

Independent Reporting Mechanism

Germany Co-Creation Brief
2022

Open
Government
Partnership



Independent
Reporting
Mechanism

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 Germany](#) 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](#), 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

Over its first three action plans, Germany has consistently succeeded in meeting the minimum requirements for engaging stakeholders and documenting its co-creation processes. For the co-creation of the third action plan (2021-2023), restrictions from the COVID-19 pandemic prevented the Federal Chancellery from holding in-person meetings, workshops, or larger-scale events. As Germany emerges from the pandemic, the fourth action plan offers the country an opportunity to reinvigorate civil society engagement in the OGP process and explore new methods around co-creation, while continuing to meet [OGP's updated Co-creation and Participation Standards](#). With those aims in mind, the IRM provides the following recommendations:

1. Reach out to new stakeholder groups with thematic expertise and to political parties and the parliamentary administration.
2. Take steps to formalize the engagement between civil society and ministries during co-creation and implementation.
3. Organize a public kick-off meeting to discuss possible priorities for the action plan.
4. Hold thematically focused consultations between ministries and expert civil society stakeholders when drafting and implementing commitments.
5. Organize a concluding workshop for stakeholders to discuss the draft action plan, in addition to the option of providing comments via online channels.

RECOMMENDATIONS

Recommendation 1: Reach out to new stakeholder groups with thematic expertise and to political parties and the parliamentary administration.

The Federal Chancellery successfully [involved](#) new stakeholders in the second action plan (2019-2021)'s co-creation beyond those focused on open data and transparency. COVID-19 limited the possibilities for wide consultations for the third action plan. Now, the fourth action plan offers an opportunity to continue reaching out to civil society and government stakeholders who, until now, have not been part of the OGP process.

The Federal Chancellery and the Open Government Network (OGN) can jointly map groups with knowledge of key social themes (such as health or the environment) and groups representing peoples who may be directly impacted by commitments (such as trade unions, linguistic minorities, or persons with disabilities). The Federal Chancellery and the OGN could consult [Finland's experience](#) in engaging previously uninvolved regional and sectoral groups for its 2019–2023 action plan. Since new stakeholders will likely be unfamiliar with OGP, the Federal Chancellery and the OGN should accompany invitations with background information and materials, such as the scope of action plans, the criteria for selecting commitments, and the value proposition explaining how participation in OGP will benefit their work.

On the government side, the Federal Chancellery can enhance the visibility of OGP by reaching out to political parties and the parliamentary administration. This could make it easier to deliberate on commitments that cut across responsibilities of different actors. Where the Federal Chancellery faces legal and practical limitations, it could facilitate outreach to these stakeholders via civil society, for example by co-hosting events on related topics.

Recommendation 2: Take steps to formalize the engagement between civil society and ministries during co-creation and implementation.

In developing Germany's past action plans, the Federal Chancellery has served as a broker between ministries and civil society. While this approach has provided a feasible format for organizing a multi-stakeholder process in Germany, the OGP process could benefit from further formalizing the dialogue mechanisms between ministries and civil society.

For the fourth action plan, the Federal Chancellery and the OGN can explore possible avenues to standardize how the government engages civil society during the development and implementation of OGP action plans. The Federal Chancellery and the OGN can jointly develop rules around the participation of ministries and civil society throughout the OGP process (i.e., the regularity of meetings and the role of civil society in decision-making procedures for the action plans). Germany could also consider organizing thematic working groups in order to standardize engagement around topics of shared interest (see Recommendation 4). Germany can learn from other OGP countries that have not always used a formal multi-stakeholder forum, but have organized working groups to develop their action plans, such as [Latvia](#), the [Slovak Republic](#), and the [United Kingdom](#).

Recommendation 3: Organize a public kick-off meeting to discuss possible priorities for the action plan.

For the [third action plan](#), the Federal Chancellery presented civil society with an initial outline, drafted by ministries. Civil society could leave comments and submit their own proposals, after which the Federal Chancellery worked with the ministries to produce a draft action plan. While this format helped Germany overcome restrictions during COVID-19, the resulting action plan generally reflected government priorities.

