Independent Reporting Mechanism

Republic of Moldova Co-Creation Brief 2022

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Introduction

This brief from the OGP's Independent Reporting Mechanism (IRM) serves to support the co-creation process and design of the fifth action plan and to strengthen the quality, ambition, and feasibility of commitments. It provides an overview of the opportunities and challenges for open government in the country's context and presents recommendations. These recommendations are suggestions, and this brief does not constitute an evaluation of a particular action plan. Its purpose is to inform the planning process for co-creation based on collective and country-specific IRM findings. This brief is intended to be used as a resource as government and civil society determine the next action plan's trajectory and content. National OGP stakeholders will determine the extent of incorporation of this brief's recommendations.

The co-creation brief draws on the results of the research in prior IRM reports for the Republic of Moldova and draws recommendations from the data and conclusions of those reports. The brief also draws on other sources such as OGP National Handbook, OGP Participation and Co-creation Standards, and IRM guidance on online OGP repositories and the minimum threshold for "involve", to ensure that recommendations provided are up-to-date in light of developments since those IRM reports were written, and to enrich the recommendations by drawing on comparative international experience in the design and implementation of OGP action plan commitments as well as other context-relevant practice in open government. The co-creation brief has been reviewed by IRM senior staff for consistency, accuracy, and with a view to maximizing the context-relevance and actionability of the recommendations. Where appropriate, the briefs are reviewed by external reviewers or members of the IRM International Experts Panel (IEP).

The IRM drafted this co-creation brief in October 2022.

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Section I: Action Plan Co-Creation Process

The Republic of Moldova is to begin co-creation of its fifth action plan in 2022, four years after it co-created its fourth plan (2019–2020). The fifth action plan offers an opportunity to align the OGP agenda with the government's reform agenda as well as the country's recent European Union (EU) candidate status. The State Chancellery will likely need to make a concerted effort to rekindle the government's and civil society's interest for involvement in the fifth action plan. Meanwhile, the country's international partners can mobilize resources to support engagement from a wider segment of civil society and public sector officials.

As the Republic of Moldova enters the fifth action plan co-creation, preliminary steps should be taken to bring stakeholders together and ensure open and participatory consultations and transparent documentation of the proceedings. It will also be important to ensure that the co-creation process is fully in line with the minimum requirements under OGP's updated *Participation and Co-Creation Standards.* The IRM recommends the following:

1. Prior to the start of co-creation, convene key stakeholders to identify a roadmap and timeline for the process, as well as objectives to address in the action plan;
2. Publish information and documents on all steps of the co-creation process on the national OGP repository, including the announcements of the meetings that participants can join;
3. Involve more diverse stakeholders from within and outside government in the co-creation process; and
4. Document and report back to stakeholders on how their contributions were considered during co-creation, ideally as written feedback.

RECOMMENDATIONS

Recommendation 1: Prior to the start of co-creation, convene key stakeholders to identify a roadmap and timeline for the process, as well as objectives to address in the action plan.

Given the gap in time since the fourth action plan, the IRM recommends the State Chancellery convene key stakeholders to develop a timeline for the fifth action plan's co-creation before the process begins. The timeline should outline clear stages of the process, roles, and expectations. As an example, Romania produces a timeline in advance of its co-creation processes. In addition to a timeline, the IRM recommends that stakeholders agree on a series of policy objectives that they wish to achieve in the fifth action plan, aligning the plan with key national open government and anti-corruption priorities.

While setting the co-creation timeline and identifying potential national priorities, the State Chancellery and stakeholders can simultaneously revisit the Multi-Stakeholder Forum's (MSF's) composition, mandate, and governing structure. For example, stakeholders could hold an open event for setting the timeline and priorities that also involves launching the process to renew the MSF. Per the updated *OGP Participation and Co-Creation Standards*, the MSF should meet at least every six months and its basic rules must be public. MSF members could agree to procedures for making decisions (e.g., consensus or majority, addressing dissenting views), selecting new members (e.g., through an open call), and monitoring implementation (e.g., regular reports or hearings of institutions responsible for commitments). The Czech MSF

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provides an example of a statute and rules of procedure. All MSF meetings should be documented and minutes published on the national OGP repository in a timely manner (see Recommendation 2).

