

Independent Reporting Mechanism

Action Plan Review:
Ireland 2021–2023

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 input 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 rolled 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 rolled 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 31 August 2021. Results Reports are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of Ireland’s 2021–2023 action plan. The action plan is made up of three of commitments. This review emphasizes its analysis on the strength of the action plan to contribute to implementation and results. For 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 IV: Methodology and IRM Indicators.

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

Ireland’s third action plan renewed national engagement in the open government process. It includes a promising commitment on lobbying transparency that would improve enforcement of the “cooling-off period” for public officials entering the private sector. To deliver substantial results from commitments on anticorruption and access to information, the IRM recommends building on the publication of planned legislative reviews to implement recommendations emerging from those reviews.

Ireland joined the OGP in 2013. This review evaluates the design of Ireland’s third action plan, which includes three commitments, emanating from the Programme for Government. The commitments build on initiatives from the previous action plans on anticorruption, access to information, and lobbying regulation.

This action plan renewed Ireland’s OGP engagement, following a challenging process during the previous action plan cycle. The action plan was developed with an expedited co-creation timeline. In October and November 2021, the Department of Public Expenditure and Reform (Ireland’s OGP point of contact) distilled potential commitments from the Programme for Government and oversaw an open call for proposals for the action plan. This resulted in 18 submissions from civil society. Simultaneously, along with an Interim Civil Society Round Table, it facilitated the formation of a new Round Table Multi-Stakeholder Forum, co-chaired by the Department of Public Expenditure and Reform and civil society, currently represented by the Open Government Association of Ireland. In January 2022, the Round Table selected three commitments from the Programme for Government, one of which was also submitted by Transparency International Ireland during the public call. Following the action plan’s publication, civil society is leading co-creation of three commitments to be added to the action plan, via Round Table sub-groups. Drawn from civil society submissions, these commitments would focus on participative governance, the Public Participation Network, and legislation related to the NGO sector. Building on the momentum of this co-creation process, the IRM recommends institutionalizing an OGP unit at the Department of Public Expenditure and Reform.

One of the action plan’s commitments lays out promising reforms to existing lobbying regulation. Building on a review of the Regulation of Lobbying Act (milestones completed prior to the action plan), Commitment 3 intends to develop and pass an amended bill. One of the key

AT A GLANCE

Participating since: 2013
Action plan under review: 2021–2023
IRM product: Action plan review
Number of commitments: 3

Overview of commitments:

- Commitments with an open gov lens: 3 (100%)
- Commitments with substantial potential for results: 1 (33%)
- Promising commitments: 1

Policy areas carried over from previous action plans:

- Anti-Corruption
- Access to Information
- Lobbying Regulation

Compliance with OGP minimum requirements for co-creation:

- Acted contrary to OGP process: No

amendments would improve the enforcement of a cooling-off period, during which public officials are restricted from engaging in lobbying for a year after they leave office.

The other two commitments could be strengthened, building from preliminary activities to concrete policy reforms. Commitment 1 aims to review the Statutory Framework for Ethics in Public Life and Commitment 2 aims to review the Freedom of Information Regime, but neither include milestones for implementing recommendations from these reviews. The IRM recommends providing government feedback on how individual public submissions are incorporated into the reviews' recommendations. Commitment 1 could also be leveraged to build greater transparency into the Statutory Framework for Ethics in Public Life, expanding access to information; transparency in declaration of interests; and proactive, timely publication of machine-readable data, usable by the public. For Commitment 2, the government could create enforceable legislation on the proper publication processes for Freedom of Information queries, rather than simply listing queries received. To expedite responses to Freedom of Information queries, the government could also make efforts to streamline document management.

In the future, commitments should focus on concrete policy reforms and exclude milestones that were implemented prior to the action plan. Conducting the next co-creation process over a more extended timeline can allow flexibility in designing commitments that move beyond initiatives already established by government. This would enable the open government process to offer greater added value. If full legislative review and approval processes are considered, the Round Table could designate a four-year action plan cycle.

Section II: Promising Commitments in Ireland’s 2021–2023 Action Plan

The following review looks at a commitment 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.

The IRM selected Commitment 3 based on its aim to deliver legislative reform. This commitment would amend the Regulation of Lobbying Act to close gaps on the cooling-off period for certain elected and public officials. The action plan’s other commitments aim to review Ireland’s Statutory Framework for Ethics in Public Life and Freedom of Information Regime, but do not include milestones implementing of the reviews’ recommendations or concrete policy reforms.

Table 1. Promising commitment

3. Review of the Operation of the Regulation of Lobbying Act 2015: This commitment would amend the Regulation of Lobbying Act to improve enforcement of the cooling-off period for certain elected and public officials.

Commitment 3: Review of the Operation of the Regulation of Lobbying Act 2015

For a complete description of the commitment, see Commitment 3 in [Ireland’s 2021–2023 action plan](#).

