energy, as the action plan indicates.

This commitment is part of the preexisting national strategy on public procurement.² It involves adopting new rules on e-procurement and ensuring e-notification (i.e., electronic access to the tender opportunities and documents). Under the new EU directives on public procurement, which the Bulgarian government is obligated to follow, this should be done by April 2016.³ According to all interviewed experts, the new e-procurement rules will facilitate the work on public procurement procedures for most of the actors through the digitalization of their communications. Thanks to this digitalization, stakeholders also agree that e-procurement will limit corruption to some extent.

The potential impact of the implementation of the e-procurement rules is moderate. Weaknesses in Bulgaria's public procurement rules are considered an important source of corruption (please see Commitment 11) which procurement digitization is intended to solve.⁴ However, according to civil society experts interviewed,⁵ e-procurement will not bring a decisive end to corruption. The biggest risks of corruption are encountered in the drafting of public tenders and offers. This can be illustrated by several notorious cases in which public institutions drafted the tenders' technical requirements in such a way that only a single product and, thus, a single vendor satisfied them, thereby eliminating competition.⁶ So far, there is no real control for preventing these risks. In practice, only another competing participant could appeal against such a procedure. The IRM researcher considers the new e-procurement rules and future platform to have the potential to help fight corruption in public procurement through improved transparency, but remain limited if not coupled with a serious risk-based control approach.

Given the detailed guidelines in the EU directives regarding how countries should approach e-procurement, but the lack of reference to these directives in the commitment's language, the IRM researcher determined the commitment was of medium specificity.

Completion

Overall, the commitment is substantially completed. The government drafted and the parliament adopted a new Public Procurement Act (PPA) in February 2016. It has been in force since April 2016,⁷ thus the **first milestone** is complete and on schedule.

The **second milestone's** completion regarding the launching of the new e-procurement platform is limited. In February 2015, the Council of Ministers took the decision to purchase a new centralized platform for e-procurement.⁸ The platform would allow for e-notification, e-submission of offers, e-opening of the offers, e-evaluations, e-complaints, and so on. The interviewed Agency experts⁹ explained that the government has advanced on the development of the platform, but has not launched it yet. According to stakeholders with experience in the field of public procurement,¹⁰ the platform's completion and full operation by 1 January 2017, the platform's mandatory launch date, could be significantly delayed, or even cancelled. The stakeholders noted that the choice of a one-platform approach requires enormous efforts to include all individual cases and to allow more than 5,000 procuring entities of different sizes and operating capacities to use it effectively. This resulted in a complex set of conditions of the public tender for building the platform,¹¹ slowing down the process. In addition, the experts do not think it is possible to train the large number of civil servants to work with the platform before its mandatory launching for e-communication on 1 January 2017.

The IRM researcher considers that, even though the government did not launch the new platform in the assessment period, the commitment as a whole is substantially complete, because of the introduction of legal guarantees, detailing its functions and operation capabilities.

Did it Open Government?

Access to Information: Did not change

Up to the end of the assessment period (30 June 2016), only the new legislation was adopted and had entered into force. Government experts¹² pointed out that the future digitalization of the opening of e-offers should guarantee that the procuring authorities will not manipulate the procedures and, thus, limit some of the risks of corruption. According to interviewed civil society experts,¹³ the e-procurement provisions in the new law and its bylaw are vague, lack specificity, and fail to provide clear legal guarantees in crucial procedures. For example, the law and bylaw do not specify how a procuring entity would be unable to manipulate and open e-offers.

The IRM researcher believes that the adoption of the law and bylaw provide information on the principles of functioning of e-procurement and also list public accountability procedures, such as the digitalization of the opening of e-offers. However, the government and parliament left their implementation and the setting of specific guarantees to the future platform. Thus, the legislation did not change government practices in this action plan's assessment period as yet.

Next Steps

The third Bulgarian national action plan includes two commitments related to the present one:

"1.1.9. Development of a Centralized Public Procurement System containing all modules including e-evaluation and e-submission of bids. Prepare and employ a centralized tender documentation. Strengthening the role of the Central Public Procurement Authority via the e-procurement system" and

"5.1.5. Amendments to the Public Procurement Act introducing an obligation for applicants for large contracts to disclose their beneficial owners and undergo preliminary checks."

