

Independent Reporting Mechanism

Action Plan Review:
Albania 2020–2022

Open
Government
Partnership



Independent
Reporting
Mechanism

Introduction

Starting in January 2021 the IRM began rolling out the new products that resulted from the IRM Refresh process.¹ The new approach builds on the lessons after more than 350 independent, evidence-based and robust assessments conducted by the IRM and the inputs from the OGP community. The IRM seeks to put forth simple, timely, fit for purpose and results-oriented products that contribute to learning and accountability in key moments of the OGP action plan cycle.

The new IRM products are:

1. **Co-creation brief** - brings in lessons from previous action plans, serves a learning purpose, and informs co-creation planning and design. This product is scheduled to roll out in late 2021, beginning with countries co-creating 2022-2024 action plans.
2. **Action Plan Review** - an independent, quick, technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. This product is scheduled to roll out in early 2021 beginning with 2020-2022 action plans. Action Plan Reviews are delivered 3-4 months after the action plan is submitted.
3. **Results report** - an overall implementation assessment that focuses on policy-level results and how changes happen. It also checks compliance with OGP rules and informs accountability and longer-term learning. This product is scheduled to roll out in a transition phase in early 2022, beginning with 2019-2021 Action Plans ending implementation on August 31, 2021. Results Report are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of Albania's 2020-2022 action plan. The action plan is made up of nine commitments. This review emphasizes its analysis on the strength of the action plan to contribute to implementation and results. For the commitment-by-commitment data see Annex 1. For details regarding the methodology and indicators used by the IRM for this Action Plan Review, see section III. Methodology and IRM Indicators

¹ For more details regarding the IRM Refresh, see <https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh/>.

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Section I: Overview of the 2020–2022 Action Plan

Albania's fifth action plan aligns closely with pre-existing government strategies and priorities toward EU accession, including commitments to prevent corruption in public institutions, introduce beneficial ownership transparency, and improve access to justice. However, the government continued to act contrary to the OGP process as it developed the action plan without a multistakeholder forum. A dedicated multistakeholder forum should be established, without delay, to monitor implementation of the current plan and develop future action plans that also consider citizen and civil society priorities.

Albania's 2020–2022 action plan is the country's fifth OGP action plan. It contains nine commitments, which seek to develop integrity plans, a beneficial ownership register, improve and digitize public service delivery, publish open data, expand measures ensuring access to justice, and implement budget transparency and transparency of state assets and revenue.

The 2020–2022 action plan development process saw the continued absence of a forum or space for government and civil society to jointly oversee the development process, set priorities, and choose final commitments.¹ Therefore, Albania continues to act contrary to the OGP process by not establishing a dedicated multistakeholder forum or space, despite being notified of acting contrary to the OGP process in the previous cycle.² To overcome this, the IRM reiterates its previous recommendation for Albania to establish such a forum, in line with OGP standards, to oversee implementation of the action plan and development of the next plan.³

During the plan's development, the government sent invitations to relevant civil society to participate in pre-consultation surveys on the government's four priority areas. The summary reports for these surveys show that by this stage, the government had already chosen commitments and that the surveys included questions to support the government's choices, or relatively general questions about open government.⁴ At later stages in the process, the government invited some civil society groups to comment on most of the drafted commitments. According to some of these invited civil society groups, government institutions considered civil society input at these meetings or reflected them in the commitments, while others noted they were already in longstanding conversations with government before the action plan development process started.⁵

AT A GLANCE

Participating since: 2011

Action plan under review: 2020–2022

IRM product: Action plan review

Number of commitments: 9

Overview of commitments:

- Commitments with an open gov. lens: 9 (100%)
- Commitments with substantial potential for results: 3 (33%)
- Promising commitments: 3 (33%)

Policy areas carried over from previous action plans:

- Budget transparency
- Digitizing public services
- Open data

Emerging policy areas:

- Integrity plans
- Beneficial ownership
- Access to legal aid

Compliance with OGP minimum requirements for co-creation:

- Acted contrary to OGP process: Yes

The government published its evaluations and feedback on civil society comments as an annex to the action plan and on the Albanian OGP repository.⁶ The quality and specificity of the feedback was not consistent across the commitments, and it was not always easy to understand how specific comments were incorporated into final commitments.⁷ This demonstrates some, but limited, progress in feedback compared to the previous action plan cycle, when Albania acted contrary to the OGP co-creation process for not providing any reasoned response to stakeholder input. For future action plans, the feedback should be clearer, more precise, and publicly available for stakeholders before the action plan is published so they can understand how their input was considered and incorporated.

As a consequence of this process, the commitments in the 2020–2022 action plan are largely replicated from pre-existing government initiatives and strategies, rather than stemming from priorities identified through engagement with civil society and citizens. Furthermore, since the commitments continue pre-planned or ongoing reforms, some milestones were already implemented before the action plan consultation began. As with previous action plan commitments, most are supported, financially or otherwise, by international donors or are specific measures needed in Albania’s journey towards EU accession.⁸

The quality of commitment design, however, has improved since the previous action plan; commitments have clear objectives and represent a wider range of open government topics.⁹ The three promising commitments analysed in Section II could deliver substantial results. “Integrity plans” will be the first time that government risk assessments specifically focus on corruption and provide anticorruption measures that will be monitored and evaluated in collaboration with civil society (e.g., the Ministry of Justice’s integrity plan during the action plan’s implementation, and other line ministries’ plans). The beneficial ownership register will centralise and publish important information that may help authorities tackle money-laundering by publicly identifying the real owners of businesses in Albania. The commitment on access to justice will engage vulnerable and marginalized groups to increase judicial awareness and provide greater access to justice through free legal aid and mediation services.

Commitments on the open data portal and on public service delivery are coded “unclear” because they largely continue actions which were planned or started before the action plan was adopted. Commitments on budget and revenue transparency also have unclear potential, as their milestones appear to have already been implemented or constitute internal reforms, which do not clearly articulate an ambitious open government lens.