Context and objectives:

This commitment plans to amend the Regulation of Lobbying Act, passed in 2015 through Ireland’s first action plan. The Act requires individuals and organizations to disclose any lobbying activity on a public register. This includes meetings with high-level public officials, as well as efforts to influence policy through letters, emails, or tweets.¹ It also stipulates a cooling-off period, during which public officials are restricted from engaging in lobbying for a year after they leave office.² Under the commitment, the amendment would close certain limitations in the Regulation of Lobbying Act, including on the enforceability of the cooling-off period.

The amendment draws on recommendations of the third review of the Act. It should be noted that the commitment’s milestones related to the review were completed prior to the action plan. In September 2020, the Taoiseach (prime minister) announced a review of Section 22 of the act, regarding officials’ cooling-off period. The review was widened in response to two Private Member Bills in the Dáil (lower house of Irish legislature) and was finished by early Summer 2021.³ According to the Department of Public Expenditure and Reform Government Reform Unit, no further formal consultations with civil society and the public are planned under this commitment.⁴

The prior two statutory reviews of the Act did not produce amendments. The second review, published in 2020, received 27 submissions from academics, business and farming representatives, interest groups, government departments, and public affairs organisations.⁵ The Public Relations Institute of Ireland and the Standards in Public Office Commission expressed disappointment that the second review did not produce substantive changes.⁶

Potential for results: Substantial

The Regulation of Lobbying Act is considered a gold standard of lobbying transparency legislation,⁷ but has some room for improvement. The cooling-off period is not denoted as a contravention, which limits enforceability. Although there is no evidence of widespread compliance issues, there have been some recent controversial cases of public officials moving to public relations firms or businesses (such as movement of the former Minister of State in the Department of Finance to a financial services group).⁸ The 2020 National Integrity Index found that in a sample of 30 companies, 26 had not published rules or policies on the movement of staff from the public sector to companies or vice versa.⁹ Beyond the cooling-off period, academics note that the Act doesn't require registration of preparatory work or giving advice, which allows commercial and in-house lobbyists to avoid registering. It also does not require any disclosure of financial information on the register, for example the amount of money paid to lobbyists.¹⁰ Additionally, the definition of lobbying excludes companies with fewer than ten employees, even if lobbying for high-value contracts.¹¹

The most potentially impactful element of this proposed amendment would introduce a contravention covering failure to comply with the cooling-off period for elected and public officials, addressing the gap in enforceability.¹² The amendment also addresses a gap that allows groups of corporations to form interest groups that are not considered to be lobbying as long as they do not technically have employees.

Other features of the amendment offer technical changes to the Act. These include extending the period between statutory reviews from three to five years; extending the Act to include non-remunerated officeholders; exempting registration of communications made by political parties to their members who are designated public officials; improving operation of the lobbying register; and introducing a contravention on actions intended to avoid registration or submission of lobbying returns.¹³

Civil society stakeholders see this commitment as an opportunity to increase lobbying transparency. They feel this could improve the demarcation between business interests and public interests. It could also build trust in Ireland's democracy, given that lobbying is an area where the wider public perceives a higher level of corruption.¹⁴ Some suggest that stronger accountability could be introduced if, like other aspects of the Act, breaching the cooling-off period were to be a criminal offence (rather than the planned contravention).¹⁵

Opportunities, challenges, and recommendations during implementation

Lobbying transparency has been one of the most ambitious policy areas for other OGP members in Europe.¹⁶ Including this initiative within the Programme for Government supports momentum toward passing the planned amendment.¹⁷ However, if the amendment does not pass before December 2022, it could be slowed by a shift in the party holding office.¹⁸ The IRM offers the following recommendations for this commitment's implementation:

- Provide clear, regular updates on each legislative stage to ensure transparency and allow the public to engage as the amendment progresses. This could include raising awareness about the amendment and opportunities for engagement.
- Expand the Regulation of Lobbying Act definition beyond companies with more than ten employees to focus on types of activity or the scale of contract. This could more fully capture the lobbying landscape in Ireland to include individual consultants.
- Consult the experiences of reformers in Latvia,¹⁹ Chile,²⁰ and Madrid, Spain²¹ for lessons learned on leveraging the open government process to support lobbying reform. It may also be beneficial to consult the International Standards for Lobbying Regulation²² and the Transparency International Recommendations on Lobbying for OGP Action Plans²³ for guidance on developing effective lobbying regulation.
- Encourage researchers to use lobbying data and report irregularities. This can contribute to verifying the accuracy of the data and to monitoring compliance with the law.

¹ Harry Cooper, "Ireland's tough lobbying rules spark cries for similar laws elsewhere" (*Politico*, 9 Aug. 2017), <https://www.politico.eu/article/ireland-lobbying-clampdown-model-for-europe/>.

² Register of Lobbying, "Cooling-off Period" (*Standards in Public Office Commission*, accessed 11 Apr. 2022), <https://www.lobbying.ie/help-resources/information-for-dpos/guidance-for-tds-senators-and-meps/cooling-off-period/#:~:text=The%20Act%20provides%20that%20certain,involvement%20in%20particular%20lobbying%20activities.>

³ Joyce Nolan (Department of Public Expenditure and Reform Government Reform Unit), correspondence with the IRM, 11 Mar. 2022.