Recommendation 2: Publish information and documents on all steps of the co-creation process on the national OGP repository, including the announcements of the meetings that participants can join.

Previous IRM reports have recommended that the State Chancellery improve the visibility and comprehensiveness of OGP-related information on its repository. Meanwhile, the MSF has maintained its own website with information on its functions and minutes of its meetings, but it has not been updated since 2021. The fifth action plan offers an opportunity to consolidate the information published on these two websites into a single repository and rethink how this information will be displayed going forward.

As a minimum, the repository should provide updates on the co-creation process and on commitment implementation at least twice a year. Information to account for the co-creation process includes notices for public consultations, rules of procedure for the MSF, meeting agendas and minutes, proposals submitted by stakeholders, and feedback on how input was considered (see Recommendation 4). New Zealand's and Romania's repositories provide good examples. Information should be provided in plain language and, where relevant, accompanied by infographics and visuals to help the public grasp the key messages. Meetings held as part of the co-creation process could be used to gather users' feedback on the display of information on the repository, source ideas for improvement, and make sure it is regularly updated. Going forward, the Republic of Moldova could also use its OGP repository as a one-stop resource for all information on national open government reforms.

Recommendation 3: Involve more diverse stakeholders from within and outside government in the co-creation process.

Stakeholder participation in past OGP processes has been mostly limited to civil society organizations (CSOs) based in the capital. The IRM recommends making an extra effort to engage diverse government and non-government groups into the fifth action plan, including those that have not participated in previous OGP processes. This could ensure broader engagement in designing open government reforms in the context of EU integration and the war in neighboring Ukraine, including through the inclusion of groups representing refugees and promoting refugees' rights.

The State Chancellery and the MSF can identify new groups to involve in the co-creation process, with priority given to non-government groups facing more barriers to participation (e.g., youth, elderly, people with disabilities, migrants). This could entail reaching out to additional grassroots groups focused on key social areas such as health, public service delivery, and local government, not just those out of the capital. Participation opportunities should be accompanied by adequate background information on open government priorities and the role the public can play in the process. On the government side, efforts could be made to involve new agencies and ministries based on the identified national priorities (see Recommendation 1) and on priorities and commitments proposed by CSOs beyond the existing members of the MSF. For example, if there is a desire to address justice sector reforms, the Ministry of Justice should be invited to participate in the co-creation process. The Republic of

Moldova could seek external funding to reach new groups during co-creation. Possible funding sources are the EU for Integrity Programme for the Eastern Partnership, the United Nations (UN) Development Programme, the United States Agency for International Development, and the World Bank. For example, during its 2019–2021 action plan co-creation, Costa Rica used a grant from the World Bank to conduct surveys, workshops, and group interviews all around the country.

Recommendation 4: Document and report back to stakeholders on how their contributions were considered during co-creation, ideally as written feedback.

OGP's updated *Participation and Co-Creation Standards* require governments and/or MSFs to document and report back to stakeholders on how their contributions were considered during the co-creation process. Adequate feedback not only improves accountability but is also positively related to strong and ambitious action plans.

In the upcoming co-creation process, the IRM recommends the State Chancellery or the MSF publish an overview of all stakeholder contributions and explain why their ideas were or were not adopted. Depending on the number of ideas received, the State Chancellery could comment on each one separately or aggregate similar topics into groups. The State Chancellery could also use the tabular format from the fourth action plan to consolidate comments and objections by central public authorities. As a more advanced step, the State Chancellery could publish draft versions of commitments throughout the co-creation process with changes tracked, like Finland did for its fourth action plan.

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS
The fifth action plan offers an opportunity to address key national priorities in line with the Republic of Moldova's commitments made for the 2021 Summit for Democracy (S4D), the government's reform agenda, and recent recommendations by the European Commission on the country's EU membership application. Priority areas could include justice sector reform (and accompanying reform of the prosecution service and law enforcement), beneficial ownership transparency, public procurement and open contracting, financing of political parties and election campaigns, and public participation in policy-making.