¹ The government could not provide sufficient evidence of a dedicated multistakeholder forum when requested by the IRM. Evis Qaja, Government point of contact, email with IRM researcher, 16 Apr. 2021. One example of a government-only meeting discussing how to conduct the consultations, is available at: <http://ogp.gov.al/artikull/komponenti-4-fiskale> (see notes from 10 Sept. 2020 meeting).

² Sanjay Pradhan (CEO of OGP), letter to Deputy Prime Minister Brace (Albania), 14 Jul. 2020, https://www.opengovpartnership.org/wp-content/uploads/2021/03/Albania_Contrary-to-Process-Letter_July2020.pdf.

³ OGP, “OGP Participation & Co-Creation Standards” (2017), <https://www.opengovpartnership.org/ogp-participation-co-creation-standards/>.

⁴ Reports on pre-consultation surveys show that commitments were already chosen before civil society was engaged in the process. See Government of the Republic of Albania, *The Open Government Partnership National Action Plan for Albania 2020–2022, Pre-consultation Report for Component 4: ‘Fiscal Transparency’* [sic] (OGP, 2020), http://ogp.gov.al/uploads/2020/12/20201230142340_4_en_pre_consultation_report_fiscal_transparency.pdf; Government of the Republic of Albania, *The Open Government Partnership National Action Plan for Albania 2020–2022, Component 1: Anti-corruption*

Pre-consultation report (OGP, 2020), http://ogp.gov.al/uploads/2020/12/20201230142135_1_en_pre_consultation_report_anti-corruption.pdf.

⁵ IDM confirmed they had been discussing integrity plan activities with the government since before the action plan process began. Rovena Sulstarova, emails with IRM researcher, 17 Feb. 2021. Mario Prendi (Albanian Legal and Territorial Research Institute) and Merita Toska (CO-Plan) stated their comments were reflected in the commitments (emails with IRM researcher, 17 Mar. 2021).

⁶ Government of the Republic of Albania, *The Open Government Partnership National Action Plan for Albania 2020 - 2022* (OGP, 2020), https://www.opengovpartnership.org/wp-content/uploads/2021/01/Albania_Action-Plan_2020-2022_EN.pdf.

⁷ *Id.* at Annex 4. In most cases, the feedback merely describes the civil society feedback, without mentioning if or how this feedback influenced final commitments.

⁸ For example, commitments on integrity plans and access to justice are supported by UNDP projects, while beneficial ownership transparency and budget transparency commitments are related to EU accession.

⁹ Commitments in the prior action plan had multiple milestones on a variety of topics under a broad, overarching objective. This current plan includes milestones under each commitment that are specific and relevant to the policy area. There are more commitments with “modest” or “substantial” potential for results in this current plan compared to those assessed as “moderate” in the prior design report. Elvana Gadeshi, *Independent Reporting Mechanism (IRM): Albania Design Report 2018–2020* (OGP, 2020), https://www.opengovpartnership.org/wp-content/uploads/2020/06/Albania_Design_Report_2018-2020_EN.pdf.

Section II: Promising Commitments in Albania’s 2020–2022 Action Plan

The following review looks at the three commitments that the IRM identified as having the potential to realize the most promising results. This review will inform the IRM’s research approach to assess implementation in the Results Report. The IRM Results Report will build on the early identification of potential results from this review to contrast with the outcomes at the end of the implementation period of the action plan. This review also provides an analysis of challenges, opportunities and recommendations to contribute to the learning and implementation process of this action plan.

If fully implemented, these three promising commitments could significantly change government practice in their respective policy areas. Commitment 1 on integrity plans aims to assess corruption risks and develop anticorruption measures in all state-level institutions and evaluate their implementation in, at least, the Ministry of Justice. This could establish clear and specific standards for ministries to prevent corruption and enable the public to understand what corruption risks exist. Commitment 2 would set up a beneficial ownership register in Albania for the first time, which could substantially increase and facilitate access to this information. This information could then assist in tackling money laundering threats. The commitment on access to justice would introduce a robust legal and institutional framework, and deliver legal aid and mediation services that could substantially change public access to these services, particularly for vulnerable and marginalized groups.

The other commitments, which have not been analysed in this section, relate to commitments which have only modest or unclear potential for results. The commitments related to improving the quality of public-service delivery at Integrated Services Centers, publishing open data, improving budget transparency, and improving transparency of public assets and revenue have unclear potential for results as they are ongoing reforms; inclusion in the action plan does not add further value or ambition to what was already planned in the Public Finance Management Reform Strategy of 2019-2022.¹ The commitment to update the Ministry of Justice website is a positive push toward greater transparency and is coded as having modest potential for results. The commitment on providing digital public services is also a positive development but has only modest potential as participation with civil society appears limited in scope (it only prioritizes which services to digitize rather than how also to improve those services).

Table 1. Promising commitments

Promising Commitments
<p>1. Integrity plans — This is the first time that risk assessments would be implemented in Albania with a specific corruption focus and measures to tackle these risks. The Ministry of Justice plans to implement, monitor, and evaluate their own integrity plan and support other institutions in doing the same.</p>
<p>2. Beneficial ownership register — This commitment would centralize beneficial ownership information in Albania in one open and public register. Public authorities may find it easier to access such information and tackle issues like money laundering. It may lead to Albania being taken off the Financial Action Task Force “grey list” of countries with strategic deficiencies in this area.</p>
<p>6. Access to legal aid — This commitment would expand access to mediation services and legal aid, particularly to people outside the capital and marginalized or vulnerable groups.</p>

Commitment #1: Integrity plans

(Ministry of Justice)

For a complete description of the commitment, [see Commitment 1 in the action plan](#).

Context and objectives

This is the first of Albania's OGP action plans to include activities specifically developing, implementing, and evaluating integrity plans. This commitment reflects activities from the action plan for implementing the Inter-Sectorial Strategy against corruption 2015-2020 (extended to 2023), which includes implementing all ministerial integrity plans.² The U.N. Development Programme (UNDP) has supported six Albanian local governments in adopting local integrity plans and is recruiting a consultant to continue similar support for other municipalities through its STAR3 project.³ The Group of States against Corruption (GRECO) recommended that integrity plans be implemented within all ministries.⁴ Currently, there are no comprehensive anticorruption risk or monitoring assessments in Albanian central government institutions.