This second commitment addresses some of the stakeholders' recommendations for fighting corruption in the public procurement field. They would like to see better integration and interconnection between the different public registers, such as the Property Register, the Commercial Register, the registers for conflict of interests and assets declarations, and so on, in order to be able to track the real owners of companies participating in tenders and assess corruption risks at an early phase. This would result in better and more effective peer oversight in the public procurement procedures.

¹ Bulgaria July 2015 Update to Second Action Plan.

http://www.opengovpartnership.org/sites/default/files/NAP2_New_Commitments_EN_Final.docx

² National Strategy for Development of Public Procurement 2014 – 2020 and Plan for implementation of the strategy, measures 1.2 and 6.1, Public Consultations Portal, 11 July 2014. Available in Bulgarian at <http://bit.ly/2eBNwPL>.

³ “E-procurement,” European Commission, <http://bit.ly/2eagC5P>.

⁴ Ibid.

⁵ Plamen Nemchev (Director) and Atanas Roussenov (lawyer in the Public Procurement Center – a NGO), interviewed by IRM researcher, 12 September 2016.

⁶ See, for example, “Bulgaria: Minister’s Classmate Wins Bids for Expensive SUVs, Website Says”, OCCRP, 09 December 2015 (available in English at <http://bit.ly/2ejef1T>); and “The National Assembly seeks a bid for a precise automobile” (Народното събрание обявя поръчка за точно определен автомобил), Dnevnik.bg, 14 September 2012 (available in Bulgarian at <http://bit.ly/2dylqnn>).

⁷ Public Procurement Act, National Assembly, promulgated on 12 February 2016. Available in Bulgarian at <http://bit.ly/2equCdv>.

⁸ Decision of the CoM no. 108 of 19 February 2015, Legal Information System of the Council of Ministers, 04 March 2015. Available in Bulgarian at <http://bit.ly/2djmXWq>.

⁹ Ana Mitkova (Head of Public Procurement Register and Monitoring Directorate in the Public Procurement Agency), Petya Nikolova (Chief expert in the Methodology, Analysis and Control of Public Procurement Directorate in the Agency) and Dafinka Velcheva (Chief expert in Information Services of the Public Procurement Register Department in the Agency), interviewed by the IRM researcher, 12 August 2016.

¹⁰ Plamen Nemchev (Director) and Atanas Roussenov (lawyer in the Public Procurement Center – a NGO), interviewed by IRM researcher, 12 September 2016.

¹¹ “Development, launching and maintenance of a Centralized Public Procurement System...” (Обществена поръчка с идентификационен номер: 00005-2016-0001, Разработване, внедряване и поддръжка на единна национална електронна уеб-базирана платформа: Централизирана автоматизирана информационна система „Електронни обществени поръчки“ (ЦАИС ЕОП), финансирана по Оперативна програма „Добро управление“ (ОПДУ), съфинансирана от Европейския съюз (ЕС) чрез Европейския социален фонд (ЕСФ)), Public Procurement Register, 17 August 2016. Available in Bulgarian at <http://bit.ly/2f9z0dY>

¹² Ana Mitkova, Petya Nikolova and Dafinka Velcheva, Ibid.

¹³ Plamen Nemchev and Atanas Roussenov, Ibid.

13. Improved System for Managing the Risk of Conflict of Interest

Text of Commitment:

Instituting a new structure of the asset disclosure and conflict of interest declarations with the following elements:

1. Full electronization of the data in both declarations
2. Expanding the scope of public officials filing declarations to include public servants in the central administration and the territorial units of government agencies
3. Expanding the scope of data to be disclosed in the declarations in order to improve risk analysis and detect corruption practices
4. Assigning tasks related to the primary processing and collection of data to the inspectorates and the district government administrations
5. Delegating auditing and verification powers as well as increased competences to lift bank and tax privacy privilege
6. Authorizing the Revenue Service to audit the declarations of established risk [Note that the Bulgarian version of this milestone adds – “concerning the civil servants”]

Responsible institution: Ministry of Justice, Council of Ministries

Supporting institution(s):

Start date: 01 June 2015

End date: 31 December 2016

Editorial note: This commitment is part of commitments added by the Bulgarian government in July 2015 – after the midterm mark and at the beginning of the second year of implementation of the action plan. For this reason, there is no midterm completion assessment.

