Independent Reporting Mechanism

Action Plan Review: Germany 2021-2023

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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 Reports are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of Germany's 2021-2023 action plan. The action plan is made up of 14 commitments. This review emphasises 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.

All interviewees agreed that information received would not be attributed to individuals, to create a more open environment for conversation. Several participants opted for higher levels of confidentiality and are thus only listed with general reference to their organisation or type of organisation. For the same reasons, interviews were not recorded but captured through extensive notetaking.

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[1] For more details regarding the IRM Refresh visit https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh/

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Section I: Overview of the 2021-2023 Action Plan

Germany's third action plan continues the goals of previous plans to increase open data, digitise public administration, consult citizens in specific policy areas, and improve open government at the subnational level. The most promising commitment could lead to improvements in competitiveness and transparency of public procurement. Commitments which make new data and tools available should encourage wide public uptake. When developing future action plans, the Federal Chancellery could organise thematically-focused consultations to more effectively involve civil society.

Germany's third action plan has 14 commitments, including five which involve Länder (state) governments.[1] Only one commitment to expand conferences and forums on improving open data in Germany, is a direct continuation from the previous action plan.

Shortly after the adoption of the third action plan, Germany held elections and parties negotiated a new coalition government in autumn 2021. Several commitments in the action plan happen to connect well with the stated priorities of the incoming coalition government which also continues long-term goals of the Federal Chancellery to digitise Germany's public administration and make it more user-friendly.[2] [3] Germany could consider amending digitisation commitments to be more ambitious during the implementation period. The action plan also seeks to improve civic participation in education policy, trace substances, and biodiversity monitoring, which could be implemented in ways that touch on the incoming coalition's priorities around diversity and inclusion. Finally, Germany could consider adding new commitments in areas that align with the incoming coalition's priorities around climate change and sustainable development, by linking open government to the country's green transition.

Generally, the level of ambition of federal commitments is comparable to previous plans, as most represent incremental improvements to existing practices and their potential for changes is modest. For example, the commitments often involve centralising existing information,[4] making specific information available in open format,[5] or conducting standalone public consultations.[6] For some commitments, it is difficult to assess the potential for results as ambitious, as they are open ended and are not yet fully planned out.[7]

The third plan includes three commitments from two German states (Länder), Hamburg and North Rhine-Westphalia (NRW), addressing civic participation and publishing open data on

AT A GLANCE

Participating since: 2016
Action plan under review: 2021-2023
IRM product: Action Plan Review
Number of commitments: 14

Overview of commitments:
- Commitments with an open gov lens: 14
- Commitments with substantial potential for results: 0
- Promising commitments: 1

Policy areas carried over from previous action plans:
- Digital public administration
- Open data
- Civic participation
- Open government in Länder

Emerging policy areas:
- Transparency of transport infrastructure projects
- Mapping government-held data
- Public contracting

Compliance with OGP minimum requirements for Co-creation:
- Acted in accordance to OGP process: Yes

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public services and elections. The federal government and Länder will jointly implement two commitments, developing an open-source platform for public administration (with Baden-Württemberg and NRW), and setting up a central notification service for public contract award procedures (with Bremen). The ongoing involvement of Länder in Germany's action plans is a positive development, as important open government initiatives have previously occurred at this level.[8]

During implementation, it will be important for public institutions to encourage wide public uptake of the information and tools made available. This may require ongoing consultations during implementation and targeted awareness raising for new platforms on legislative information (6.1) and planning and approval procedures for major federal transport projects (6.3). Commitment 6.3 could also benefit from publishing tenders and available participation opportunities, and since the platform is scheduled to be completed after the action plan period, this commitment could be continued to the next plan. The government and civil society stakeholders identified Commitment 7.2, to develop a central platform for public contract awards, as among the most important in the action plan. To maximise the results of this commitment, the IRM recommends encouraging wide uptake of the new platform by Länder governments, as the participation of the awarding bodies at the Länder level is not legally binding for contracts below the relevant EU thresholds. The IRM also recommends consulting expert stakeholders when determining procurement data fields and widening the scope of procurement data beyond the announcements for tenders.