The activities build on the actions of the Ministry of Justice and an NGO, the Institute for Democracy and Mediation (IDM), which jointly developed a methodology for integrity plans and applied it to the Ministry in 2019.⁵ The IDM was engaged in this activity before the adoption of the OGP action plan and it contributed toward the final commitment.⁶ While the action plan identifies the need to promote and ensure integrity in public officials and the public administration more broadly, GRECO specifies that the behaviour and actions of top executives should also be included in the plans.⁷

According to IDM, there was favourable space for discussions during development of this commitment, but civil society participation in the co-creation process meetings was low.⁸ They felt this was possibly because integrity plans are a new concept in Albania and expertise may be limited and/or that civil society trust of the consultation process itself may have been quite low.⁹ Raising civil society trust in the co-creation process in Albania, whereby their engagement influences the process and content of commitments, may increase participation.

The commitment aims to develop and approve a methodology for producing integrity plans (Milestones 1, 3, and 9), train public officials on applying the methodology (Milestone 2), and produce and publish integrity plans for all central institutions (Milestones 4–7). Activities also include monitoring performance and producing evaluations on plan implementation (Milestones 10–13). The commitment includes public participation as civil society would be consulted on the monitoring of the integrity plans and the government will provide feedback on public input (Milestone 10). Publishing the integrity plans would give public access to the assessments and measures outlined in the plans (Milestone 8).

Currently, an integrity plan exists only for the Ministry of Justice (adopted before the start of the action plan implementation period, in 2020).¹⁰ GRECO stated this particular integrity plan could serve as an example for other ministries as it assesses ethical behaviour of the Minister, Deputy Minister, Chief of Cabinet, and political advisors.¹¹ The Ministry of Justice also confirmed that it had already shared the methodology with other government ministries and instructed them to begin the process of developing their integrity plans in November 2020 (before the OGP action plan had been adopted).¹²

Potential for results: Substantial

This commitment could lead to corruption-risk assessments being produced for the first time in all central government institutions. For example, the Ministry of Justice Integrity Plan identifies and qualifies risks (high, medium, or low priority), the kind of risk (such as reputational, operational, or financial) and identifies activities and responsible persons to address them.¹³

Full implementation of this commitment could substantially tackle corruption risks in central government institutions, as for the first time, Albanian institutions will identify and outline specific remedial measures. In the Ministry of Justice Integrity Plan, activities are arranged around three objectives to introduce clear internal processes to reduce the risk of corruption, ensure adequate human resourcing, and implement more transparency on the Ministry's anticorruption work. Activities include the need to adopt and implement rules around accepting gifts, prohibiting the use of state property for personal use, reviews of the procedures for investigating corruption, implementing internal procedures for public consultations and guaranteeing the right to information, as well as publishing audits, financial monitoring reports, contracts, procurement procedures, complaints procedures, and more.¹⁴

However, the commitment identifies only the Ministry of Justice as collaborating with civil society in monitoring and evaluating the performance of the measures included.¹⁵

In 2019, citizens made 23,605 complaints related to public administration; 22,423 were addressed, leading to 171 administrative measures and 20 cases going before Anti-Corruption Task Forces.¹⁶ A 2019 poll revealed that 87.5% of Albanians perceive petty corruption as widespread or very widespread in Albanian society.¹⁷ According to the poll, 15% of Albanians had personally witnessed government corruption at the central level and of the 34.8% of respondents that received a service at the central level, 19.1% paid a bribe for that service.¹⁸ Successful implementation of this commitment could increase public trust in institutions' capacity to deal with corruption, which might cause an initial increase in corruption reporting in the short term. However, an eventual decrease in the number of complaints and experiences of petty corruption would reflect the efficacy of anticorruption measures inside the public administration. Therefore, rather than look at the number of cases alone at the end of the implementation period, it may be useful to measure the percentages of cases that are prosecuted, sanctions applied, or changes in practice inside government.

In relevance to open government, the commitment would increase transparency by publishing integrity plans, which in the case of the Ministry of Justice, also includes actions to increase transparency of the institution itself and improve internal right-to-information procedures. This could increase the amount of information available to citizens and improve processing of the right of access to information. For the first time, citizens would be able to access proactively public institutions' exposure to corruption and their anticorruption measures. The commitment is also relevant to participation as it would involve civil society in the monitoring of integrity plan implementation, which could be a substantive change in government practice, depending on how it engages civil society. With the first evaluation of the Ministry of Justice Integrity Plan due in 2021, it should be possible to establish how far the commitment goes in ensuring participation of civil society and the kinds of information that could be expected to be published.

Opportunities, challenges, and recommendations during implementation

IDM has identified both human resourcing and raising awareness of informal and formal measures to implement integrity plans as potential challenges to successful implementation of integrity plans in Albania.¹⁹ The UNDP has committed to providing adequate guidance, resources, and capacity to implement integrity plans, which suggests a risk in maintaining implementation of the plans without external help.²⁰

However, institutions must also collaborate closely with civil society, particularly as they monitor implementation. The potential for results is threatened if engagement with civil society is not meaningful. Central state institutions must not only encourage broad engagement, but also clearly demonstrate how civil society and citizen contributions are incorporated into monitoring and evaluation. Implementation can also benefit from cooperation and knowledge-sharing between institutions developing and implementing integrity plans.

Integrity plans will need to address top executives' behaviour and actions to effectively reduce corruption risks.²¹ This includes informing such officials regularly if their behaviour or actions fall foul of anticorruption rules and about the potential consequences.²² IDM stated that a potential challenge to successful implementation could arise from not having the support of the governing body or head of the institution.²³ The Ministry of Justice has already developed its integrity plan, thus completing some milestones of the commitment. GRECO has praised the MoJ, particularly for its assessment of the ethical behaviour of the Minister, Deputy Minister, Chief of Cabinet, and political advisors in the Ministry, saying that the plan could serve as an example for other ministries.²⁴

A longterm challenge for integrity plans is the extent to which they are dynamic and regularly refreshed.²⁵ Periodic updates can ensure they are effective in preventing corruption and managing the risks in institutions.