With the lifting of COVID-19 restrictions, the Federal Chancellery and the OGN can start the fourth plan's co-creation by organizing a public kick-off meeting to discuss possible thematic priorities to take up during consultations ([as during the second action plan](#)). Before the meeting, the Federal Chancellery can provide participants with detailed information on the timeline for co-creation and the opportunities to get involved in the process. The Federal Chancellery and the OGN can accompany the meeting with a workshop for representatives of ministries and civil society to learn how to develop strong commitment proposals.

The kick-off meeting can also be accompanied by opportunities for remote participation. For example, the Federal Chancellery can follow up the meeting with an online survey for government and civil society stakeholders to submit additional ideas. For example, [Finland](#) (2019-2023 action plan) and [Latvia](#) (2019-2021 action plan) used online surveys to supplement their initial consultations in identifying themes for further discussion.

Recommendation 4: Hold thematically focused consultations between ministries and expert civil society stakeholders when drafting and implementing commitments.

During Germany's first three action plans, civil society has mostly engaged with the open government team at the Federal Chancellery, with the point of contact acting as an interlocutor between civil society and the implementing ministries and agencies. For the fourth action plan, Germany can transition to a format that allows ministries and agencies to engage directly with civil society around themes of common interest.

After key themes are identified (see Recommendation 3), the Federal Chancellery and the OGN can organize thematically focused consultations for civil society and relevant ministries and agencies to jointly discuss and develop commitments. This could reinvigorate civil society's interest in Germany's OGP process, improve the quality of engagement, and promote collaborative ownership of the action plan. As an example, stakeholders could replicate the ongoing discussions between experts from civil society and government on open data (a [commitment](#) in Germany's third action plan). Direct government-civil society deliberation could also improve the quality of the proposals, making them more likely to be taken up by implementing ministries in the action plan.

Lastly, these thematic consultations could eventually turn into working groups that could monitor the implementation of their commitments. These working groups could also help to formalize the OGP process in Germany (see Recommendation 2).

Recommendation 5: Organize a concluding workshop for stakeholders to discuss the draft action plan, in addition to the option of providing comments via online channels.

The Federal Chancellery drafted the third action plan along with the ministries, after examining the comments received from civil society. Civil society then had a further 19 days to review the draft action plan and submit feedback on it. While this additional commenting period was welcomed, it left little opportunity for substantive engagement on the commitments selected for inclusion by the government in the draft action plan.

For the fourth action plan, the Federal Chancellery could organize a "concluding workshop" around the draft action plan while the draft is still available for further comments. This workshop could allow stakeholders to give summaries of their thematic consultations (see Recommendation 4) and allow the Federal Chancellery to give direct feedback on the reasoning behind decisions for the inclusion and exclusion of specific commitment proposals (in addition to the publicly available written summary that the Federal Chancellery has given during past action plans – a practice that should continue during the plan).

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS

Germany's fourth action plan could address priorities of the [governing coalition's agreement](#) as well as the recently-adopted [digital strategy](#). Commitments could focus on lobbying transparency (including creating a "legislative footprint"), and digital transformation of the public administration, including digital public services, protecting civic space online, and transparency of online political advertising. Germany could also pursue transparency and participation in its green transition and climate policies, and improve open data, particularly for beneficial ownership of companies and public procurement. For all policy areas, Germany could incorporate aspects around inclusion and gender equality, and continue to seek synergies with the activities of federal states (Länder).

AREA 1. Lobbying transparency and "legislative footprint"

On 1 January 2022, the Lobbying Register Act [entered into force](#). Germany subsequently established a publicly accessible [Lobbying Register](#), where representatives of special interests are required to register and provide information on their lobbying activities.

