Independent Reporting Mechanism

Ukraine Co-Creation Brief 2022

Open Government Partnership

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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 Ukraine's sixth 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 Ukraine 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 the assessment of OGP's minimum requirements 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 November 2022.

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Section I: Action Plan Co-Creation Process

On 24 February 2022, during Ukraine's fifth action plan cycle, Russia launched a full-scale war on Ukraine. Nonetheless, Ukraine's multi-stakeholder forum (the Coordinating Council) has expressed its desire to begin developing its sixth action plan. As the security situation will likely limit Ukraine's ability to carry out the same level of consultations as during its previous co-creation processes, the Cabinet of Ministers and the Coordination Council can implement a simplified process that gives stakeholders the opportunity to provide input into the action plan, while still meeting the requirements under OGP's Co-creation and Participation Standards.

It will likely be unfeasible for the Cabinet of Ministers to hold large in-person consultations in the context of the war, particularly outside Kyiv. Instead, the Cabinet of Ministers and Coordination Council can prioritize online engagement to solicit ideas and feedback on the action plan from stakeholders. The co-creation timeline and the opportunities to participate can be flexible, with the possibility to adjust them in the event of changes to the security situation. The Secretariat of Cabinet of Ministers can organize targeted online consultations between relevant government institutions and civil society organizations (CSOs) to draft commitments around the topics that stakeholders discussed at the strategy session in May 2022 during Open Gov Week and at the August 2022 Coordinating Council meeting.

After these consultations, the Coordination Council can organize online voting for members to prioritize which commitments to include in the draft action plans. The Cabinet of Ministers can post the draft action plan online for broader public input before it is finalized, in line with the requirement under OGP's Co-creation and Participation Standards to put in place a mechanism to gather inputs from a range of stakeholders during an appropriate period of time. Finally, the Cabinet of Ministers and/or the Coordination Council should document the proposals and comments it receives and report back (ideally as written feedback) to stakeholders on how their contributions were considered during co-creation.

OGP's Co-creation and Participation Standards also require members to publish information and evidence to account for their action plan co-creation process. During Ukraine's co-creation process, the Secretariat of the Cabinet of Ministers should publish the following information and documents on the website of the Cabinet of Ministers:

- the co-creation timeline and overview of the opportunities for stakeholders to participate, published at least two weeks before the start of the co-creation process,
- the results of stakeholders voting and online consultations, including proposals for commitments, as discussed by stakeholders. See for example, the publication on the results of the survey for Latvia's 2019-2021 action plan, which received 168 proposals, and the readout by the Dutch government on how it used online polling to prioritize themes for the Netherlands' 2020-2022 action plan,
- meeting agendas and minutes of the Coordination Council, and any other relevant documents (i.e., its composition and rules of procedure),
- the proposals and/or comments submitted by stakeholders throughout the co-creation process, and the reasoning behind their inclusion or exclusion in the draft and final action plans (published before the Cabinet of Ministers adopts the final action plan). The Cabinet of Ministers can continue its practice from past co-creation processes of publishing feedback outlining the issue raised, solutions,

suggested, expected results, and decision made. Depending on the number of proposals received, the Cabinet can publish a single document with feedback around common themes, rather than responding to each proposal individually. As an example, the Government of Canada published a summary report for its 2018-2020 action plan of the major themes that emerged during its co-creation and explained how it prioritized themes for further consultation based on shared interest.

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS
International partners are underscoring that the multi-faceted anti-corruption initiatives should be part of Ukraine's reconstruction, democratic renewal, and economic progress. Commitments in Ukraine's next OGP action plan can address the post-war recovery through inclusive reconstruction processes as well as transparency, monitoring, and accountability of recovery funds. It can also address recommendations from the recent EU candidacy conditions, such as justice and anti-corruption reform, and carry forward key commitments from the fifth action plan, such as public procurement and beneficial ownership verification.