- **During implementation of this commitment, sufficient and dedicated human resources should be allocated within ministries to develop, implement, and monitor integrity plans that are tailored to their specific institution.** This includes sharing knowledge between institutions as well as giving opportunities to external nongovernmental stakeholders who can help identify risks, propose measures, and take part in monitoring and evaluation.
- As part of implementing the integrity plans, institutions should address top executives' behaviour and actions to be effective in reducing corruption. This includes **informing top officials regularly about where their behaviour and actions might fall foul of anticorruption rules and ensuring reprimands if this does happen.**

Commitment #2: Beneficial ownership register

(Ministry of Finance and Economy)

For a complete description of the commitment, [see Commitment 2 in the action plan](#).

Context and objectives

This is the first time that a commitment introducing a beneficial ownership register has appeared in an Albanian OGP action plan. Implementation of the commitment would fulfil a recommendation from MONEYVAL on introducing mechanisms to ensure information on beneficial ownership is accurate, up-to-date, and available to public authorities.²⁶ Albania has made a high-level political commitment to work with the Financial Action Task Force (FATF) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) to strengthen efficacy of its anti-money-laundering regime since February 2020, including implementing a register of beneficial owners.²⁷

Money laundering and terrorist financing risks are still high in Albania, despite recent progress on addressing deficiencies in technical compliance with MONEYVAL's mutual evaluation report.²⁸ Beneficial ownership information is currently decentralized, meaning that authorities have to first establish which financial institution might hold data on specific entities before trying to gain access.²⁹ A centralised register, which is current and accurate, would therefore tackle this problem. However, nongovernmental activists are sceptical about whether a register alone can tackle tax evasion, money laundering, or organised crime involving domestically operating companies that are registered overseas, particularly in tax havens.³⁰

There is no evidence of civil society consultation on this commitment during development of the action plan. During this review, the IRM could not connect with Albanian civil society working on beneficial ownership to determine the commitment's potential, opportunities, or challenges.

The commitment seeks to draft and pass a law, and subsequent by-laws, that establish a central beneficial ownership register and the necessary framework. However, a law on a beneficial ownership register was passed in July 2020 (and entered into force a month later), before this action plan was published.³¹ The law defines a beneficial owner as having at least a 25% ownership stake, and who to record as the beneficial owner when it has not been possible to identify a beneficial owner.³² It establishes free and open access to the name and surname of the beneficial owner, their citizenship and birth year and month, the date determining the individual as a beneficiary owner, and the type and percentage of ownership.³³ The data can be downloaded automatically once users are logged into the e-Albania website.³⁴ Access to more detailed information (e.g., the ID or passport number, or expiry date) requires a legitimate interest, meaning a person authorised to represent the reporting entity or competent state authorities would need to request the information from the National Business Centre.³⁵

According to the law, the register would be created no later than 31 January 2021, and the deadline to provide updated data is extended to 30 June 2021.³⁶ The commitment should increase transparency of information by the end of the implementation period. A public register addresses some MONEYVAL concerns regarding Albanian authorities accessing beneficial ownership information and using that data to tackle money laundering and terrorist financing.

Potential for results: Substantial

Before this action plan, beneficial ownership information in Albania was not centralised or collected by public authorities. Public authorities in Albania could only access beneficial ownership information by first establishing which financial institution the legal person or arrangement had a business relationship with, and then approaching that institution for information.³⁷ In 2019 for example, 232 cases of money laundering were referred to prosecutors but there were only 8 cases with final convictions for money laundering.³⁸ Creating a centralised register of beneficial owners that is updated regularly and includes sanctions for inaccurate information³⁹ could make it easier for citizens, civil society, and public authorities to determine the real beneficial owners of legal entities. This could facilitate the prevention and detection of money laundering and other similar corrupt activities enabled through secret financial ownership, and even increase the number of investigations and convictions.

Fully implementing a beneficial ownership register may lead to Albania coming off the FAFT “grey list” of countries, designated as such due to strategic deficiencies in countering money laundering, terrorist financing, and proliferation financing.⁴⁰

Opportunities, challenges, and recommendations during implementation

As this is the first beneficial ownership register in Albania, it is a blank slate to develop the register along international standards like the Open Ownership Principles⁴¹ and the Beneficial Ownership Data Standard.⁴² These principles state that public access to such a register should not include obstacles like payments, identification, or registration. Albania must ensure that the legal obligation for openness is implemented without obstacles like requiring registration.

In that sense, the implementation period is an opportunity to address the register’s specifications, which are not yet determined. It is essential that data is accurate, up-to-date, and interoperable with other government processes such as procurement. This would require the National Business Centre (NBC), which will manage the register, to have the resources and mandate to verify the data and impose sanctions for non-compliance. According to an NBC representative, the accuracy and veracity of data and accompanying documents in the register is borne by the reporting entities and the persons authorized to make the registration. Sanctions for not updating the register with beneficial ownership information would lead to \$5,000 USD fines.⁴³ However, it is unclear that data veracity would be proactively checked and opens the possibility of unverified and therefore inaccurate data in the register.

Furthermore, the register could be more effective if the government also addressed if and how the register may be used to root out corruption in government processes such as procurement. There are actions that can be taken to deal with this. For example, Denmark automatically checks data against other datasets, such as the civil register, to ensure that false or deceased persons are not registered, and it conducts hundreds of random data checks every year. Ukraine has proposed a system which would automatically check beneficial ownership data against tax payments to spot potential inconsistencies or evasion of beneficial ownership data.⁴⁴ There are also mechanisms that can be used before data is submitted. In Belgium, data such as birthdates can only be registered in certain formats to ensure comparability.⁴⁵ These rules can be enforced with sanctions such as in Slovakia where third parties like lawyers or financial institutions are responsible for the accuracy of the data submitted and liable to sanctions if the information is incorrect. France not only applies financial sanctions but incorrect data can also

lead to limitations on business activities.⁴⁶ The IRM makes the following implementation recommendations to improve the potential for results:

