Independent Reporting Mechanism

Montenegro Co-Creation Brief 2024

Introduction

This brief from the OGP's Independent Reporting Mechanism (IRM) serves to support the co-creation process and design of Montenegro's fourth 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 Montenegro and draws recommendations from the data and conclusions of those reports. The brief also draws on other sources such as _OGP National Handbook_ and _OGP Participation and Co-creation Standards_, 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 March 2024.

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Section I: Action Plan Co-Creation Process

For Montenegro's third action plan (2022-2024), the Ministry of Public Administration (MPA), with support of the National Democratic Institute (NDI), oversaw a robust co-creation process, including online and in-person public consultations, a citizen survey, and interviews with civil society organizations (CSOs). Moreover, Institut Alternativa, a leading anti-corruption CSO, facilitated consultations in municipalities. However, the Operations Team (OT) – Montenegro's multi-stakeholder forum – had vacancies following elections in August 2022, preventing it from functioning during the co-creation process. With the establishment of a new government in October 2023, the possibility of delays in the next co-creation process is lower.

The MPA and NDI could build some of the good practices into the next co-creation process. The following recommendations could be considered:

- Design a clear roadmap and timetable before the start of the co-creation process.
- Consider an informal approach to multi-stakeholder dialogue.
- Invite CSOs with relevant thematic experience to the co-creation process and lower administrative barriers for CSOs to apply to the OT.
- Reach out to more local self-government units (LSGUs) to participate in the co-creation process and organize more consultations in LSGUs.

RECOMMENDATIONS

Recommendation 1: Design a clear roadmap and timetable before the start of the co-creation process.

Before the next co-creation process, the IRM recommends the MPA and NDI bring together key stakeholders (including members of the OT) to design a roadmap and timetable for the process. This roadmap could clearly define the opportunities for stakeholders to contribute to the action plan, as well as the roles, expectations, and priorities for the action plan. It will be important to allow for enough time to organize sufficient consultations and account for possible political difficulties. The timeline with the opportunities for stakeholders to participate in the co-creation process should be published on the OGP webpage at least two weeks before the start of public consultations (per OGP's Participation and Co-creation Standards).

Additionally, during the previous co-creation process, the Union of Municipalities of Montenegro told the IRM that it wished to have been included earlier, as some of the initial proposals were already linked with its existing activities. For the next co-creation process, the IRM recommends ensuring that all stakeholders are made aware of discussions that may pertain to their jurisdictions.

Recommendation 2: Consider an informal approach to multi-stakeholder dialogue.

During the previous co-creation process, the existence of a caretaker government made it difficult to fill the government seats in the OT. Institut Alternativa told the IRM that the burdensome procedures for participating in the OT discouraged their organization from joining it in a formal capacity. As there was no formal multi-stakeholder forum in place during most of the co-creation process, consultations with CSOs were sometimes held separately from meetings with government bodies. For the next co-creation process, the MPA and NDI could consider a less formal approach to the multi-stakeholder dialogue. The MPA and NDI could organize thematic working groups and invite stakeholders with interests or responsibilities in a certain sector. The working groups could then bring their draft commitments to the OT which would decide on the final selection. For example, Latvia

adopted a similar approach (thematic working groups within the multi-stakeholder forum), resulting in collaborative co-creation processes for its 2019-2021 and 2022-2025 action plans.

Recommendation 3: Invite CSOs with relevant thematic experience to the co-creation process and lower administrative barriers for CSOs to apply to the OT.

Following the expiration of the OT's mandate in June 2022, the MPA launched a call to renew the OT's composition. However, as of this writing (March 2024), there were still vacancies for government and civil society members on the OT, and membership has not officially been renewed. If the OT is renewed for the fourth action plan, it will be important to invite CSOs with thematic experience in relevant policy areas, such as anti-corruption and open data, to fill the civil society vacancies. If possible, the IRM recommends lowering or removing documentation requirements to applying for membership to the OT, which have dissuaded CSOs like Institut Alternativa from joining as formal members.

Recommendation 4: Reach out to more local self-government units (LSGUs) to participate in the co-creation process and organize more consultations in LSGUs.

During the previous co-creation process, the MPA, NDI, and Institut Alternativa organized roundtable consultations in the municipalities of Podgorica, Bar, and Bijelo Polje to collect proposals on the draft action plan and allow for additional communication between stakeholders. For the next co-creation process, the MPA and NDI (with the support of Institut Alternativa and the Union of Municipalities of Montenegro) could reach out to more LSGUs to join the process. The MPA and NDI could also organize more consultations in LSGUs in the earlier stages of the co-creation process so that the inputs may influence the draft. The Union of Municipalities of Montenegro could also be invited to become a permanent member of the OT to help ensure that local-level commitments are taken up by all LSGUs.

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS

As a candidate state to the European Union (EU), Montenegro could pursue ambitious commitments around the EU acquis and the recommendations of the European Commission and the Group of States Against Corruption (GRECO), including improving access to government information and improving transparency of asset declarations. The fourth action plan could harmonize Montenegro's policies and practices to EU directives on anti-money laundering (beneficial ownership transparency), high-value public sector data, and whistleblower protection. In addition, the government and civil society could jointly select specific reforms (through the fourth action plan or beyond it) to pursue as Open Gov Challenges, such as access to information, anti-corruption, and civic space.

