

Independent Reporting Mechanism

Portugal Co-Creation Brief
2023

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 Portugal's third 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 Portugal](#) 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 May 2023.

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Section I: Action Plan Co-Creation Process

Portugal's previous co-creation processes met the minimum requirements set out by OGP. The IRM identified in its [review of Portugal's second action plan](#) that, compared to the first action plan cycle, the second cycle had more direct public outreach. That process included a survey, policy assessments, public workshops, sessions between civil society and government, and a public consultation on the final draft. Through these activities, civil society helped to strengthen proposals and advocated to include commitments on COVID-19 recovery funding and access to information.

Portugal's Administrative Modernization Agency coordinates the Multi-Stakeholder Forum (MSF). It contains both civil society and government representatives and published minutes of its meetings during the previous co-creation process. During that action plan development process, the government also provided reasoned response on how the public's feedback was being used.

Portugal's next action plan presents an opportunity for the MSF to further improve citizen participation in the co-creation process, to secure wider ownership of commitments by involving different government entities in the design, implementation, and monitoring of commitments, and to address different thematic areas. Portugal needs to ensure co-creations meet the minimum requirements of the updated Participation and Co-Creation Standards, even though stakeholders can expect Portugal to be more ambitious during its development process.

RECOMMENDATIONS

Recommendation 1: Co-create an action plan in line with OGP's updated Participation and Co-Creation Standards

OGP's updated [Participation and Co-Creation Standards](#) apply from 1 January 2022. These contain five standards with eight minimum requirements. This will be Portugal's first action plan cycle following this update. Given the maturity of Portugal's participation in OGP, this new action plan cycle is an opportunity for the MSF to exceed the minimum requirements. The minimum requirements are the starting point for implementing each Standard, rather than the end goal.

Portugal would need to ensure that its MSF meets regularly during co-creation, and has published its basic rules on participation (such as its mandate and rules of procedure) to continue to meet the minimum requirements of Standard 1.

To meet the minimum requirements of Standard 2, Portugal needs to maintain its OGP website and ensure its OGP repository provides updates at least twice a year with information and evidence of the co-creation process and of the implementation of commitments.

Standard 3 requires inclusive and informed opportunities for public participation during co-creation. This means that the MSF must publish a timeline and overview of the opportunities for stakeholders to participate at least two weeks before the start of the action plan development process. There needs to be outreach activities with stakeholders to raise awareness of OGP and opportunities to get involved in developing the action plan. As was the case during the previous co-creation process, there needs to be a mechanism to gather inputs from a range of stakeholders during an appropriate period of time. Portugal could aim for broader engagement processes that give more time for gathering and considering input, building on the success of previous cycles.

To meet the minimum requirements of Standard 4 on providing feedback, Portugal could build on its previous co-creation process that included summary reports of workshops, minutes of MSF meetings, and direct comments to input during public consultation, to develop a report on how input throughout the co-creation process was incorporated.

The minimum requirements of Standard 5 require the government or MSF to hold at least two meetings every year with civil society to present results on the implementation of the action plan and collect comments, to ensure ongoing dialogue.

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS

Portugal has demonstrated its commitment to tackling corruption through different measures, such as the adoption of the [National Anti-Corruption Strategy](#). Portugal could build on and strengthen these efforts through its next OGP action plan by implementing advanced commitments on specific areas, such as political integrity, whistleblower protection, beneficial ownership transparency, land ownership data, and public procurement transparency.

AREA 1. Assets declarations transparency

The [Group of States against Corruption](#) (GRECO) and the [European Commission](#) (EC) have recommended Portugal adopt reforms that prevent political corruption. As the EC notes, although Portugal mandates high-level officials to submit a declaration of interests and assets, the Transparency Entity established to monitor compliance and verify declarations is still not operational.

In the next action plan, the Portuguese government could commit to a timeline for the Transparency Entity to be fully operational and ensure that it has the necessary resources to fulfill its mandate. Civil society can hold the government accountable to the timeline and resourcing requirements. Also, building on the current mandate of collecting asset declarations from public officials, the government could ensure that the declarations are publicly available in a timely manner and in an open format that enables journalists' and civil society's participation in detecting corruption. Civil society could have the opportunity, through an OGP action plan commitment, to provide input into shaping how the Transparency Entity works and in identifying its main strategic priorities.