- **Legal and/or technological mechanisms should be put in place to ensure that the data submitted to the beneficial ownership register is accurate, up-to-date, and compatible with other databases.** Beyond ensuring that submitted data is accurate and compatible with other databases or processes (such as procurement), this can give the National Business Centre the mandate to verify data accuracy.
- **The National Business Centre should be resourced to ensure that they can successfully verify data that is submitted to the register.** Alongside the ability to impose sanctions for not keeping information current, the NBC should also be empowered to impose sanctions for inaccurate or incorrect data submitted.
- **Data from the open beneficial ownership register should be downloadable without administrative obstacles such as having to log in to the e-Albania platform.** The principle of public access to beneficial ownership registers outlines the need for data to be accessible without barriers such as payment, identification, or registration, and that the use of “legitimate interest” be limited so that the register does not become a closed register in practice.⁴⁷

Commitment #6: Access to legal aid

(Ministry of Justice)

For a complete description of the commitment, [see Commitment 6 in the action plan.](#)

Context and objectives

While this is not the first time that an Albanian action plan addresses openness in the justice sector,⁴⁸ it is the first time that an action plan deals specifically with providing legal aid and mediation. The commitment seeks to improve the legal and institutional framework for providing legal aid, increase collaboration with the legal and mediator communities, and provide relevant training. The establishment of an interinstitutional forum that includes citizens, civil society groups, and government institutions to improve the delivery of legal aid is a particular milestone that ensures this commitment relates to the open government value of participation.

Some activities of this commitment stem from a law passed in 2017 guaranteeing legal aid by the state.⁴⁹ According to a government representative, the main purpose of that law was to ensure access to free legal aid for all Albanians, particularly marginalised and vulnerable groups.⁵⁰ The law defines vulnerable groups as including victims of domestic violence, sexually abused victims, minors, persons that benefit from the payment for disability, and beneficiaries of social protection programs (such as Roma and Egyptian community members).⁵¹ A 2018 report by the Tirana Legal Aid Society identified that people from vulnerable groups (it highlighted the Roma community, people with disabilities, and those undergoing economic hardship) do not seek legal aid because they are unaware it exists or lack resources to access it.⁵²

More broadly, a 2017 UNDP survey found that almost half of Albanians had unresolved legal problems because of a lack of legal awareness and an underperforming legal sector.⁵³ Since

2017, the UNDP has been working in the country to support free legal aid and promote legal awareness and empowerment.⁵⁴ The EU Euralius programme has also been working in Albania on consolidating the justice system, including addressing the legal framework for legal aid.⁵⁵

The government had already implemented some of the milestones in this commitment before starting the co-creation process and adopting the final action plan. In any case, a lawyer from civil society who was invited to engage in the co-creation process said that he supported the activities in the commitment, particularly the creation of an interinstitutional forum as proposed by officials from the Directorate after discussion with civil society.⁵⁶

Finally, before moving onto the potential for results, the IRM notes that the commitment outlines what bodies and agencies it will establish, but not necessarily the expected results or specific outcomes. This makes it difficult to establish baselines to measure progress, which is why the review established alternative measures of success when discussing the potential for results. The government could better measure success if it stated the intended results from this reform of legal aid and mediation. As explained below, this might include ensuring quality of legal aid and mediation provision, and collecting data on the number of people from marginalized groups who access legal aid or mediation.

Potential for results: Substantial

Implementation of this commitment has the potential for substantial results. Before the action plan was adopted however, the government had already implemented Milestones 1–3 on the legal framework by updating the 2017 law (and relevant bylaws between 2017–2020) by establishing the Directorate of Free Legal Aid in 2019 and legal aid service centres in collaboration with civil society organisations in 2019–2020.⁵⁷ The remaining milestone on establishing the interinstitutional forum is due to be implemented in 2021,⁵⁸ as well as Milestones 5–8, on improving institutional cooperation with mediators, building professional capacity of mediators, raising awareness of mediation, and establishing an updated register of mediators.

The projected budget to support legal aid in Albania is due to more than quadruple from around 150,000 USD in 2019, to 430,000 USD in 2020, to over 700,000 USD in 2021.⁵⁹ Between January–December 2020, primary legal aid providers reported 4,191 cases and the Directorate of Free Legal Aid administered 181 Judicial Decisions with secondary legal aid.⁶⁰ By the end of the implementation period, the increased funding should translate into a rise in the number of cases using legal aid.

The types of cases and people using legal aid is also important in assessing successful implementation. The action plan states a need to provide legal aid to marginalised groups and the legal framework explicitly includes domestic violence victims, sexually abused victims, minors, disabled persons that benefit from the payment for disability; persons who are beneficiaries of social protection programs (such as Roma and Egyptian community members).⁶¹ This coincides with a report from the EU, which states that legal aid (alongside other measures) is essential to ensure women's access to justice.⁶² These vulnerable groups are also reflected in the 2018 report by the Tirana Legal Aid Society.⁶³ An increase in the number of cases for these groups year on year, and of the number resolved in favour of the vulnerable plaintiffs, would help establish whether the changes in legal aid is leading to successful results in access to justice for marginalised and vulnerable people. Furthermore, the interinstitutional

forum is an important space that could be used for including these civil society groups in improving policy and delivery of access to justice. While protecting personal data, Albanian authorities would need to collect and publish statistics to establish whether they are meeting the need to provide legal aid to marginalised and vulnerable groups, as expected by law.

Regarding the milestones in relation to mediation, the end of the action plan cycle should see a cooperation agreement between the Ministry and the National Chamber of Mediators, training of mediators on the new legal aid frameworks, an awareness campaign by the National Chamber of Mediators, and a public database of mediators. The National Chamber of Mediators website appears not to have been updated since 2016. Implementation of the action plan should see an increase in the number of mediators trained and better collaboration between institutions. A significant result would be an increase in successfully completed mediations where both parties have agreed to the outcome.

Opportunities, challenges, and recommendations during implementation

Cooperation with civil society groups and legal aid centres is a key aspect of implementing this commitment. The interinstitutional forum provides a formal space for participation, but participation should not be limited simply to this formal space. The provision and growth in the availability of legal aid is a positive step for Albania but a concerted effort to reach out and engage with marginalised and vulnerable groups would ensure that it provides access to justice for all, and not just further access to justice for those who already have access. For example, people with lesser formal education (e.g., lower earners and the Roma community) have the biggest gaps in their legal knowledge, and thus the biggest impediments in accessing justice.⁶⁴ Engagement with these and other vulnerable groups should raise awareness of legal aid and also ensure that they are able to participate in policy definition and implementation so that they can inform and improve access to legal aid.