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Completion		Mid-term End of term		Did it open government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not started	Limited	Substantial	Completed	Worsens	Did not change	Marginal	Major	Outstanding
				✓	✓			✓			✓		N/A					✓			
													✓								

Context and Objectives

This commitment aimed to improve mechanisms to prevent conflict of interest. According to the action plan, a relatively small number of government officials are obligated to file asset disclosures and conflict of interest declarations under the current system while at the same time the amount of requisite data to be disclosed is insufficient.¹ There is no consistent practice of verifying the declared information.² This commitment came in response to Bulgaria being perceived as the most corrupt country in the EU.³ Another authoritative report on Bulgaria called “State Capture Unplugged” notes that “overall, Bulgarian regulatory agencies need to improve their oversight, reporting of sanctions and inspection procedures, because results in this respect are modest.”⁴

According to the interviewed government advisor,⁵ the commitment is an answer to recommendations under the EU Cooperation and Verification Mechanism concerning Bulgaria.⁶ The commitment is based on the National Strategy for Preventing and Countering Corruption (a non legally binding policy document).⁷ The specificity of the text is generally high, since the commitment focuses on specific provisions in the draft anti-corruption law, a version of which the government had introduced in parliament before formulating the commitment.⁸ The IRM researcher was unable to find any civil society participation in the drafting of this commitment.

The draft anti-corruption law aims at codifying several existing laws and delegating new functions to a united anti-corruption body – the National Bureau for Prevention of Corruption and for Illegal Assets Forfeiture. The bureau would be in charge of coordinating the collection of, verifying and publishing the combined declaration for assets disclosure, and of conflict of interest concerning persons occupying high state positions in the executive and legislature. Currently, different bodies are collecting two types of declarations – one for assets disclosure and one for conflicts of interests concerning different sets of officials and civil servants.

The draft law provides that all declarations of assets disclosure and conflicts of interests and the declarations of incompatibilities (i.e., documents declaring that a person does not occupy other positions or carry out actions incompatible with her public duties),⁹ should be kept electronically and published.¹⁰ According to the interviewed civil society expert,¹¹ this “electronization” of the declarations would improve the effectiveness of checks and balances, as well as the communications and interconnectivity between the different administrative bodies collecting the declarations.

The bill provides that the scope of both the disclosed data and the declaring persons would be largely extended.^{12,13} It would cover practically all civil servants and officials. However, the bureau will automatically verify fewer declarations. The interviewed government advisor¹⁴ explained that this reform aims at allowing the bureau to concentrate on important cases which concern decision makers and takers. The responsibilities to collect the declarations and to verify the conflicts of interest concerning lower civil servants positions would be assigned to the inspectorates internal to the administrative bodies.¹⁵

The draft law delegates auditing and verification powers respectively to the bureau and internal inspectorates.¹⁶ The interviewed civil society expert¹⁷ explained that this milestone is the core of the prevention regime reform, but the draft law provides for automatic verifications only on declared assets. There are no automatic verifications on the conflicts of interest’s data. The texts set an obligation for the officials and civil servants to stand down in such cases. The head of the public body will also have an obligation to recuse a subordinate in a conflict of interest situation.¹⁸ However, the civil society expert noted that the bill provides no clear control mechanism on these provisions.¹⁹ The government advisor stated that this would eliminate the need for a constant monitoring position in the public bodies. As an addition, the bureau would also have the authority to access the central Credit Register and to ask a court to lift the bank, tax, and social security secrets.²⁰

The sixth milestone is being implemented by a text²¹ which does not delegate any new powers to the Revenue Agency. It is a procedure for referral of certain cases. Nonetheless, it could have a positive effect in improving communication between controlling bodies.

The bill is controversial. This is at least partly due to modest government efforts in explaining the future provisions and engaging in dialogue with civil society. In the IRM researcher’s opinion, a number of the critiques in these stakeholders’ statements are misinformed, due to the insufficient information and explanations accompanying the voluminous and hard to read draft law. However, as many of these statements point out, the bill lacks a transparency instrument, such as an impact assessment. The lack of a proper impact assessment of the entire bill hinders the government’s and stakeholders’ analyses of its potential.