As a reference, some countries have included similar commitments in their action plans. [Ukraine created a unified web-portal](#) to make civil servants' declarations of income, property, and expenditures publicly available. [Georgia implemented a system to monitor the veracity of the asset declarations](#) that public officials submitted.

Useful resources:

- TI: [Recommendations on asset and interest declarations for OGP Action Plans](#);
- OGP: [Broken Links report, Asset Disclosure chapter](#)
- World Bank: [Using Asset Disclosure for Identifying Politically Exposed Persons](#)
- Ukraine ([2014-2016](#)), North Macedonia ([2021-2023](#)) are also working on the policy area
- Partners that can provide support: [Transparency International](#), [Global Integrity](#)

AREA 2. Whistleblower Protection

In 2021, Portugal transposed Directive 2019/1937 on whistleblower protection into national law ([Lei 03/2021](#)). Nonetheless, [Transparency International Portugal](#) notes that the transposition process was not transparent, the protection the legislation mandates is insufficient, a lot of potential whistleblowers are out of the scope of legislation, and even though the law mandates public entities to have a safe channel for reporting, some government agencies are still receiving complaints via email.

Portugal could take concrete steps in its next action plan to strengthen its whistleblower protection measures. It could ensure that the authority in charge of monitoring compliance with the national law has sufficient resources to support whistleblowers. Also, the authority should be able to publish aggregate data on the number of complaints it receives, the measures it takes to protect whistleblowers, and the time it takes investigating cases and reaching a resolution. Civil society should be able to monitor that investigations into complaints are complete, independent, and timely. Another area of action is ensuring there are safe channels to report wrongdoing and retaliation anonymously and raising public awareness of the channels and protection measures available to whistleblowers. As a reference, the [Czech Republic](#) committed in its fifth action plan to implement a media campaign around its new whistleblower law, organize expert conferences, conduct a comparative study of good

practices, do statistical monitoring, and run trainings of prosecutors and judges. [Estonia](#), [Liberia](#), and [Spain](#) have promising commitments that seek to educate people about and promote whistleblowing, introduce whistleblower protection legislation, and/or develop technological solutions for anonymous reporting of wrongdoing.

Useful Resources:

- OGP: [Open Government Reforms Need to Protect Whistleblowers](#);
- OECD: [Whistleblower Protection](#);
- Partners that can provide technical support: [Blueprint for Free Speech](#), [OECD](#), [Transparency International Portugal](#).
- Czech Republic ([2020–2022](#)), Estonia ([2020–2022](#)), Latvia ([2017-2019](#)), and Spain ([2020–2024](#)) are working on this policy area.

AREA 3. Continued efforts on beneficial ownership transparency

In its second action plan, Portugal committed to strengthening its Central Registry of Beneficial Owners ([Registo Central do Beneficiário Efetivo](#)) by adopting international standards such as the Beneficial Ownership Data Standard, increasing compliance of entities required to collect and record data, and increasing public awareness of the definition of beneficial ownership and its implications. Pending the IRM's Results Report on the implementation of [related beneficial ownership transparency \(BOT\) commitments on the second action plan](#), Portugal could continue its efforts to strengthen BOT.

In April 2023 the European Commission issued an [infringement procedure](#) against Portugal for failing to correctly transpose the fifth Anti-Money Laundering Directive (5AMLD). The European Commission deems that Portugal is not guaranteeing that the Financial Intelligence Unit has proper access to anti-money laundering information. Local civil society organizations such as Transparency International Portugal have also [expressed their concern](#) in this regard.

Portugal's third action plan could help it comply with its obligations under the 5AMLD. Bearing in mind the [judgement from the Court of Justice of the European Union](#) limiting public access to beneficial ownership information, Portugal could still strive for an open register and for making beneficial ownership information as open as possible. [Latvia](#) made information on beneficial owners of companies publicly available, free of charge, and in open data format. The [Slovak Republic](#) is building on beneficial ownership reforms in its previous action plan by improving the quality and quantity of information published using [Beneficial Ownership Transparency Disclosure Principles](#), despite the Court of Justice ruling.