To develop the third action plan, ministries jointly drafted a non-binding outline as a basis, and civil society then submitted comments and additional proposals mainly, though not exclusively, through the Open Government Network (OGN).[9] In the second stage, the Federal Chancellery prepared a draft action plan that incorporated some ideas from civil society in amended form,[10] while also taking up proposals from past consultations.[11] However, the Federal Chancellery noted that several ideas originating from civil society were not taken up in part because they did not identify an explicit problem, a possible solution, or a responsible public body.[12] According to the Federal Chancellery, moving to a purely online format (due to the COVID-19 pandemic) may have affected the quality of the proposals submitted. Furthermore, the Federal Chancellery noted that the elections in 2021 may have limited the ambition of the action plan, due to the uncertainties around what activities the incoming federal and Länder governments would support.

To increase the quality of engagement in future co-creation processes, the IRM reiterates a previous recommendation to consider transitioning from an all-encompassing open government consultation to thematically focused consultations where specialised civil society stakeholders and relevant ministries jointly develop commitments based on shared interests.[13] Thematically-focused consultations could ensure co-ownership of action plans and help standardise collaboration between civil society and ministries, in lieu of a formal multi-stakeholder forum.[14] Commitment 6.6 aims to bring together experts from civil society and government to regularly discuss how to improve open data in Germany. This format could serve as an example of holding targeted consultations around other thematic areas.

[1] Open Government Germany, Third National Action Plan 2021-2023, https://www.opengovpartnership.org/wp-content/uploads/2021/09/Germany_Action-Plan_2021-2023_EN.pdf
[2] Commitments include, among others, developing a legislative information portal (6.1) and creating a platform for the planning and approval procedures of major transport projects (6.3).

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3 Spiegel, Panorama, https://www.spiegel.de/panorama/bildung/bildungsforscher-marcel-helbig-ueber-laengere-weihnachtsferien-das-ganz-grosse-drama-ist-schon-gelaufen-a-1cced9e2-cc80-49a5-8c65-d6db630db6fb

4 i.e. Commitment 6.1 on improving access to legal information and 8.2 on improving the quality and quantity of data from public service entities, and of election data.

5 i.e. Commitment 6.4 on providing the Federal Government's Integrity Report as open data and extend reporting to include aspects of Internal Audit work

6 i.e. Commitment 6.7 on participatory development of the next National Action Plan on Education for Sustainable Development

7 i.e. Commitment 6.6 on promoting knowledge-sharing in the open data environment, as well as commitments on public consultations (6.7, 6.8, and 6.9).

8 For example, the second action plan (2019-2021) included commitments on strengthening data sovereignty in North Rhine Westphalia (Commitment 12) and establishing a participation portal of the Free State of Saxony (Commitment 13).

9 The Länder commitments were developed in a separate process. In NRW, the ongoing development of the Digitalstrategie.NRW digital strategy was used to generate ideas. The Open.NRW office generated commitments from these proposals and NRW's Open Government Working Group then agreed to them. See p 25, https://www.opengovpartnership.org/wp-content/uploads/2021/09/Germany_Action-Plan_2021-2023_EN.pdf

10 Adhocracy, https://adhocracy.plus/ogpde/ideas/2021-04264/

11 https://ogpde.yrpri.org/community/940 https://adhocracy.plus/ogpde/projects/ogp-konsultation/?initialSlide=0. From 5 to 24 May 2021, civil society had the opportunity to respond to the draft plan, https://adhocracy.plus/ogpde/projects/ogp-konsultation/?initialSlide=0.

12 The Federal Chancellery and the OGN argued that more support to develop contributions would be helpful to improve their quality in the future.

13 Open Government Partnership, IRM Germany Design Report, 2019-2021, https://www.opengovpartnership.org/wp-content/uploads/2020/11/Germany_Design_Report_2019-2021_EN.pdf

14 Stakeholders saw the Federal-State Exchange (Bund-Länder Austausch) as a potential means to implement OGP principles in the activities of ministries, though questions remain over the rights and responsibilities of this exchange. A member of the OGN was invited to their meetings and noted that there could be more openings created for civil society to participate in this forum and similar fora. Germany could also learn from other OGP participating countries which have not always used a formal multi-stakeholder forum, such as the Slovak Republic, which previously organised thematic consultations and working groups to develop its 2019-2021 action plan.

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Section II: Promising Commitments in Germany's 2021-2023 Action Plan

The following review looks at the commitment that the IRM identified as having the potential to realise 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.