As the interviewed civil society expert noted, the government often does not take the necessary measures to inform the public of the actual improvements in the system. One of the main problems in Bulgaria, according to this expert, is that the institutions cannot find the appropriate preventive or “deterrent measures” to corruption. Transparency and accountability from the controlling bodies could provide this prevention. So far, no institution reports extensively on the number of received signals, the number of actual checks, the analysis of the violations found, or the measures taken to counter them in the future.

In the IRM researcher’s opinion, the potential impact of the draft anti-corruption law is moderate. If adopted and implemented, the future law would not eliminate the major deficiencies in the Bulgarian system of the separation of powers, which foster corruption. However, its system for tackling wrongful behaviors through its new coordination and increased transparency and accountability of the future public registers of assets disclosure and conflict of interests’ declarations would improve the fight against corruption and foster further public pressure on the political system to reform.

Completion

The implementation of the commitment is limited. The implementation of all the milestones of the commitment was to be done by legislative reform. The draft anti-corruption law, initially proposed by the government, received a number of critiques and parliament rejected it at first reading in September 2015.²² This prompted an international reaction and a group of 16 ambassadors from the EU and EFTA countries called for new ideas as soon as possible to tackle corruption.²³ The Council of Ministers proposed a second version of the draft law, which again received some serious critiques from civil society,²⁴ but most notably from the Supreme Court of Cassation (Bulgaria’s highest jurisdiction on civil and criminal matters).²⁵ The government adopted the draft law without significantly modifying its text and introduced it in parliament in April 2016. The National Assembly approved it at first reading on the last day of June 2016.²⁶ The final adoption is still pending and becoming more unlikely to happen at the writing of this report in December 2016. With the government’s resignation and the failed attempts at a new government in this parliament, Bulgaria is heading for early parliamentary elections. A majority in the parliamentary Legal Committee voted to drop the second reading of the law from its schedule, because of the lack of time for further work. This effectively ends the chances for adoption in this parliament.²⁷ If the efforts on adoption are continued in the future, the bill will have to be introduced anew in a future parliament and pass through the entire legislative procedure again.

Did it Open Government?

Access to Information: Did not change

The draft law’s adoption in parliament is pending and, thus, did not change the government’s practices in the July 2014-June 2016 period.

Next Steps

The third Bulgarian national action plan includes a commitment related to the present one: “5.1.2. Development and implementation of an Information System for Corruption Risk Analysis.”

¹ Bulgaria July 2015 Update to Second Action Plan.

http://www.opengovpartnership.org/sites/default/files/NAP2_New_Commitments_EN_Final.docx

² Katia Hristova-Valcheva, PhD (Expert in Transparency International – Bulgaria), interviewed by IRM researcher, 26 July 2016.

³ “Corruption Perception Index – 2015,” Transparency International, Transparency International – Bulgaria. Available in Bulgarian at <http://bit.ly/2eTYbC6>.

⁴ “State Capture Unplugged: Countering Administrative and Political Corruption in Bulgaria,” Center for the Study of Democracy, Sofia, 2016, p. 25. Available in English at <http://bit.ly/2e42fRf>.

⁵ Alexandra Kovacheva (Advisor in the cabinet of the Deputy Prime Minister for European Policies Coordination and Institutional Affairs and Minister of Education and Science), interviewed by IRM researcher, 28 August 2016.

⁶ “Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification mechanism” and “Technical report,” European Commission, (COM(2015) 36 final), 28 January 2015, http://ec.europa.eu/cvm/progress_reports_en.htm.

⁷ National Strategy for Preventing and Countering Corruption in the Republic of Bulgaria 2015 – 2020 (Национална стратегия за превенция и противодействие на корупцията в Република България 2015–2020 г.), Public Consultations Portal, 09 April 2015. Available in Bulgarian at <http://bit.ly/2eAlJOd>.

⁸ Draft “Law for Preventing Corruption among the Persons Occupying High State Positions” (проект на Закон за предотвратяване на корупцията сред лицата, заемащи висши публични длъжности), Public Consultations Portal, 22 May 2015. Available in Bulgarian at <http://bit.ly/2dEYkLU>.