AREA 1. Participatory and inclusive planning and implementation of the reconstruction process

Participation of Ukrainian CSOs and local communities in the reconstruction of Ukraine will be essential to ensure the process is carried out in a citizen-centric way. Ukrainian CSOs can provide valuable input during reconstruction by reporting observed misconduct, be it in the allocation of resources or delivery of projects. The next action plan could focus on creating institutionalized channels for CSOs to work directly with the government and international donors to shape the planning and implementation of the country's reconstruction. To make the reconstruction inclusive, CSOs will not only need to be consulted but should also be given a formal role in the process within a multi-stakeholder framework.

The framework and/or channels for participation should be implemented in a way that allows civil society to give direct feedback and input on decisions of spending, prioritizing projects, and choosing contractors. For example, the EU's "RecoverUkraine" platform could offer equal representation for civil society. The German Marshall Fund of the United States has recommended that RecoverUkraine could allow for more institutionalized and regular exchange with civil society, possibly through an annual RecoverUkraine summit. In addition, civil society has provided input into the planning for the government's National Recovery Plan and adopted a manifesto at the Lugano conference in July 2022. The principles in this manifesto can form the basis for a future multi-stakeholder framework to consult civil society during reconstruction.

Useful resources:
- German Marshall Fund of the United States: Designing Ukraine's Recovery in the Spirit of the Marshall Plan;
- Brookings Institution: Financing and governing the recovery, reconstruction, and modernization of Ukraine;
- RISE Ukraine;
- Lugano Declaration: Civil Society Manifesto 2022;

- National Recovery Council: National Recovery Plan of Ukraine (July 2022)

AREA 2. Transparency, monitoring, and accountability of reconstruction funds

Ukraine's next action plan could prioritize measures that support transparency, monitoring, and accountability related to the reconstruction of infrastructure. Commitments around transparency of recovery funds could cover documentation related to planning, design and procurement, implementation, and assessment of projects. Ideally this should be done through a centralized digital platform, such as the Rebuild Ukraine Digital Management System, as discussed by the Ministry of Infrastructure and the RISE coalition of Ukrainian and international civil society. Such a platform could also include a module to publish data in accordance with international standards, such as the Open Contracting Data Standard (OCDS) and the Beneficial Ownership Data Standard (BODS).

To enhance public monitoring, the next action plan could build on the commitment from the fifth action plan (2021-2022) by creating unique identifiers for reconstruction projects. Applying unique identifiers for projects across databases would make it easier to track the different contracts for individual projects, regardless of the name or the number of contracts needed for the project. Making such identifiers public could also reduce opportunities for corruption and make it possible for officials and the public to accurately follow the implementation of reconstruction projects.

Finally, implementation of reconstruction projects should incorporate an element of public feedback and reporting potential corruption. Similar to DoZorro, the public monitoring system of public procurement, Ukraine could set up a mechanism to ensure that the public can report wrongdoings, potential conflicts of interest, and problems with the delivery of services.

Useful resources:
- Open Contracting Partnership: "A bold vision for Ukraine's digital and accountable reconstruction";
- Transparency International Ukraine: "The cost of reconstruction: calculations of the National Recovery Council" and "Awaiting rebuilding: 5 questions still unanswered";
- Open Ownership: Beneficial ownership data in procurement;
- Partners that can provide technical support: Open Contracting Partnership, Infrastructure Transparency Initiative (CoST)

AREA 3. Public procurement and open contracting

Ukraine's fourth action plan included a commitment that added a citizens' budget module on to openbudget.gov.ua, which greatly increased access to state, regional, and local spending information via open formats. Ukraine sought to build on this success in the fifth action plan by committing to introduce budget program indicators (criteria for monitoring budgets) and e-contracts on openbudget.gov.ua. The e-contracts module would digitize the signing contracts with public institutions, turn them into publicly available and machine-readable data, and enable easier analysis and public oversight of contracts in Ukraine.

Given the potential benefits of digitalization of signing contracts, Ukraine could carry this commitment forward to the next action plan. Ukraine could commit to conducting all public procurement on the Prozorro platform, including digital contracts signing. As recommended in

the IRM Action Plan Review, Ukraine can also ensure that public officials are trained in using the new system and that there are measures in place to detect potential errors or verify the information before it is confirmed in the system.