In addition, the Republic of Moldova can continue implementing the State Chancellery's Central Public Administration Reform in the fifth action plan. It will be important to ensure that commitments concerning digitalization include activities that will lead to opening up government, such as improving the transparency around public services delivery and including citizen feedback mechanisms to continuously improve services. Furthermore, in light of the European Commission's decision to award the Republic of Moldova with EU candidate status, the fifth action plan could be used to ensure transparent monitoring of funds deriving from EU support to government institutions. Lastly, the Republic of Moldova can pursue commitments that instill transparency on provision of aid to refugees from Ukraine, such as healthcare provisions for refugees.

AREA 1. Justice sector reform

The Organisation for Economic Co-operation and Development (OECD) has identified persistent challenges regarding political influence in judicial appointments, promotions, and case assignments. The Group of States against Corruption's (GRECO's) latest compliance report found that the Republic of Moldova had made little progress on reforms to the judiciary. Although the country has recently adopted legislation to address some of these issues, there are significant gaps in the enforcement of the rules. As part of its S4D commitments, the government has pledged to prioritize judicial reforms.

The fifth action plan offers an opportunity to strengthen judicial and prosecutorial transparency and integrity and align the legal and policy frameworks with European standards. In line with the S4D pledge, potential commitments could entail launching transparent selection and vetting procedures of judges and prosecutors to ensure their integrity and independence. GRECO and the European Commission have recommended filling vacancies on the Supreme Council Magistracy in a fair and transparent manner. As an example, the Slovak Republic established a committee to oversee the selection of heads of courts, judges, and judicial staff and published detailed information on candidates and the selection processes. Also, in light of the European Commission's recommendation to implement "de-oligarchisation," the next action plan could support the work of the Anticorruption Prosecutor's Office and the recently appointed anticorruption prosecutor. This could entail improving the transparency and independence of the prosecution service, particularly around high-profile cases of alleged political corruption. Finally, the government could make key data on court cases and decisions available in open formats. For example, the Czech Republic will publish the final decisions of lower (district) courts, including different categories of decisions beyond civil law issues. The Republic of Moldova could commit to publishing adequate reasoning alongside decisions, particularly those of the Supreme Council Magistracy (benchmark 5.5.7 in the OECD's report and recommendation viii in the GRECO report).

Useful resources:
- UN Office on Drugs and Crime: Resource Guide on Strengthening Judicial Integrity and Capacity
- OGP Justice Policy Series, Part II: Open Justice
- Partners that can provide technical support: Global Judicial Integrity Network, Pathfinders

AREA 2. Beneficial ownership transparency

In October 2021, the Republic of Moldova passed amendments to its law on company ownership to ensure public access to information on the beneficiaries of companies operating in the country and via offshore accounts. Anti-corruption is a priority in the Republic of Moldova's 2021–2024 concept for OGP, including making information on ultimate beneficial owners of legal entities publicly available. Moreover, in its opinion on the EU membership application of the Republic of Moldova, the European Commission recommended that the Republic of Moldova put in place a comprehensive framework to fight financial crime and money laundering.

To tackle these challenges, the Republic of Moldova could use the fifth action plan to ensure that information on its companies register meets global transparency standards. As the amended legislation calls for making information accessible as open data, a potential commitment could entail adopting the Beneficial Ownership Data Standard, as Armenia and Latvia are doing. The Republic of Moldova could also ensure that information on the companies register is cross-

checked with data on other portals and registers, such as MTender. North Macedonia has committed to publishing information on the beneficial owners of companies that are awarded state tenders to the government's e-procurement system.

Useful resources:
- Open Ownership: Guide to implementing beneficial ownership transparency and beneficial ownership disclosure principles
- OGP recommendations on beneficial ownership commitments
- Partners that can provide technical support: Open Ownership, Beneficial Ownership Leadership Group, Tax Justice Network

AREA 3. Public procurement and open contracting

The OECD has noted that public procurement in the Republic of Moldova continues to be perceived as lacking transparency, integrity, and efficiency. In its opinion on the EU membership application of the Republic of Moldova, the European Commission has recommended the country complete the reform of its public financial management, including improving public procurement at all levels of government. The Government Action Plan 2021–2023 envisages a modern public procurement system according to EU standards. In addition, the Republic of Moldova's 2021–2024 OGP concept envisages open contracting as an area of focus, including implementing the Open Contracting Data Standard (OCDS).