There are challenges in implementing this commitment that can limit successful access to justice. The Open Society Justice Initiative has identified the quality of legal aid as being an important factor in the state provision of effective legal assistance.⁶⁵ The interinstitutional forum and Directorate for Free Legal Aid therefore, would need to ensure that legal aid is of high quality and that measures are put in place for users to provide feedback or complain if they are dissatisfied with services. This also applies to mediation, where building the capacity and professionalism of mediators would create greater access to justice.

Another challenge for Albanian institutions is to ensure that the increased provision of legal aid and mediation services are used by the vulnerable groups that recent legal reforms have sought specifically to address. This would mean that institutions collect, maintain, and publish statistics—while protecting personal data—on the usage of the services in a disaggregated manner to ensure that improvements can be identified and applied as implementation progresses. However, research shows that data collection needs to improve across the court system in Albania (such as by adopting common standards and processes),⁶⁶ and reflects a larger challenge to collecting legal aid data. The interinstitutional forum would need this kind of statistical data to both inform its work and hold institutions accountable for collecting statistics.

On a practical level, the ongoing COVID-19 pandemic and potential restrictions on freedom of movement may pose a challenge to raising awareness of legal aid and mediation services for marginalised or vulnerable communities. Potential unintended consequences from restrictions

due to COVID-19 may also mean it is harder for individuals to access specific legal advice. Although institutional websites would be updated with relevant information, it is unclear if in-person legal aid and mediation services would be adapted for online provision or if measures would be taken to ensure access for marginalised or vulnerable groups during the pandemic. The interinstitutional forum could be asked to look at measures that do not limit access to these marginalised or vulnerable groups.

- **Users of free legal aid should be provided with high quality services from service centres and other authorised providers or free legal aid.** This also includes the right to provide feedback or complain if they are dissatisfied with these services. **The Directorate of Free Legal Aid should ensure that complaints are taken seriously and dealt with efficiently, with feedback provided to users on any measures taken. The Directorate could target awareness-raising efforts about the ability to complain or provide feedback to marginalised groups.** The process of making complaints or providing feedback should be made clear. For example, the UK government website outlines such complaint procedures in clear language.⁶⁷
- **The Directorate for Free Legal Aid and its subordinate agencies and bodies should establish mechanisms to collect, maintain, and publish data on the use of the various services established through this reform process.** For example, the UK Ministry of Justice publishes detailed quarterly statistics on the usage of legal aid and mediation services in England and Wales online and in open format.⁶⁸ The statistics should be used to understand if the reforms are reaching the vulnerable groups for which it was intended. **Therefore, the Directorate should publish regular progress reports that provide “next steps” for improvement and establish objectives and targets (such as the percentage increase in cases using legal aid).**
- **Legal Aid Services should consider how they can adapt to the post-COVID-19 situation without limiting access to marginalised groups.** This may require Legal Aid Services to ensure access to services and information even if it remains necessary to limit physical access to Legal Aid Service Centres.

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⁸ Sulstarova, email, 17 Feb. 2021.

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- ¹⁹ Rovena Sulstarova (Institute for Democracy and Mediation), emails with IRM researcher, 9 Mar. 2021.
- ²⁰ GRECO, *Fifth Evaluation Round Evaluation Report*.
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- ²⁴ GRECO, *Fifth Evaluation Round Evaluation Report*.
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- ²⁹ MONEYVAL, *Albania: Fifth Round Mutual Evaluation Report: Executive Summary*.
- ³⁰ Ola Mitre, “Marrëveshjet hidrokarbure dhe PPP fshehin taksat dhe lidhjet politike në parajsë fiskale” (Hydrocarbon and PPP deals hide taxes and political connections in tax havens) (*Reporter.al*, 18 Nov. 2020), <https://www.reporter.al/marreveshjet-hidrokarbure-dhe-ppp-fshehin-taksat-dhe-lidhjet-politike-ne-parajsa-fiskale/>.
- ³¹ The President of the Republic of Albania, “Presidenti Meta Dekreton Shpallje Ligji NR. 112/2020” (President Meta decrees promulgation law no. 112/2020), <https://president.al/presidenti-meta-dekreton-shpallje-ligji-nr-112-2020/>.
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- ³⁸ In 2018, there were 257 cases and 10 convictions. European Commission, *Commission Staff Working Document: Albania 2020 Report* (6 Oct. 2020), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf.
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- ⁴² Open Ownership, “The Beneficial Ownership Data Standard” (accessed Jun. 2021), <http://standard.openownership.org/en/0.2.0/>.
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- ⁴⁴ Tymon Kiepe, *Verification of Beneficial Ownership Data: Policy Briefing* (Open Ownership, May 2020), <https://www.openownership.org/uploads/OpenOwnership%20Verification%20Briefing.pdf>.
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- ⁴⁷ Open Ownership, “Principles for Effective Beneficial Ownership Disclosure” (accessed Jun. 2021), <https://www.openownership.org/principles/>.
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- ⁵² Koalicionit “Drejtësi për të gjithë,” *Vlerësimi i nevojave ligjore në shqipëri* (Assessment of legal needs in Albania) (Tirana Legal Aid Society and The European Law Students’ Association, 2018), <https://www.tlas.org.al/sites/default/files/VLER%C3%8BSIMI%20I%20NEVOJAVE%20LIGJORE%20N%C3%8B%20SHQIP%C3%8BR%20%28I%29.pdf>.
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- ⁵⁹ In Albanian currency, these numbers convert to 16 million ALL in 2019, 45.5 million ALL in 2020, and 73 million ALL in 2021. Hoxha, interview, 24 Feb. 2021.
- ⁶⁰ These cases originated as follows: 1,426 from Service Centres, 960 from authorised nonprofit organisations, 41 from law clinics, 1,524 from online lawyer platforms, and 240 from other sources. *Id.*
- ⁶¹ *Id.*
- ⁶² European Commission, *Commission Staff Working Document: Albania 2020 Report*.
- ⁶³ Koalicionit “Drejtësi për të gjithë,” *Vlerësimi i nevojave ligjore në shqipëri* (Assessment of legal needs in Albania)
- ⁶⁴ Dr. Sinisa Milatovic, *Survey on Access to Justice in Albania*.
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Section III: Methodology and IRM Indicators