The IRM has assessed Commitment 7.2 in detail below,[15] as it could lead to improvements in the competitiveness and transparency of public procurement in Germany. Under this commitment, the Federal Ministry of the Interior, Building and Community (BMI) and the Free Hanseatic City of Bremen would provide German companies and citizens with information on available public tenders in a central platform and in a standard open format. The Federal Chancellery and the OGN consider this commitment to be among the most promising in the action plan. Its success, however, will largely depend on the level of uptake of the platform by Länder and municipalities and on the number of below-threshold tenders that are published.

The rest of the commitments in Germany's third action plan have not been assessed in further detail. Commitments 6.1 and 6.4, for example, aim to centralise information that is mostly available already (with limited expansion), even though the Federal Chancellery noted they are particularly relevant to the federal government's digitisation reforms. The legislative information portal (Commitment 6.1) could improve the searchability of legislative information which would be made available as open data for the first time. However, improvements to transparency will depend on the volume of new information made available, and the IRM recommends making amendments easily understandable, alongside the full text of enacted laws and regulations.[16] In future action plans, Germany could consider committing to providing comprehensive "legislative footprint" information for citizens to more easily track the development of any legislation from start to finish, including all amendments and their sponsors. Under Commitment 6.4, BMI will publish consolidated annual Integrity Reports on areas of federal administration, where possible as structured and machine-readable open data, and include aspects of the Federal Audit Office's Internal Audit. According to BMI, the Integrity Reports will help support cross-departmental exchanges on best practices for anti-corruption within the federal administration. The IRM recommends actively consulting civil society experts on the specific information included in the Integrity Reports and to consider offering timely and continuous publication cycles in addition to the once-a-year publication, for example as soon as new audit data is available.

Completion of commitments 6.2 and 6.3 is planned in 2024, stretching beyond the end of the action plan period. The Federal Chancellery also noted that these are relevant to the federal government's digitisation reforms. For Commitment 6.2, BMI will provide largely free online access to the federal government's Joint Ministerial Gazette, but not until late 2024. For Commitment 6.3, the Federal Ministry of Transport and Digital Infrastructure (BMVI) will set up a public platform with the planning and approval procedures of major federal transport and infrastructure projects (scheduled for Q4 2024).[17] BMVI believes that showing the obstacles in

planning and approval processes in a transparent and systematic way can contribute to factual discussions about changes to these processes. It could also lead to better understanding of the projects for people who are directly and indirectly affected by them. It will be important for BMVI to encourage wide uptake of the platform by its specialist departments and subordinate authorities, as the action plan notes that in the absence of any legal obligation, providing information either on the platform or via a direct link to other websites is voluntary. According to the BMVI, the provision of data will be time-consuming, as there is no database at the federal level that already contains the necessary information in full. Given the potential significance of this commitment, the IRM recommends continuing it forward to the next action plan. Ideally, information on the formal planning and approval procedures should be made available in a timely manner, and where possible, in open and reusable format. BMVI could also consider expanding the platform to include information on the procurement phase of the project cycles (including tenders) or information on possible opportunities for public participation in the planning process. Lastly, the IRM recommends BMVI to proactively promote the platform among citizens and civil society, and local media.

Commitment 6.5 involves developing a government data information platform, known by its German acronym "VIP", to catalogue and assess the open data suitability of the data held by government institutions. During implementation, it will be important to clearly allocate responsibilities between the Federal Statistics Office, data-holding institutions, and partner organisations when developing the catalogue and carrying out the assessment. Commitment 6.6 will involve annual open data conferences and expert forums on improving the provision of open government data. This commitment will continue the open data conferences from Germany's second action plan, and expand them to include more federal, Länder and non-government representatives. As mentioned, the format of these discussions could be an example for co-creating future OGP commitments around other thematic areas.

Three commitments involve consulting citizens around specific policy areas. Commitment 6.7 entails holding public consultations when developing Germany's next National Action Plan on Education for Sustainable Development. Commitment 6.8 will continue the Dialogue on Trace Substances at the Federal Environment Agency's Centre for Trace Substances. Participants will jointly select the relevant substances to be discussed and the commitment will result in a report on progress achieved. Commitment 6.9 involves harnessing citizen projects related to biodiversity monitoring by holding two "Application and Research in Dialogues" at the Centre for Biodiversity Monitoring. The IRM has not assessed these commitments in detail as they are designed to be open ended in order not to predetermine their outcomes. Their success will largely depend on whether the consultations go beyond existing practices on participatory policy making to offer more innovative solutions for sustainable development, as well as the extent to which these consultations will impact Germany's policies in the relevant areas. In the future, Germany could consider formalising participatory mechanisms in policy-making processes. As an example, Estonia has used several OGP action plans to create a single access point for citizens and policymakers to the full cycle of policy development and an easy-to-use interface, aiming to engage experts and users from the outset.[18]