AREA 1. Access to information

In its report on the implementation of the United Nations Convention Against Corruption, the Center for Democratic Transition notes that the degree to which government institutions make information available often depends on the will of the institutional manager, in the absence of a systemic approach. Pending amendments to the Law on Free Access to Information are expected to remove problematic restrictions on information, especially business and tax secrets, exclusion of data of international organizations, foreign countries and on the security sector.

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While waiting for the passage of the amendments, the MPA could use the fourth action plan to address gaps in the implementation of Montenegro's existing law. The MPA could provide information holders with guidance to publish and apply sanctions for non-compliance. For example, the Republic of Moldova committed in its 2023-2025 action plan to establish a mechanism for monitoring and evaluating its new access to information law. Lastly, the MPA could make the process of submitting information requests easier and strengthen the appeals procedures against decisions to refuse access to requested information.

Useful resources
- OGP: Right to Information;
- Open Data Institute: Open Standards for Data;
- World Bank Institute: Proactive Transparency: The future of the right to information?;
- Partners that can provide technical support: Center for Democratic Transition, Center for Civic Education, NGO "MANS";
- Spain (2020–2024), Germany (2023-2025), and the Republic of Moldova (2023-2025) are working on this policy area.

AREA 2. Transparency of asset declarations

GRECO found that there is currently no systematic in-depth examination of the declarations submitted by persons with top executive function (PTEFs) by the Agency for Prevention of Corruption. In the fourth action plan, the Agency for Prevention of Corruption could commit to systematically review asset and income declarations of PTEFs. For example, Georgia developed an asset declarations monitoring system that involves an independent committee within the Civil Service Bureau and using randomized auditing. The agency could publish asset declarations in open data format, as done by OGP members Armenia, Romania, and Ukraine. The agency could also commit to greater transparency of its reviews and follow-up activities in cases of potential breaches of professional conduct.

Useful resources:
- Transparency International: Recommendations on Asset and Interest Declarations for OGP Action Plans
- World Bank: Using Asset Disclosure for Identifying Politically Exposed Persons
- OGP: Broken Links: Asset disclosure;
- Partners that can provide support: Institut Alternativa, NGO "MANS".

AREA 3. Beneficial ownership transparency

Montenegro launched a register of beneficial owners in February 2022. In the next action plan, the government could commit to populating the register with comprehensive and structured data on the beneficial owners of companies and improve reporting by private entities on their shareholders and beneficial owners. The government could also publish the publicly available information in open data format (using the Beneficial Ownership Data Standard) and enable interoperability of the register of beneficial ownership with other registers, such as the register of bidders for public procurement procedures. Lastly, Montenegro could pursue commitments on verifying the accuracy of information submitted to the register of beneficial ownership.

Useful resources:
- OGP: Policy Progress Report: Beneficial Ownership Transparency;

- Institut Alternativa's recommendations for improving beneficial ownership transparency in Montenegro;
- Open Ownership: Policy briefing: Verification of Beneficial Ownership Data;
- Partners that can provide support: Institut Alternativa, Open Ownership;
- Latvia (2017-2019), Ukraine (2021-2022 action plan), and the Slovak Republic (2022-2024) are working on this policy area.

AREA 4. High-value open data

According to the Open Data in Europe 2023 report, Montenegro had the highest increase in its open data maturity score among five EU candidate countries, while still being classified as an open data "Beginner". Montenegro's national open data portal was among several government websites targeted by a cyber-attack in August 2022, but it is back online. The third action plan included commitments to improve open data at the national and local levels, including adopting mandatory annual open data plans by and calendars for public institutions. However, stakeholders have experienced difficulties in implementing commitments on open data due to the need to recover data and rebuild the IT infrastructure after the cyber-attack.

In the next action plan, the MPA and the Open Data Management Council could focus on publishing key categories of data that Montenegro has lacked, such as air quality, administrative boundaries, election results, and land ownership. The MPA and the Open Data Management Council could prioritize the publication of datasets listed as high value in EU Directive 2019/1024. Montenegro could adopt legislation to mandate a government-wide data management policy and open data procedures. Another possibility could be implementing a country-wide open data strategy, with targets to assist open data publication among LSGUs. Lastly, it will be important to address the issue of cybersecurity by taking appropriate protective measures when publishing open data.

Useful resources:
- OGP: Digital governance;
- Open Data Watch: Montenegro country profile;
- Armenia (2022-2024), Georgia (2023-2025), the Netherlands (2023-2027), Romania (2022-2024), and Sweden (2023-2025) are working on this policy area.

AREA 5. Whistleblower protection

Montenegro is the only country in the Western Balkans region without a standalone law on whistleblowing (the subject is covered under the Law on Prevention of Corruption). During the previous action plan, the Ministry of Justice committed to improve the regulations of whistleblower protection, though the ministry had not decided if it will amend the existing law or introduce a separate legal act.

The Ministry of Justice and the Agency for Prevention of Corruption could continue to pursue compliance with EU Directive 2019/1937. This could involve establishing safe channels to anonymously report wrongdoings or instances of retaliation. Montenegro could also raise public awareness of the channels and protection measures available to whistleblowers. For example, in the Czech Republic, the Ministry of Justice led a media campaign to promote the country's new whistleblower law, organized expert conferences, conducted a comparative study of good practices, and trained prosecutors and judges. For legal amendments, the Regional Anti-Corruption Initiative recommends Montenegro to explicitly define "legal person"

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and "natural person" and clarify how whistleblower protections, compensation, and other provisions apply to people outside the workplace, and to institutions.

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