The purpose of this review is not an evaluation as former IRM reports. It is intended as an independent quick technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. This approach allows the IRM to highlight the strongest and most promising commitments in the action plan based on an assessment of the commitment per the key IRM indicators, particularly commitments with the highest potential for results, the priority of the commitment for country stakeholders and the priorities in the national open government context. To determine which reforms or commitments the IRM identifies as promising the IRM follows a filtering and clustering process:

Step 1: determine what is reviewable and what is not based on the verifiability of the commitment as written in the action plan.

Step 2: determine if the commitment has an open government lens. Is it relevant to OGP values?

Step 3: Commitments that are verifiable and have an open government lens are reviewed to identify if certain commitment needs to be clustered. Commitments that have a common policy objective or commitments that contribute to the same reform or policy issue should be clustered and its “potential for results” should be reviewed as a whole. The clustering process is conducted by IRM staff, following the steps below:

- a. Determine overarching themes. They may be as stated in the action plan or if the action plan is not already grouped by themes, IRM staff may use as reference the thematic tagging done by OGP.
- b. Review objectives of commitments to identify commitments that address the same policy issue or contribute to the same broader policy or government reform.
- c. Organize commitments by clusters as needed. Commitments may already be organized in the Action Plan under specific policy or government reforms or may be standalone and therefore not clustered.

Step 4: assess the potential for results of the cluster or standalone commitment.

The filtering process is an internal process and data for individual commitments is available in Annex I below. In addition, during the internal review process of this product the IRM verifies the accuracy of findings and collects further input through peer review, the OGP Support Unit feedback as needed, interviews and validation with country-stakeholders, and sign-off by the IRM’s International Experts Panel (IEP).

As described in the filtering process above, the IRM relies on **three key indicators** for this review:

I. Verifiability

- “Yes” Specific enough to review. As written in the action plan the objectives stated and actions proposed are sufficiently clear and includes objectively verifiable activities to assess implementation.

- “No”: Not specific enough to review. As written in the action plan the objectives stated and proposed actions lack clarity and do not include explicit verifiable activities to assess implementation.

*Commitments that are not verifiable will be considered “not reviewable”, and further assessment will not be carried out.

II. Does it have an open government lens? (Relevant)

This indicator determines if the commitment relates to open government values of transparency, civic participation or public accountability as defined by the Open Government Declaration, the OGP Articles of Governance and by responding to the guiding questions below. Based on a close reading of the commitment text, the IRM first determines whether the commitment has an open government lens:

- **Yes/No:** Does the commitment set out to make a policy area, institution, or decision-making process more transparent, participatory, or accountable to the public?

The IRM uses the OGP Values as defined in the Articles of Governance. In addition, the following questions for each OGP value may be used as a reference to identify the specific open government lens in commitment analysis:

- **Transparency:** Will the government disclose more information, improve the legal or institutional frameworks to guarantee the right to information, improve the quality of the information disclosed to the public, or improve the transparency of government decision-making processes or institutions?
- **Civic Participation:** Will the government create or improve opportunities, processes, or mechanisms for the public to inform or influence decisions? Will the government create, enable, or improve participatory mechanisms for minorities or underrepresented groups? Will the government enable a legal environment to guarantee freedoms of assembly, association, and peaceful protest?
- **Public Accountability:** Will the government create or improve opportunities to hold officials answerable for their actions? Will the government enable a legal, policy, or institutional framework to foster accountability of public officials?

III. Potential for results

Formerly known as the “potential impact” indicator, it was adjusted taking into account the feedback from the IRM Refresh consultation process with the OGP community. With the new results-oriented strategic focus of IRM products, this indicator was modified so that in this first review it laid out the expected results and potential that would later be verified in the IRM Results Report, after implementation. Given the purpose of this Action Plan Review, the assessment of “potential for results” is only an early indication of the possibility the commitment has to yield meaningful results based on its articulation in the action plan in contrast with the state of play in the respective policy area.

The scale of the indicator is defined as:

- **Unclear:** the commitment is aimed at continuing ongoing practices in line with existing legislation, requirements or policies without indication of the added value or enhanced open government approach in contrast with existing practice.

- **Modest:** a positive but standalone initiative or changes to process, practice or policies. Commitments that do not generate binding or institutionalized changes across government or institutions that govern a policy area. For example, tools like websites, or data release, training, pilot projects
- **Substantial:** a possible game changer to the rules of the game (or the creation of new ones), practices, policies or institutions that govern a policy area, public sector and/or relationship between citizens and state. The commitment generates binding and institutionalized changes across government

This review was prepared by the IRM in collaboration with Elvana Gadeshi and overseen by the IRM's International Experts Panel (IEP). The current IEP membership includes:

- César Cruz-Rubio
- Mary Francoli
- Brendan Halloran
- Jeff Lovitt
- Juanita Olaya

For more information about the IRM, refer to the "About IRM" section of the OGP website, available [here](#).

Annex I: Commitment by Commitment Data¹

Commitment #1: Integrity plans²

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment #2: Beneficial ownership register

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment #3: Provision of interactive electronic public services

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment #4: Expansion and increased accessibility of the Open Data Portal

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment #5: Improving the quality of public service delivery at integrated service centres and service counters

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment #6: Access to legal aid

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment #7: Fully functional Ministry of Justice website

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment #8: Budget transparency

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment #9: Transparency of revenue

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

¹ **Editorial notes:** 1. For commitments that are clustered: the assessment of potential for results is conducted at the cluster level, rather than the individual commitments. 2. Commitment short titles may have been edited for brevity. For the complete text of commitments, please see Albania's action plan: <https://www.opengovpartnership.org/documents/albania-action-plan-2020-2022/>

Annex 2: Minimum Requirements for Acting According to OGP Process

According to OGP’s Procedural Review Policy, during development of an action plan, OGP-participating countries must meet the “Involve” level of public influence per the IRM’s assessment of the co-creation process.