The fifth action plan could address past IRM recommendations to improve the quality of data on the MTender platform and align the data with international best standards (e.g., the OCDS). This could involve publishing critical procurement documents, such as procurement plans, notices of intended procurements, and decisions of tender commissions. For example, Lithuania's Public Procurement Office is opening up all of its historical procurement data using OCDS. Commitments could also improve public monitoring of and engagement in the procurement process. For example, DOZORRO in Ukraine provides channels for citizens to submit feedback and report procurement violations for investigation.

Another area of opportunity is transparency in the health sector, particularly for emergency spending and procurement (in light of COVID-19). The government could consider adding health-related procurements to MTender so that publishing for the sector is in line with other sectors. For example, Ukraine has used its e-procurement system, ProZorro, to save healthcare organizations an average of 15 percent on all of their procurement. The government could collaborate with experienced CSOs like Initiativa Pozitiva, which has developed the tender.health platform for procurement contracts for equipment and drugs to fight COVID-19.

Useful resources:
- Recommendations on Open Contracting for OGP National Action Plans
- OGP's Guide to Open Government and the Coronavirus: Public Procurement
- OCP's toolkit for Open and Sustainable Public Procurement
- OpenStories about Ukraine's DOZORRO and the Republic of Moldova's tender.health
- Partners that can provide technical support: Open Contracting Partnership

AREA 4. Financing of political parties and election campaigns

The Republic of Moldova amended legislation on political party financing in 2020 that sets a ceiling on the amount of donations to political parties and bans donations from foreign and anonymous entities. However, independent observers have found inadequacies in enforcement of the rules and investigations of violations. For its S4D commitments, the administration pledged to enforce strong oversight measures and sanctions for the illegal financing of political parties.

Several of these issues could be addressed in the fifth action plan. Since the Republic of Moldova has generally found it challenging to enforce regulations and fight improper influence, the government should devote attention to adopting supporting policies, mechanisms for enforcement, and independent oversight. Other activities could entail publishing information on donations to political parties and political campaigns in a timely manner and in a single portal with machine-readable data. For example, Croatia publishes data on electoral and referendum financing on the State Electoral Commission webpage. Also, Georgia publishes regular reports detailing income and expenditures of political parties as well as the names and ID numbers of individual contributors.

Useful resources:
- International Institute for Democracy and Electoral Assistance (IDEA) & OGP: Political Finance Transparency Policy Brief
- Transparency International: Recommendations on Political Financing for OGP Action Plans
- Transparency International: Building Political Integrity to Stamp out Corruption: Three Steps to Cleaner Politics
- Partners that can provide technical support: International IDEA

AREA 5. Public participation in policy-making

Currently, there are sub-pages on the webpages of all ministries in the Republic of Moldova where draft laws are published, as well as a central platform (particip.gov.md) where bills are published for the public and civil society to comment. However, as noted in previous IRM reports, public consultations are often announced late, the government often makes changes to draft legislation at the last minute or fast-tracks legislation without adequate warning or justification, and civil society input is often not reflected in the adopted laws. GRECO has recommended ensuring the timely publishing of draft laws in order to provide sufficient time for public debate. Meanwhile, the European Commission has recommended enhancing civil society involvement in decision-making processes at all levels.

For the fifth action plan, the government could commit to institutionalizing civil society engagement in policy-making and strengthening sectoral-focused consultations. For example, Mexico has a legally established citizen council for formulating all public policies. Also, Latvia has committed to strengthening the representation of sectoral partners in decision-making by requiring ministries to identify and maintain regular dialogue with civil society, social partners, experts, industry representatives, and others in the ministry's areas of activity. Commitments could also entail developing and promoting practical guidance for government agencies on how to conduct consultations, as Italy and New Zealand have done. Moreover, the government could commit to providing more detailed feedback on civil society suggestions that are not included in the final law drafts and inform civil society of any last-minute changes to the bill before it starts the legislative process.

Useful resources:
- [OECD's guide to public engagement for better policies and services](#);
- [Involve's guide to designing and implementing good citizen participation processes](#)
- [European Center for Not-for-profit Law's overview of civil participation in decision-making in Council of Europe member states](#)
- [Council of Europe's Code of Good Practice for Civil Participation in the Decision-Making Process](#)