In the fourth action plan, Germany could ensure that the Lobbying Register meets international best practices in data publication, such as adding unique identifiers for each lobbyist and public official, and displaying data in open, downloadable format, as [France](#) does. Germany could revisit the long-standing priority of civil society to [establish a comprehensive "legislative footprint"](#): a repository that allows citizens to track the development of any legislation from start to finish, including all amendments and their sponsors. The legislative footprint could give each law an electronic identifier and be made interoperable with the Lobbying Register.

In addition, the Lobbying Register Act applies only to the federal level and there are large [differences in lobbying regulations among Länder](#). Therefore, the fourth action plan can bring together Länder governments with the aim of improving the transparency of lobbying activities within their own legislatures. Länder governments and stakeholders could explore ways to harmonize their reporting policies for lobbying activities and discuss best practices.

Useful resources:

- [Access Info, Sunlight Foundation, Transparency International, and Open Knowledge Foundation: International Standards for Lobbying Regulation](#);
- [OECD: Principles for Transparency and Integrity in Lobbying](#);
- [Transparency International: EU Legislative Footprint](#);
- Partners that can provide technical support: [Open Knowledge Foundation Germany](#), [Transparency International Germany](#), [LobbyControl](#).

AREA 2. Digital governance (public services, online content, and online political advertising)

The digital transformation of society has been a focus of Germany's action plans. The European Union (EU)'s [Digital Economy and Society Index](#) ranks Germany 13th among EU member states on digital performance, and the most recent [e-government benchmark](#) from the EU ranks Germany 18th. To address this situation, the governing coalition agreement calls for "a comprehensive digital awakening" and the Federal Government launched a new [digital strategy](#) in September 2022.

Germany can use the fourth action plan to pursue the goals of the digital strategy through open government. As Germany continues to digitize its public services, it could develop tools for monitoring of services and incorporate feedback and redress mechanisms for the public. For example, Estonia developed an [online platform](#) that provides detailed comparative information of all local municipalities in public service provision and open government. In addition, activities around digitizing public services in [Hamburg](#) and [North Rhine-Westphalia](#) in the third action plan could be taken up by more Länder in the fourth plan.

The coalition agreement calls for introducing an "Act Against Digital Violence" to [reduce](#) legal obstacles for victims of digital violence. The fourth action plan could be used to support the implementation of this Act. This could involve establishing a framework for government, law enforcement, independent experts, and civil society to identify harmful content (with a focus on gender-based harassment) and ensure regular disclosure of remediation actions taken. Finally, Germany could develop regulations and guidelines for transparency for the use of online political advertising. For example, the Netherlands has [committed](#) to introduce binding rules around transparency of funding political parties and making digital political campaigns and advertisements [more transparent](#).

Useful resources:

- OGP: [Actions for Transparent and Accountable Digital Governance](#);
- Open Governance Network for Europe: [Bolstering Online Political Advertising Policy in Europe](#);
- National Democratic Institute and OGP: [How OGP Members Can Address Foreign-Sponsored Information Manipulation](#);
- OGP: [Strengthening Democracy and Protecting Civic Rights in the Digital Era](#);
- Partners that can provide technical support: [Open Knowledge Foundation Germany](#), [Center for Democracy & Technology](#), [The Web Foundation](#).

AREA 3. Green transition and climate action

Germany's governing coalition has [pledged](#) €200 billion through 2026 toward decarbonization and climate protection. The [United Nations Climate Change Conference \(COP26\)](#) saw the finalization of the Enhanced Transparency Framework (ETF), to track progress toward achieving countries' emission reduction commitments under the Paris Agreement. In 2022, Germany [participated](#) in COP27, where implementation of the ETF was on the agenda. Meanwhile, Russia's invasion of Ukraine has reinforced the importance for Germany to transition away from fossil fuel imports.

Germany could align the fourth action plan to the coalition's priorities around climate action by linking open government to the country's green transition. For example, Germany could commit to increasing transparency of the use and impact of green transition funds by publishing open data on procurement for green purchasing.