For Commitment 7.1, BMI and the Länder Baden-Württemberg and North Rhine-Westphalia (NRW) will create an open source platform for public administration so that federal, Länder and local governments can share and reuse open source solutions. According to the action plan however, the platform will also be open to actors outside of the government, following a legal

review. Germany could make this platform public and draw lessons from the Netherlands' fourth action plan (2020-2022), which involves consulting the country's open source experts to develop a toolbox, share best practices and link open source to policy making at the national level.[19]

Finally, the action plan includes three commitments from Länder. For Commitment 8.1, the Free and Hanseatic City of Hamburg will develop digital solutions to support civic participation in spatial planning and approvals. For Commitment 8.2, NRW will create the technical and legal framework for companies and public service providers to publish their services as open data on the portal Open.NRW. This commitment also entails standardising and centralising the publication of data on local elections in NRW. Currently, election data in NRW is provided in many places by many actors and in different formats, which makes re-use of elections data difficult. This commitment would provide a uniform structure of elections data as CSV files as well as a web API for data retrieval. Lastly, under Commitment 8.3, NRW will launch a Länder-wide participation portal in collaboration with the Free State of Saxony, which created a similar portal during the second action plan. NRW's Ministry of Economy, Innovation, Digitalisation and Energy will also consult expert groups when developing guidelines for good participation and for feedback on the usability of the portal.

Table 1. Promising commitments

Promising Commitments
1. **Commitment 7.2: Standards-based simplification of business access to public procurement**. This commitment could result in fairer competition in Germany's procurement processes, by centralising available tenders from other platforms in one place. It could also improve transparency of Germany's procurement processes by publishing data on contract and award notices using a standard format.

Commitment 7.2: Standards-based simplification of business access to public procurement [Federal Ministry of the Interior, Building and Community (BMI) /BMI Procurement Office, Free Hanseatic City of Bremen]

For a complete description of the commitment see Commitment 7.2 in Germany's 2021-2023 action plan here.

Context and objectives:
Under this commitment, the Federal Ministry of the Interior, Building and Community (BMI) and the Free Hanseatic City of Bremen aim to create a national notification service for public contract awards, known as Bekanntmachungsservice (BKMS), using standardised data fields. BMI proposed this commitment's inclusion in the action plan as part of the ongoing reform of access for businesses to public contracts in the Online Access Act (OZG).[20] Open contracting was a priority area from civil society during the consultations.[21] Civil society commented on the proposal during the online consultation, but it is not evident if these comments were addressed.[22] Nonetheless, interviewed OGN members said that this commitment is among the most critical of the action plan. The Federal Chancellery echoed this sentiment, noting that this commitment is key to connect Germany's ongoing procurement reforms to the G7 anti-corruption agenda and to respond to civil society's desire to include this topic in OGP action plans. The interviewees also said that the German business community is in favor of the project, which was a major justification for including it in the action plan.

Germany's public procurement sector is complex, with a number of different platforms and governing regulations across federal, Länder, and municipal levels. While above-threshold procurement is regulated at the EU level, several laws apply for contracts below the thresholds set by the EU.[23] If a contract falls above the EU's threshold, the law against limitation of competition (Gesetz gegen Wettbewerbsbeschränkung) applies. If a contract falls below the threshold, budget laws of the federal government and states apply. On the federal level, the Unterschwellenvergabeordnung (UVgO) requires contracting agencies to publish tenders below thresholds either on their own website or on an online portal. Notices must be searchable on the tender/procurement portal https://www.service.bund.de/. Research suggests that only a limited part of all procurement data below the threshold is made available by the UVgO. This is because only the tenders of procured services are required to be electronically processed below thresholds and only in those Länder where the UVgO is implemented.[24] In the case of the procurement of construction, for example, no electronic announcement or communication are required. On the Länder level, there are currently 14 different laws that apply to contracts below the threshold, which can hinder fairness and transparency in the market.[25] Some Länder have begun to use the UVgO.[26] However, the UVgO has fewer requirements for documenting procurement by contracting agencies at the Länder level, such as excluding the submission of EU-wide tenders or the use of standard forms. Länder may also determine a minimum monetary amount below which contracts can be awarded directly without a bidding process. Some Länder like Baden-Württemberg only recommend, but do not require, communities to adopt the UVgO.