⁹ Draft “Law for Preventing Corruption and Illegal Assets Forfeiture” (Законопроект за предотвратяване на корупцията и за отнемане на незаконно придобито имущество), National Assembly, introduced on 13 April 2016, approved at first reading on 30 June 2016, , Articles 36, par. 8 and 37, par. 5. Available in Bulgarian at <http://bit.ly/2ejvEWM>.

¹⁰ Ibid, Articles 42 and 43.

¹¹ Katia Hristova-Valcheva, *ibid*.

¹² Ibid., Article 38, par. 6, 8, 9, 10.

¹³ Ibid., Article 5 and § 2 of the Additional Provisions.

¹⁴ Alexandra Kovacheva, *ibid*.

¹⁵ Ibid., Article 41 and § 2 of the Additional Provisions.

¹⁶ Ibid., Articles 44-53.

¹⁷ Katia Hristova-Valcheva, *ibid*.

¹⁸ Ibid., Articles 58-72.

¹⁹ Ibid., Article 82, par. 1. There is a debate on the scope of this draft provision. It sets an administrative sanction only for the violation of a “prohibition.” The obligations to stand down and recuse are obligations to do something. They require an action, hence, they do not directly prohibit one. Thus, in the civil society expert’s and the IRM researcher’s opinions, Article 82 does not explicitly cover the obligations to stand down and recuse under Articles 58-60. The government advisor, also a lawyer and PhD candidate in constitutional law, disagrees. The provision would need a revision or future interpretation by the courts.

²⁰ Ibid., Article 31, par. 5, 6 and 7, and § 2 of the Additional Provisions.

²¹ Ibid., Article 93, par. 2 and § 2 of the Additional Provisions.

²² Draft “Law for Preventing Corruption among the Persons Occupying High State Positions”, National Assembly, rejected on 03 September 2015. Available in Bulgarian at <http://bit.ly/2ejt6lq>.

²³ The ambassadors of the Netherlands, France, Germany, the UK, Austria, Belgium, Ireland, Poland, Denmark, Finland, Italy, Cyprus, Spain, Luxembourg, Norway and Switzerland, “Bulgarian anti-corruption law: joint statement from Ambassadors,” British Embassy Sofia, 7 September 2015, <http://bit.ly/1UwGxVr>.

²⁴ See the opinions posted during the public consultation on the Draft “Law for Preventing Corruption and Illegal Assets Forfeiture” (Законопроект за предотвратяване на корупцията и за отнемане на незаконно придобито имущество), Public Consultations Portal, 16 March 2016. Available in Bulgarian at <http://bit.ly/2dF0dZg>.

²⁵ “Opinion on the Draft Law for Preventing Corruption and Illegal Assets Forfeiture,” Supreme Court of Cassation, 23 March 2016. Available in Bulgarian at <http://bit.ly/2eAycBv>.

²⁶ Draft “Law for Preventing Corruption and Illegal Assets Forfeiture” (Законопроект за предотвратяване на корупцията и за отнемане на незаконно придобито имущество), National Assembly, introduced on 13 April 2016, approved at first reading on 30 June 2016. Available in Bulgarian at <http://bit.ly/2ejvEWM>.

²⁷ “The anti-corruption law was dropped from the parliament’s schedule” (“Антикорупционният закон отпадна от програмата на парламента”), Mediapool, 14 December 2016. Available in Bulgarian at <http://bit.ly/2jgOOzQ>.

14. Introducing the Concept and Practice of Problem Solving Courts in Bulgaria

Text of Commitment:

Developing an evidence-based methodology for the work of judges with vulnerable social groups based on empirical research and know how provided by American experts/judges following the model of the problem-solving courts in the US.

Specific measurable indicators:

- Number of participating experts;
- Number of participating judges;
- Methodology in place

Responsible institution: Ministry of Justice

Supporting institution(s):

Start date: 1 June 2015

End date: 31 December 2016

Editorial note: This commitment is part of the commitments added by the Bulgarian government in July 2015 – after the midterm mark and at the beginning of the second year of implementation of the action plan. For this reason, there is no midterm completion assessment.