Useful resources:

- Open Ownership: [Beneficial Ownership Data Standard](#) and [beneficial ownership disclosure principles](#); [Armenia and Latvia's experience adopting the Beneficial Ownership Data Standard](#);
- Transparency International: [Recommendations on how to address beneficial ownership transparency in OGP action plans](#).
- OGP: [recommendations on beneficial ownership commitments](#);
- Slovak Republic ([2022-2024](#)) and Latvia ([2017-2019](#)) are working on this policy area
- Partners that can provide technical support: [Open Ownership](#), [Transparency International Portugal](#).

AREA 4. Making cadastral information free and publicly available

As part of its [Recovery and Resilience Plan](#) after the COVID-19 pandemic, Portugal committed to modernizing its cadastral information system to aid in environmental policy planning and help prevent and address rural fires.

In its next action plan, Portugal can take advantage of the existing data on land property and make it interoperable with other datasets to maximize its benefits. For instance, making these data interoperable with tax data can help prevent property tax evasion. One way to make these data more likely to advance accountability is to use [common identifiers](#) across datasets.

Furthermore, making these data available and free can help prevent corruption. [The current cadastral information portal](#) only allows the owners of property data to access their own data and they can only do so after paying a fee. This means that land property data are not freely nor publicly available. Making land ownership data open while protecting data privacy could allow to identify irregularities in land ownership and suspicious activity. For instance, open data can show if public officials or their relatives own property they have not disclosed or if a company has acquired land with a value that is incompatible with their reported revenues. In the past, public land ownership data has helped to [uncover subsidy fraud](#) in the European Union.

Portugal's MSF can request input from different stakeholders to make sure that these data are useful and usable. As a reference, in its fourth action plan, [Uruguay](#) optimized its cadastre information system by consulting with potential users on the quality of its open data. Greece is working on improving the reliability and accuracy of its Land Registry and legal transactions so that the data can be better used for land administration.

Useful resources:

- OGP: [Broken Links report, Land Tenure and Ownership chapter](#);
- World Bank: [The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector](#).
- Armenia ([2018-2020](#)), Greece ([2022-2024](#)), and Uruguay ([2018-2020](#)) are working on this policy area.

AREA 5. Public procurement transparency

Despite being a strong performer in entrepreneurship, Portugal does not perform satisfactorily on public procurement transparency and competition, [according to the European Commission](#). Portuguese public institutions continue to use Direct Agreements for a large number of contracts without detailed justification. Even though Portugal's public procurement data infrastructure is internationally recognized, the European Commission also highlights the need to improve the quality of public procurement data available. The total number of contracts on Portugal's public procurement portal (BASE portal) is [estimated to be three times lower](#) than the total amount of public procurement in Portugal, meaning there is a high number of unpublished public contracts despite legal requirements. These issues could be addressed by ensuring contracts are transparent by default, including publication of pre-tendering information, or even to adapt the BASE portal so that it can publish timely information about the contracting process so that it can be followed in real time. Greater efforts are needed to ensure the systematic publication of data from public institutions, as well as greater scrutiny and obligations to provide detailed reasons for using Direct Agreements.

Portugal has used its [OGP action plans to apply integrity pacts](#) to increase public oversight of public spending. This initiative could be expanded to provide broader oversight of contracts through the fostering and support of a community of active citizens and civil society that monitor contracts, in a similar manner to the [OpenCoesione](#) and [Dozorro](#) initiatives.

Useful resources:

- OGP's [Open Contracting Factsheet](#)
- Transparency International's [Recommendations on Open Contracting for OGP National Action Plans](#)
- Open Contracting Partnership's [Open Contracting Data Standard](#)
- [Finland](#) (2017–2019), [France](#) (2015–2017), [Germany](#) (2021–2023), [Lithuania](#) (2021–2023), and [Italy](#) (2016–2018) are working on this policy area.
- Partners that can provide technical support: [Open Contracting Partnership](#), [Transparency International Portugal](#)