This commitment intends to facilitate procurement processes for public administrations and companies by offering several technical features on the BKMS. These include: 1) a fiscal ID for companies to manage their account and logins, 2) a prequalification service for companies to save application forms for tenders and share them with other procurement platforms, 3) an announcement service for tender notices, 4) bookmarking and alerts, and 5) a "supplier cockpit" (an interface that simplifies communication between suppliers and bidders over their contracts). The BKMS will not handle any procurement processes itself. Instead, the fiscal ID will enable companies to access other procurement systems by facilitating registration and login. The Bund.de tender/procurement portal will be discontinued, and its functions transferred to the BKMS.

Procurement platforms in Germany currently publish data in various formats that are not always machine-readable. For this commitment, the government will develop a uniform data standard as part of the existing "XÖV-Standards" called "XBeschaffung". This standard is specifically designed for handling procurement processes within German administrations, which can receive contract and award announcements from different platforms. The XÖV standard is a recommendation which could be turned into a requirement if the IT Planning Council decides to do so.[27] XBeschaffung will implement the standardised data fields from the EU's data structure "eForms"[28] and be made interoperable with the Open Contracting Data Standard (OCDS). eForms defines data fields for the entire procurement process, including planning, competition, pre-registration, results, and contract changes. The Open Contracting Partnership (OCP) has compared eForms for its compatibility with the OCDS, and the project partners will align XBeschaffung with the OCDS. The Free Hanseatic City of Bremen will develop an intermediary service to gather tender information from the existing procurement portals through an API and convert them into the eForms format. As an international communication standard, "Peppol" (a

web server-based infrastructure that securely transmits data particularly in the context of electronic procurement) will be tested for its usability.[29] The use of the BKMS will be mandatory for above threshold contracts starting on 25 October 2023. Prior to this date, the project partners will have gathered procurement data and converted it into a format close to the official eForms. By October 2023, the data shall be provided in eForms by the procurement platforms themselves.

Potential for results: Modest

Primarily, this commitment could result in fairer competition in Germany's procurement processes, as it will be easier for companies to find public tenders and submit applications. As mentioned, Germany uses many different e-procurement platforms for the federal, Länder, and municipal levels, which can create challenges for companies to find out about tenders. For example, companies often need to use service providers to help find tenders and must keep different accounts on different platforms.[30] The BKMS will centralise tenders from other platforms in one place, thus simplifying the process of searching for open tenders. This centralisation could be especially useful for SMEs, who may not have the resources to search for open tenders across many platforms.

This commitment could also improve the transparency of Germany's procurement processes by publishing data on awarded contracts on the BKMS using a standard format. According to OCP, available data on the procurement processes in Germany is fragmented. Data on tenders are available from the buyers and private providers, but the public has no option to analyze data on awarded contracts. Bund.de has a central information point for tenders, but relevant data is published in HTML or PDF formats, with no open data available for further analysis or re-use. Also, certain data such as the price are often not available. OCP also noted that the need for a more transparent and fair allocation process was made clear in the context of the COVID-19 pandemic response, when overpriced contracts and lack of competition resulted in inefficient use of tax money.

An important factor in the success of this commitment will be the uptake of the BKMS by Länder and municipalities. According to the action plan, the project's outcomes will provide a blueprint for Länder to follow. To expand the scope of data on the BKMS, the project participants plan to involve Länder and municipal actors at an early stage by organising training and information events, testing the features, and organising expert committees. Gaining the support of the Länder to upload their procurement announcements on the BKMS in a standard and machine-readable format would be a major shift in Germany. However, the publication of tenders below threshold from Länder and municipalities will ultimately depend on their willingness to participate in the project. In addition, several Länder and municipalities have not yet implemented binding requirements for publishing tenders or data on other aspects of the procurement process.

Although there is a lack of representative data, available evidence suggests that below-threshold contracts represent a significant portion of all public procurement in Germany. Recent studies found that the number of public contracts below threshold amount to between 80 and 90 percent of all public contracts in Germany.[31] Based on the contracting volume, public contracts below the threshold are estimated to amount to roughly 64 percent of the entire amount spent by public procurement.[32] Interviewed project planners, OGN representatives, and the Federal Chancellery confirmed that legal reforms are not planned for this commitment, as

Germany recently underwent a major procurement law reform (the Public Procurement Statistics Ordinance - Vergabestatistikverordnung) which came into effect in October 2020.[33] Therefore, restrictions on below threshold reporting will still apply to the BKMS in accordance with the existing legal framework. For example, non-public tenders will not have to be filed and there may be below-threshold tenders that will be exempt from reporting.