⁴ Nolan, interview with the IRM, 14 Mar. 2022.

⁵ Department of Public Expenditure and Reform, "Second Statutory Review of the Regulation of Lobbying Act 2015" (Gov.ie, 25 Feb. 2020), <https://www.gov.ie/en/publication/7ef279-second-statutory-review-of-the-regulation-of-lobbying-act-2015/>.

⁶ Public Relations Institute of Ireland, "Disappointment At Outcome Of Second Review Of Lobbying Act: No Change" (accessed 4 Feb. 2022), <https://www.prii.ie/news/2020/disappointment-at-outcome-of-second-review-of-lobbying-act-no-change.html>.

⁷ Harry Cooper, "Ireland's tough lobbying rules spark cries for similar laws elsewhere."

⁸ Martin Banks, "Brian Hayes under fire for taking 'revolving door' to private sector" (*The Parliament*, 8 Jan. 2019), <https://www.theparliamentmagazine.eu/news/article/brian-hayes-under-fire-for-taking-revolving-door-to-private-sector>.

⁹ Roland Gjoni, *National Integrity Index 2020* (Transparency International Ireland, 2021), <https://www.transparency.ie/resources/national-integrity-index/private-sector-index/report-2020>.

¹⁰ Gary Murphy, "Lobbying regulation in Ireland: Fool's errand or finest hour?" *Administration* 65 no. 2 (2017), 138–141, <https://sciendo.com/pdf/10.1515/admin-2017-0018>.

¹¹ Catherine Lawlor (Transparency International Ireland), interview by the IRM, 14 Mar. 2022.

¹² Ibid.

¹³ Nolan, correspondence.

¹⁴ Johnny Sheehan (the Wheel), interview by the IRM, 23 Mar. 2022; Antoin O'Lachtnain (Open Government Association of Ireland and Digital Rights Ireland), interview by the IRM, 4 Mar. 2022.

¹⁵ Lawlor, interview.

¹⁶ Sarah Dickson, "Common Challenges in Lobbying Transparency: Lessons from Europe" (OGP, 8 Jun. 2021), <https://www.opengovpartnership.org/stories/common-challenges-in-lobbying-transparency-lessons-from-europe/>.

¹⁷ O'Lachtnain, interview; Philip McGrath (Department of Public Expenditure and Reform), interview by the IRM, 7 Mar. 2022.

¹⁸ Sheehan, interview.

¹⁹ OGP, "Latvia: Transparency in Lobbying (LV0042)" (OGP, 2019), <https://www.opengovpartnership.org/members/latvia/commitments/LV0042/>.

²⁰ Jorge Sahd and Cristian Valenzuela, *Lobby Law in Chile, Democratizing Access to Public Authorities* (OGP, Dec. 2016), https://www.opengovpartnership.org/wp-content/uploads/2001/01/report_Lobby-law-in-Chile.pdf.

²¹ OGP, "A Window Into the Previously Murky World of Lobbying" (OpenStories, 21 Oct. 2021), <https://www.ogpstories.org/a-window-into-the-previously-murky-world-of-lobbying/>.

²² Open Knowledge Foundation et al., "International Standards for Lobbying Regulation" (accessed 11 Apr. 2022), <http://lobbyingtransparency.net/standards/>.

²³ Lucas Amin and José María Marín, *Recommendations on Lobbying for OGP Action Plans* (Transparency International, 2018), <https://images.transparencycdn.org/images/Rec-on-Lobbying-for-OGP-action-plans-FINAL.pdf>.

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*, *OGP’s 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 lays out the expected results and potential that can 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 and reviewed by Andy McDevitt. The IRM methodology, quality of IRM products, and review process is overseen by the IRM’s International Experts Panel (IEP). For more information about the IRM, refer to the “About IRM” section of the OGP website, available [here](#).

Annex I: Commitment-by-Commitment Data

Commitment 1: Review of Ireland’s Statutory Framework for Ethics in Public Life

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

Commitment 2: Review of Ireland’s Freedom of Information (FOI) Regime

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

Commitment 3: Review of the Operation of the Regulation of Lobbying Act 2015

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

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 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 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>
A forum exists. The Round Table Multi-Stakeholder Forum was formed in November 2021. ¹	Green
The forum is multistakeholder. The Round Table Multi-Stakeholder Forum includes six representatives from government and six from civil society. ²	Green
The government provided a reasoned response on how the public’s feedback was used to shape the action plan. The POC emailed stakeholders the Round Table Multi-Stakeholder Forum’s decision on whether their proposed commitments had been included in the action plan. However, these responses were sent after the action plan’s publication. ³	Yellow

¹ Department of Public Expenditure and Reform, “Open Government Round Table multi-stakeholder forum activity” (gov.ie, 21 Feb. 2022), <https://www.gov.ie/en/publication/5a21f-open-government-round-table-multi-stakeholder-forum-activity-ongoing/#membership-details>.

² Ibid.

³ Criona Brassill (Department of Public Expenditure and Reform Public Service Reform Unit), correspondence with the IRM, 3 Mar. 2022.