To determine whether a country falls within the category of “involve” on the spectrum, the IRM assesses different elements from OGP’s Participation & Co-creation Standards. The IRM will assess whether the country complied with the following aspects of the standards during the development of the action plan, which constitute the minimum threshold:

1. **A forum exists:** there is a forum to oversee the OGP process
2. **The forum is multistakeholder:** both government and civil society participate in it.
3. **Reasoned response:** The government or multistakeholder forum documents or can demonstrate how they provided feedback during the co-creation process. This may include a summary of major categories and/or themes proposed for inclusion, amendment, or rejection.

The table below summarizes the IRM assessment of the three standards that apply for purposes of the procedural review. The purpose of this summary is to verify compliance with procedural review minimum requirements, and it is not a full assessment of performance under OGP’s Co-creation and Participation Standards. A full assessment of co-creation and participation throughout the OGP cycle will be provided in the Results Report.

Table 2. Summary of minimum requirements to act according to OGP Process

<i>OGP Standard</i>	<i>Was the standard met?</i>
<p>A forum exists. In the previous action plan cycle, Albania acted contrary to OGP process because it did not have a dedicated multistakeholder forum or space to discuss the action plan process.¹ For the development of the 2020–2022 action plan, the government point of contact said again that the Integrated Policy Management Group on Good Governance and Public Administration (IPMG GGPA) carries out the role of the OGP multistakeholder forum. No evidence was provided to the IRM to show that the IPMG GGPA oversees the OGP process or discusses open government. No evidence was provided to the IRM, such as meeting minutes, showing that the action plan process was discussed by members of the IPMG GGPA.² The lack of a dedicated multistakeholder forum means that Albania continues to act contrary to the OGP process. A forum should be set up that oversees implementation of the current action plan and which could also oversee the development of the next action plan.</p>	Red

<p>The forum is multistakeholder. As stated above, there was no multistakeholder forum or space for discussion between civil society and government on the action plan process. Meaningful civil society engagement in the process was limited to filling out pre-consultation surveys and commenting on draft commitments in consultation meetings.³ Any forum that is set up should include stakeholders from civil society and government and could oversee implementation of the current plan as well as development of the next action plan.</p>	Red
<p>The government provided a reasoned response on how the public's feedback was used to shape the action plan. In the previous action plan cycle, the government acted contrary to the OGP process because it did not provide feedback or a reasoned response to stakeholders on their contributions.⁴ In an annex of the 2020–2022 action plan itself, the government explained the outcomes of its consultation meetings, what comments it received, and some information on how this was incorporated into or related to the final action plan.⁵ Civil society had tried to make two proposals, which were not considered, go forward as commitments and instead were integrated into the government's feedback on the comments received.⁶ The lengthy government feedback was published as an annex to the final action plan and on the Albanian OGP repository.⁷ The quality and precision of the feedback is not consistent across the commitments, and it is not always easy to understand in what ways the comments were incorporated (or not) into the final commitments.⁸ While the government has demonstrated progress in this area, in the development of the next action plan, stakeholders should receive feedback before the end of the action plan cycle, and the feedback should be clear and specific in explaining where changes have been made because of the comments, or reasons why comments were not incorporated into the final plan. Spain and New Zealand are good examples for Albania to look at in terms of providing reasoned responses to public and civil society input. During the implementation of this action plan, the government (and/or multistakeholder forum) should provide feedback on input received from civil society.</p>	Yellow

Albania is found to have **acted contrary to OGP process** because it did not provide evidence that the Integrated Policy Management Group on Good Governance and Public Administration (IPMG GGPA) carries out the role of the OGP multistakeholder forum, oversees the OGP process, or discusses open government. No evidence was provided to the IRM, such as any meeting minutes, showing that the action plan process was discussed by members of the IPMG GGPA.⁹ The lack of a dedicated multistakeholder forum means that Albania continues to act contrary to the OGP process. **A forum should be set up with government and civil society representatives which oversees implementation of the current action plan and which could then oversee the development of the next action plan.**

¹ Elvana Gadeshi, *Independent Reporting Mechanism (IRM): Albania Design Report 2018–2020* (OGP, 2020), https://www.opengovpartnership.org/wp-content/uploads/2020/06/Albania_Design_Report_2018-2020_EN.pdf.

² The government point of contact (POC) provided documents including the PM Order establishing the IPMG, but there is no mention of OGP or Open Government. Furthermore, although the IRM requested the information, the POC was unable to provide minutes of IPMG meetings. Evis Qaja, Government point of contact, emails with IRM researcher, 16 Apr. 2021.

³ As explained in the Overview, civil society was not able to influence or discuss the development process with government. Civil society was invited to provide input in online pre-consultation surveys and on the draft commitments in consultation meetings. Feedback and evaluations of this engagement were solely addressed by the government. The POC was unable to provide evidence of civil society involvement in a multistakeholder forum that discussed the process, set priorities, or choose commitments. Evis Qaja, Government point of contact, emails with IRM researcher, 16 Apr. 2021.

⁴ Gadeshi, *Independent Reporting Mechanism (IRM): Albania Design Report 2018–2020*.

⁵ Government of the Republic of Albania, *The Open Government Partnership National Action Plan for Albania 2020–2022* (OGP, 2020), https://www.opengovpartnership.org/wp-content/uploads/2021/01/Albania_Action-Plan_2020-2022_EN.pdf.

⁶ Government of the Republic of Albania, *The Open Government Partnership National Action Plan for Albania 2020 - 2022, Component -Fiscal transparency Consultation Summary 3*, (OGP.GOV.AL, 2020), http://ogp.gov.al/uploads/2020/11/20201103165350_3consultation_report_14-oct.pdf.

⁷ Government of the Republic of Albania, *The Open Government Partnership National Action Plan for Albania 2020–2022*.

⁸ *Id.* at Annex #4.

⁹ See note 2.