Opportunities, challenges and recommendations during implementation
If successfully implemented, the BKMS can provide a basis for greater transparency if it makes data increasingly available in open format for the entire procurement process, from all public offices on Federal, Länder and municipal levels, above and below thresholds. A possible risk is that the participation of the awarding bodies at the Länder and municipal levels in below-threshold contracts is not legally binding, but dependent on their willingness to participate. Because Länder and municipalities have some discretion about what data to publish for below-threshold contracts, the project explicitly wants to involve Länder and communities. The project partners plan to foster cooperation between the federal and Länder levels to increase the acceptance of this project in other Länder. Submitting procurement information for below-threshold contracts is crucial to achieve the desired simplification and centralisation of information related to tenders.

As Germany recently underwent a major procurement reform, the government did not add new legislative changes to this commitment that could define transparency requirements for below-threshold awards. Interviewed project partners note that legal changes will eventually be needed to transpose eForms into Germany's various procurement laws. In order not to wait for a legal update they want to develop a technical solution ahead of the implementation of eForms which shall be finished by 2023. Nevertheless, the successful implementation of this commitment could showcase the usefulness of OCDS and familiarise government actors with the principles of transparency and open government. OCP thus sees this commitment as an important step towards wider reforms in how procurement processes are organised in Germany.

To maximise the impact of this commitment, the IRM recommends the following to the project leads:

- **Encourage wide uptake of the BKMS by Länder**. Absent legally binding requirements for publishing tenders or data on procurement in the Länder, the IRM recommends that the federal government collaborate with Länder governments to use the BKMS. During the implementation period, the BMI could evaluate which Länder are the least transparent in terms of contracts that are below the threshold and make extra effort to encourage these Länder to use the BKMS when it is adopted in 2023. Publishing these evaluations on the BKMS or on a separate dashboard could help to motivate Länder that are less transparent to publish below the threshold contracts. As an example, Estonia's fourth action plan (2018-2020) contained a commitment that involved launching a website that measures the transparency of all municipalities in the country, including if they have transparent procedures for conducting public procurement.[34]

- **Consult a wide range of stakeholder groups when determining relevant data fields and when collecting the data**. Civil society could benefit from better access to procurement data in open format. However, the project partners have not mentioned

whether they will collaborate with civil society directly during implementation. Organisations such as OCP can provide technical advice to optimise the data publication on the BKMS. The legal framework for the national implementation of eForms in Germany is still under development and other implementation framework conditions have not yet been finalised. When selecting the specific data fields from eForms to be covered in the BKMS, the project partners can hold discussions with various stakeholder groups (ministries, private sector, civil society, etc.) to ensure that their priorities are taken into account. OCP recommends consulting organisations such as Open Knowledge Foundation Germany and their FragdenStaat team and Transparency International Germany to record relevant data for the BKMS and ensure its uptake. Journalists are also an important target group, as most German media outlets now have their own data teams who could use the BKMS data for their investigations and research.

- **Widen the scope of procurement data beyond announcements for tenders and make data gradually accessible during the implementation period to ensure more collaboration**: Currently, this commitment focuses on increasing transparency around one part of the procurement process, namely announcements. To further increase transparency, the BKMS should also include data covering the entire procurement cycle. For civil society and journalists, data on contract volume, payments and companies are important. The project leads could consider using Ukraine's Prozorro platform for peer learning, as Prozorro also links up procurement data with public databases of ultimate beneficial owners and the State Treasury.[35] Regarding the provision of open data, members of OGN recommend gradually publishing already existing data over the course of the implementation period, instead of publishing the full, standardised datasets only at the end of the period.[36] This could be in the form of a pilot project of a project partner (i.e. a Länd or a federal ministry). This could enable a network to be built up so that the data can be used and incorporated into innovative services. A gradual opening of public purchasing data and contracts based on open contracting standards can lead to greater involvement of stakeholders, minimise risks and achieve successes during implementation.