Germany could also use the fourth action plan to embed citizen participation mechanisms in climate policies, with a focus on underrepresented groups. For example, at COP26, Germany [announced](#) a new [Gender Strategy](#) under its International Climate Initiative, to promote gender-transformative approaches in international climate and biodiversity cooperation. Finally, Germany could also leverage previous OGP commitments around [extractives sector transparency](#), [developing standards for participation in environmental policy-making](#), [maintaining dialogue around trace substances](#), and [biodiversity monitoring](#).

Useful resources:

- Open Contracting Partnership and the World Resources Institute (WRI): [Implementing the Paris Climate Agreement through Transparency, Participation, and Accountability](#);
- WRI and Open Data Charter: [Implementing Open Data Strategies for Climate Action: Suggestions And Lessons Learned for Government and Civil Society Stakeholders](#);
- EU: [guidance for green procurement](#);
- International Budget Partnership: [Budgeting for a Greener Planet](#);
- Knowledge Network on Climate Assemblies: [examples of national climate assemblies](#), Bürgerrat: [citizen assemblies in Germany](#);
- Partners who can provide technical support: [Mehr Demokratie](#).

AREA 4. Open data (beneficial ownership transparency and public procurement)

Germany has used its past action plans to expand open data in areas such as transportation, extractives industries, and development aid, and to deepen open data practices in Länder. In addition, the Federal Government is implementing a [national open data strategy](#), and the Open Data Competence Centre is supporting a cultural shift toward open data within the

federal administration. Germany could build on these efforts in the fourth action plan, while focusing on improving the quality of data on beneficial ownership and public procurement.

Germany could use the fourth action plan to improve the beneficial ownership data on the [Transparency Register](#). This could involve adopting the Beneficial Ownership Data Standard, as [Latvia is doing](#), and publishing disaggregated data by gender, i.e., through identity codes. Moreover, the [case](#) of the Climate and Environmental Protection Foundation (and its connection to Russian state-owned gas company Gazprom) has demonstrated the need for stronger verification mechanisms of beneficial ownership in Germany. For example, [Denmark](#) and the [Slovak Republic](#) have developed verification mechanisms for their beneficial ownership registers.

Meanwhile, Germany underwent a [major procurement reform](#) in 2020, and is [creating a mandatory platform \(BKMS\)](#) for public contract award procedures (above the legal threshold set by the EU). In the fourth action plan, Germany could work toward a long-term goal of making all procurement data (at the EU, federal, Länder, and municipal levels) accessible via one central e-procurement portal (i.e., [GovData.de](#)). Germany could commit to wide adoption of the [Open Contracting Data Standard \(OCDS\)](#), or ensure compatibility between the XVergabe standard used by implementation partners in the third action plan and the OCDS. Partners can also ensure that data covers the entire cycle of the procurement process (from planning to implementation of contracts) and to pursue collaboration throughout the cycle, for example by allowing civil society access to data models or raw data to comment on. The Federal Government could also continue supporting Länder to publish their public procurement data for contracts below the legal threshold set by the EU, which represent a significant portion of all public procurement in Germany. Finally, Germany could make its public procurement data interoperable with other databases, like the Transparency Register and the Lobbying Register.

Useful resources for beneficial ownership transparency:

- Open Ownership: [Gender and beneficial ownership transparency](#) and [policy briefing on how to link beneficial ownership data with procurement](#);
- OGP recommendations on beneficial ownership commitments;
- Transparency International: [Recommendations on how to address beneficial ownership transparency in OGP action plans](#);
- Partners that can provide technical support: [Open Ownership](#), [Tax Justice Network](#), [Transparency International Germany](#).

Useful resources for public procurement:

- OCP: [best practices for creating open contracting legislation](#), [step-by-step guidance](#) on implementing [open contracting](#) and the OCDS, and [global principles](#) for both disclosure and participation in public procurement;
- Transparency International: [guide](#) to curbing corruption in procurement that includes key principles and standards, and [recommendations](#) for how OGP members can incorporate open contracting commitments in their action plans;
- Organisation for Economic Co-operation and Development: [Public Procurement Toolbox](#), including a [checklist](#) for implementing their transparency principles and many country case studies.