Commitment Overview	Specificity				OGP value relevance (as written)				Potential Impact				Com-pletion		Mid-term		Did it open government?				
															End of term						
Overall		✓			Unclear				✓					✓			✓				

Context and Objectives

This commitment's main objective is to educate judges on the specific needs and procedural rights of people in vulnerable social groups (e.g., children, drug addicts, people with mental problems). This applies especially to the first-instance courts. According to the action plan, Bulgarian courts are perceived as rather "technocratic" "letter of the law" institutions. The courts are not integrated with other public institutions tasked with providing effective protection to vulnerable groups and overcoming social inequality, such as health experts, social workers, law and order, education and culture. Judges lack formal training on how to ensure equal treatment of different social groups.

According to the interviewed expert from the Ministry of Justice (MoJ), the commitment encompasses parts of two preexisting reforms.¹ These are the implementation into national law of the UN Convention on the Rights of the Child² and its committee's 2008 concluding observations,³ as well as

the UN Convention on the Rights of Persons with Disabilities⁴ and its committee's general comment no.1.⁵

All interviewed stakeholders agreed that in the sphere of juvenile criminal justice the proposed substitution of penal with correctional measures, as well as the limiting and reform of the detention system are positive steps. The future law would support the reintegration and resocialization of minors in conflict with the law. Existing closed facilities for minors will be abolished and replaced by correctional and educational centers inside urban areas. This would provide the opportunity for the supply of better professional training and reintegration of minors in these centers. Krassimir Kanev,⁶ an experienced human rights leader, stressed the limits of the future legislation, such as the lack of specialized courts for children. In criminal matters, the new law will still be implemented by judges in criminal law, who could lean toward a more punitive approach. Control of the bodies implementing the correctional and educational measures would be weak. In smaller urban or village areas the new correctional and educational centers would not be able to develop the specific professional education, which would limit their efficiency.

The potential impact of the commitment as an open government reform is unclear. It covers important reforms, which should result in a complete overhaul of the legal system concerning minors and disabled people, but the lack of clarity of the commitment's text hinders the assessment of its actual goals. The reader could interpret the text of the commitment to include a couple of different reforms and the responsible institution could claim after the implementation that the commitment was meant to include a variety of actions. Concerning juvenile justice, Kanev⁷ noted that improving the institutional framework and training professionals are positive but marginal steps without reforming the entire legislative framework and implementing international standards.

The IRM researcher was unable to determine why the MoJ proposed this commitment or find any civil society participation in the drafting of this commitment. The political decision on formulating this additional commitment in the action plan as well as its clear relation to the OGP values of transparency, accountability, and civic participation remained unexplained for the IRM researcher and the public in general.

Completion

The commitment's completion is limited, because of the relatively low number of trained professionals and courts involved in juvenile justice reform, and because the two draft laws are yet to be adopted by the National Assembly.

In terms of juvenile justice reform, as of June 2016, the MoJ has trained 30 magistrates, police officers, and social workers. They all are working with or within the five pilot courts (out of the total 143 district and regional courts in Bulgaria) which are the first to establish panels of judges specialized in juvenile justice. In 2015 a team of lawyers with experience in the field, along with UNICEF experts, drafted a special "Handbook for the work of the specialized court panels, dealing with cases with the participation of children." The handbook contains chapters on (a) a description of all types of cases involving children, (b) the roles of the different participants in the process – prosecutors, judges, social workers, defenders, and (c) the international and national legal standards on juvenile justice. The handbook is not public, but the MoJ distributed it to the pilot courts and the trained professionals, according to the interviewed government⁸ and UNICEF⁹ experts.