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[15] The IRM has maintained the original numbering of the commitments in the third action plan: 6.1-6.9 for the federal government, 7.1 and 7.2 for the joint federal – Lander commitments, and 8.1, 8.2, and 8.3 for the Lander commitments.
[16] As an example, the Canadian Parliament's LegisINFO database provides a variety of information about individual bills, https://www.parl.ca/legisinfo/en/bills.
[17] According to BMVI's current considerations, times and information on various stages of the regional planning procedures (ROV) and approval procedures (POV) will be recorded and published, such as preparations, establishment of the PoV, environmental impact assessments (if necessary), revisions of the plan to the responsible authority, the length of the consultation process, and the time of the planning approval decisions.
[18] See Estonia's OGP action plans, https://www.opengovpartnership.org/members/estonia/commitments/EE0054/ and https://www.opengovpartnership.org/members/estonia/commitments/EE0048/
[19] Netherlands Action Plan, https://www.opengovpartnership.org/members/netherlands/commitments/NL0049/
[20] Federal Ministry of the Interior, What is the Online Access Act?, https://www.onlinezugangsgesetz.de/Webs/OZG/EN/home/home-node.html;jsessionid=604ACC0C71555B42AEAF764695D13CB8.2_cid295
[21] Civil society ideas included 1) enshrining open contracting in political programs, https://adhocracy.plus/ogpde/ideas/2021-04205/, 2) setting up a project to open contracting data in an agile manner, https://adhocracy.plus/ogpde/ideas/2021-04206/, 3) using the Open Contracting Data Standard (OCDS), https://adhocracy.plus/ogpde/ideas/2021-04207/, 4) expanding transparency requirements to contracting below thresholds, https://adhocracy.plus/ogpde/ideas/2021-04209/ and, 5) publishing contracting data centrally on the GovData portal, https://adhocracy.plus/ogpde/ideas/2021-04211/.
[22] See Adhocracy, https://adhocracy.plus/ogpde/topicprio/2021-04785/
[23] A list of the currently applicable thresholds, https://bi-medien.de/evergabe/wissen/news/eu-schwellenwerte-2020-2021-veroeffentlicht

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24 Springer Link, p 96, https://link.springer.com/book/10.1007/978-3-658-31687-7

25 For an overview of the laws on Länder level, see https://www.abz-bayern.de/abz/inhalte/Info-Recht/Rechtliche-Grundlagen-des-Vergaberechts/recht-in-bund-und-laendern/index.html

26 These include Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg-Vorpommern, Lower Saxony, NRW, Saarland, Schleswig-Holstein and Thuringia.

27 See Freie Hansestadt Bremen (in German), https://www.xoev.de/xoev-4987

28 https://www.google.com/url?q=https://op.europa.eu/de/publication-detail/-/publication/dc6aa498-f733-11e9-8c1f-01aa75ed71a1/language-de&sa=D&source=docs&ust=1635773934978000&usg=AOvVaw1wvknYCptTDjVLRgecB4m8.

29 Freie Hansestadt Bremen, Peppol, https://www.xoev.de/peppol-21513

30 Vdz.org, https://www.vdz.org/beschaffung/gefangen-im-formalismus

31 See Springer Link, https://link.springer.com/book/10.1007/978-3-658-31687-7

32 Ibid.

33 Ministry of Justice, http://www.gesetze-im-internet.de/vergstatvo/BJNR069100016.html

34 Open Government Partnership, Estonia Action Plan 2018-2020, https://www.opengovpartnership.org/members/estonia/commitments/EE0052/

35 Open Government Partnership, Ukraine Action Plan 2016-2018, https://www.opengovpartnership.org/members/ukraine/commitments/UA0064/

36 Adhocracy, https://adhocracy.plus/ogpde/topicprio/2021-04785/

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 <u>verifiability</u> of the commitment as written in the action plan.
>
> **Step 2:** determine if the commitment has an <u>open government lens</u>. Is it relevant to OGP values?
>
> **Step 3:** Commitments that are verifiable and have an open government lens are reviewed to identify if certain commitments 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. Organise commitments by clusters as needed. Commitments may already be organised in the Action Plan under specific policy or government reforms or may be standalone and therefore not clustered.
>
> **Step 4:** assess the <u>potential for results</u> 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 include 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, institutions 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 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 legal, policy or institutional frameworks 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.

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- **Modest:** a positive but standalone initiative or changes to process, practice or policies. Commitments that do not generate binding or institutionalised 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 institutionalised changes across government

This review was prepared by the IRM in collaboration with Danny Lämmerhirt 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](#).