Useful resources:
- Organisation for Economic Co-operation and Development: Public Procurement Toolkit;
- Partners that can provide technical support: Open Contracting Partnership

AREA 4. Beneficial ownership verification

Ukraine has included commitments in its past action plans around developing a verification mechanism for its beneficial ownership transparency regime. However, these commitments were implemented only partially. In September 2022, the Verkhovna Rada passed a draft law on disclosing the ultimate beneficial owners (UBO) of legal entities. The draft law will automatize the verification of information about UBOs of companies submitted to the unified state register, using the Unified State Web Portal of Electronic Services (Diia).

Ukraine's beneficial ownership is currently closed due to the security concerns from the war. If it is re-opened in time for the next action plan, Ukraine can continue implementing the verification of beneficial ownership data. A future commitment could entail introducing unique identifiers for individual UBOs and to establish annual mandatory updates of the register's data. Possible mechanisms to verify information on UBOs could include automatic checks against risk-indicators, feedback from banks, and cross-checks with other registries. Ukraine could also learn from other OGP members who have implemented beneficial ownership verification. For example, in Denmark, the Danish Central Business Register automatically cross-checks submitted information with various governmental registers, including the civil register and the Danish address register. Lastly, Ukraine can link unique identifiers for beneficial ownership data to the data presented on any database created or used for reconstruction projects.

Useful resources:
- Open Ownership: Verification of Beneficial Ownership Data;
- Tax Justice Network: Beneficial ownership verification;
- Beneficial Ownership Leadership Group;
- Independent audit of state registers and databases required for the implementation of a unified verification system of beneficial ownership transparency;
- Partners that can provide technical support: Open Ownership, Transparency International Ukraine, Tax Justice Network.

AREA 5. Judicial transparency and integrity

Ukraine will emerge from the war with a need to overhaul its judicial system. Ukraine can use the sixth action plan to address EU recommendations on judicial reforms. In particular, Ukraine can commit to establishing an independent committee to oversee the selection of heads of judges of the Constitutional Court of Ukraine and publishing detailed information on the vetting of candidates for the High Council of Justice and the High Qualification Commission of Judges of Ukraine. Ukraine could create a committee that is in line with the Venice Commission's recommendation to establish a "screening body" for candidates for

judges of the Constitutional Court, and include international human rights experts and participation from civil society. As an example, the Slovak Republic established a committee to oversee the selection of heads of courts, judges, judicial staff and published detailed information on candidates and the selection processes.

Useful resources:
- OGP Justice Policy Series, Part II: Open Justice;
- Council of Europe's Venice Commission: Urgent opinion on the Reform of the Constitutional Court of Ukraine (December 2020);
- Partners that can provide technical support: Global Judicial Integrity Network, Pathfinders, World Justice Project

AREA 6. Transparent anti-corruption institutions and investigations

Ukraine will also emerge from the war with a need to re-invigorate its anti-corruption institutions in line with EU candidacy recommendations. The European Commission noted that while Ukraine has made notable achievements in corruption prevention, the number of high-level officials brought to justice for corruption remains limited and law enforcement sometimes experiences political interferences in its investigations of corruption.

Ukraine can use the sixth action plan to address recommendations from the EU on strengthening the fight against corruption, particularly high-level corruption. In particular, Ukraine can regularly publish detailed and centralized statistics on the detection, investigation, prosecution, and adjudication of high-level corruption (in line with benchmark 12.2.1 of the OECD's 2022 monitoring of Ukraine's progress under the Istanbul Anti-Corruption Action Plan). Ukraine could also pursue selecting the heads of the National Anti-Corruption Bureau and the Asset Recovery and Management Agency (ARMA) through transparent and competence-based competitions.

Useful resources:
- 2021 OECD Anti-Bribery Recommendation;
- OECD: Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan;
- Partners that can provide technical support: Transparency International Ukraine, Anti-Corruption Action Center.