In addition, in April 2016 the MoJ opened in the city of Varna the first "blue room," a friendly environment for questioning of juveniles. Another 11 such rooms should be constructed by the end of 2017.¹⁰ Finally, after several months of preparation, in September 2016, after this report's assessment period, the MoJ published a draft for a new law on juvenile criminal justice.¹¹ It would set a minimum age of criminal liability at 14 years, and provide for specialization in the police, the prosecution service and the courts, which deal with juveniles in conflict with the law. It contains specific measures for

diversion from criminal procedure as well as measures for prevention, support, reintegration and resocialization of juveniles in conflict with the law.¹²

According to the interviewed MoJ expert, the second reform which falls within the scope of the commitment is the work on the Draft Law on the Natural Persons and Support Measures, which the MoJ drafted and discussed with stakeholders in 2015 and 2016. The government introduced the bill in parliament in August 2016.¹³ In the IRM researcher's opinion, the commitment's project-oriented text does not directly cover this reform. The bill relates to the general idea of forging modern legislation for vulnerable social groups. The draft law proposes the abolition of the legal concepts and regimes of guardianship and incapacitation, which prevented persons subject to them to exercise their rights, and provides a new system of measures for support. By virtue of these measures, adults with mental health problems or intellectual disabilities will be able to exercise their basic human rights in accordance with their personal desires and preferences.¹⁴

Did it Open Government?

Access to Information: Did not change

Civic Participation: Did not change

Public Accountability: Did not change

Since the described measures do not clearly relate to the OGP values, the extent to which they opened government and changed administrative practices is also unclear.

Next Steps

The commitment was not continued through the third Bulgarian action plan.

All interviewed stakeholders stated that the primordial task is the adoption of the bills. After that, there will be a need to train all judges, prosecutors, social workers, and lawyers working in the field.

¹ Elena Furnadjieva (expert in the "Legislation Council" Directorate of the Ministry of Justice), interviewed by IRM researcher, 16 August 2016.

² Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, Office of the United Nations High Commissioner for Human Rights (OHCHR), <http://bit.ly/1fVlqsS>.

³ "Concluding observations : BULGARIA," Committee on the Rights of the Child, Forty-eighth session, (CRC/C/BGR/CO/2), 23 June 2008, <http://bit.ly/2eLHbiZ>.

⁴ Convention on the Rights of Persons with Disabilities, OHCHR, <http://bit.ly/1QjkzDd>.

⁵ General comment No. 1 (2014) on Article 12: Equal recognition before the law, Committee on the Rights of Persons with Disabilities, Eleventh session, 31 March–11 April 2014, <http://bit.ly/2e4xfgy>.

⁶ Krassimir Kanev (Founder and President of the Bulgarian Helsinki Committee – one of the oldest and the largest human rights watchdog in Bulgaria), interviewed by IRM researcher, 22 August 2016.

⁷ Ibid.

⁸ Elena Furnadjieva, Ibid.

⁹ Kremena Chobanova, (Access to Justice Consultant in UNICEF Bulgaria), interviewed by IRM researcher, 18 August 2016.

¹⁰ For more see the media coverage on the project's Facebook page – Укрепване на правния капацитет на в сферата на младежкото правосъдие, <http://bit.ly/2erXa31>.

¹¹ Draft Law on Diversion from Criminal Proceedings and imposition of Disciplinary Measures for Juveniles (Проект на Закон за отклоняване от наказателно производство и налагане на възпитателни мерки на непълнолетни лица), Public Consultations Portal. Available in Bulgarian at <http://bit.ly/2eY93jD>.

¹² "Committee on the Rights of the Child reviews the report of Bulgaria", Committee on the Rights of the Child, OHCHR, 30 May 2016, <http://bit.ly/1RV4sqZ>.

¹³ Draft Law on the Natural Persons and Support Measures (Законопроект за физическите лица и мерките за подкрепа), National Assembly, introduced on 04 August, 2016, <http://bit.ly/2f1taOL>.

¹⁴ "Bulgaria is about to make step forward in the efforts to recognize the human rights of people with disabilities", BCNL, 22 January 2015, <http://bit.ly/2fnxujt>.

METHODOLOGICAL NOTE

Commitments are clustered based on the 2014-2015 midterm IRM report with the addition of the new commitments from 2015. This report is based on a desk review of governmental programmes, draft laws and regulations, governmental decrees, review of the government self-assessment report, analysis of the commitments, interviews with stakeholders (see the list in the [Bulgaria library http://bit.ly/2jopYLV](http://bit.ly/2jopYLV)), as well as on monitoring the process of elaboration of the 3rd Bulgarian Action Plan.

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The Open Government Partnership (OGP) aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP's Independent Reporting Mechanism assesses development and implementation of national action plans to foster dialogue among stakeholders and improve accountability.