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Annex I. Commitment by Commitment Data

Commitment 6.1: Improving access to legal information

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

Commitment 6.2: Improved access to the Joint Ministerial Gazette

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

Commitment 6.3: Transparency about approval procedures for major transport infrastructure projects

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

Commitment 6.4: Provide the Federal Government's Integrity Report as open data and extend reporting to include aspects of Internal Audit work

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

Commitment 6.5: Continued development and enhancement of the government data information platform (VIP)

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

Commitment 6.6: Promotion of knowledge-sharing in the open data environment

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

Commitment 6.7: Participatory development of the next National Action Plan on Education for Sustainable Development

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

Commitment 6.8: Maintaining the dialogue on trace substances

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

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Commitment 6.9: National Centre for Biodiversity Monitoring
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

Commitment 7.1: An open source platform for public administrations
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 7.2: Standards-based simplification of business access to public procurement
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 8.1 (Free and Hanseatic City of Hamburg): Digitalisation of administrative services for participation and provision of plans in spatial planning
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 8.2 (North Rhine-Westphalia): Improve the quality and quantity of data from public service entities, and of election data
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 8.3 (North Rhine-Westphalia): Online approaches to increase public participation
- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

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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 multi-stakeholder:** Both government and civil society participate in it.
3. **Reasoned response:** The government or multi-stakeholder forum documents or is able to 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 summarises 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
Key:
Green = Meets standard
Yellow = In progress (steps have been taken to meet this standard, but standard is not met)
Red = No evidence of action

OGP Standard	Was the standard met?
A forum exists. The Open Government Network (OGN) serves as a main interlocutor between civil society and the OGP point of contact.[37] The OGN is an informal network of non-governmental stakeholders who work on transparency, open data, and technology-related issues in Germany.[38] It facilitates civil society exchange on OGP issues primarily via a coordinator. However, there is no single body that encompasses members of both government and civil society. Only a small number of OGN members actively participate in OGP-related activities.[39]	Green

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By the time Germany develops its fourth action plan, OGP's new participation and co-creation standards will have taken effect along with their minimum requirements. Among these new minimum requirements will be establishing a space for ongoing dialogue with participation from both government and civil society members, and other non-governmental representatives as appropriate, that meets at least every six months and its basic rules on participation are public.[40] The new standards will also require conducting outreach with stakeholders to raise awareness of opportunities to get involved in the development of the action plan, as well as developing a mechanism to gather inputs from a range of stakeholders during an appropriate period of time for the chosen mechanism.[41]	Green
The forum is multi-stakeholder. The OGN is not a formal multi-stakeholder forum, as it is run by and consists only of civil society stakeholders and does not include formal representation from government stakeholders. It can at times serve as a multi-stakeholder space to discuss the OGP process when government representatives (i.e., from the Federal Chancellery) join its meetings. The OGN met 17 times in 2021, all online, where members discussed ideas and inputs for the third action plan among each other. However, it is not clear how many of these meetings were attended by government representatives to jointly discuss possible commitments for the action plan with OGN members. There were no physical OGN meetings but there were two virtual events related to Open Government Week in May 2021 attended by government and civil society.[42]	Yellow
The government provided a reasoned response on how the public's feedback was used to shape the action plan. The Federal Chancellery published all the responses and comments received from the first phase of the consultation on the website www.open-government-deutschland.de.[43]	Green

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[37] Open Government Network Germany, https://opengovpartnership.de/
[38] For a description of the OGN, see p 14, https://www.opengovpartnership.org/wp-content/uploads/2019/08/Germany_Design-Report_2017-2019_EN.pdf
[39] The members who participate most regularly include from OKFN, two participants from an e-government research group at Zeppelin University, and OCP, among others.

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[40] OGP Consultation, Participation and Co-creation Standards,
https://ogpconsultation.org/standards/topic/613d29c1bcc16e4da1e7f2f0
[41] OGP Consultation, Participation and Co-creation Standards,
https://ogpconsultation.org/standards/topic/613d2a72bcc16e5240e7f376
[42] Open Government Germany, https://www.open-government-deutschland.de/opengov-de/ogp/mitmachen/dokumentation-2021-1861414
[43] See Open Government Germany, https://www.open-government-deutschland.de/resource/blob/1591100/1946966/6ec61f3c3ce482c8d7912fcabc0ba9d1/response-nap3-data.pdf?download=1

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