



Open Government Partnership

Independent Reporting Mechanism

Ireland

Comments Received on the First Progress Report

As civil society representatives committed to openness, accountability and responsiveness in government, we welcome the Open Government Partnership's (OGP) Independent Reporting Mechanism (IRM) Progress Report 2014-2015 on Ireland's National Action Plan (NAP).

We are particularly pleased that the comprehensive report reflects the dedicated efforts of citizens, civil society representatives and officials to include 'transformative' commitments in the first national action plan. As the report notes, 'back-room deals', historical opaqueness and perceived corruption in Irish politics has damaged public trust in our democratic institutions and may have played a part in our recent economic collapse.

Trust of citizens in government can only be restored when concrete steps are taken to ensure transparency and accountability and to involve citizens in a meaningful way in decisions that affect their lives. In light of the IRM's Progress Report findings, we have the following comments:

- We urge the incoming government to continue to drive the Open Government Partnership process forward in Ireland, echoing the energy and commitment shown by the previous administration under Minister Brendan Howlin.
- We encourage the incoming administration to appoint a Minister with lead responsibility for driving OGP, whilst also ensuring that 'open government' becomes a whole of government initiative, not just a matter for one department.
- We commit to working with our partners in government to ensure that even more ambitious and far reaching reforms are included in Ireland's National Action Plan 2016-2018.
- We urge the Government to commit to implement all the outstanding OGP commitments from the first NAP - the credibility of OGP depends on continuing commitment to doing what has been agreed.
- We fully endorse the five SMART recommendations of the IRM researcher that the government does the following:
 1. Gets the 'Word Out' about OGP at local as well as national level.

2. Creates an OGP team as a point of contact in government for all stakeholders.
3. Establishes an Implementation Review Group to ensure that OGP commitments are delivered.
4. Reduces the number of commitments and does not recycle pre-existing initiatives in the next National Action Plan.
5. Finds a balance between participatory democracy and technocratic efficiency.

We are keen to play our part in seeing that these recommendations are implemented. We hope that the necessary high level political commitment will be in place and that a dedicated budget be set aside to raise awareness of the aims and benefits of Ireland's membership of this unique partnership. We also urge the Government to invest in identifying models of international best practice in citizen participation and in implementing these across the public service.

Submitted by:

- Anne Colgan, co-chair of the OGP Joint Working Group
- Ivan Cooper, The Wheel
- John Devitt, Transparency International Ireland
- Nuala Haughey, TASC (Think Tank for Action on Social Change)
- Antóin Ó Lachtnáin, Digital Rights Ireland
- Jane Suiter, Dublin City University

TASC, think tank for Action on Social Change, has been closely involved with Ireland's OGP journey and was a member of the Civil Society Forum and the Joint Working Group which developed the first Irish National Action Plan. TASC welcomes the IRM Progress Report 2014-2015 (see separate comment) and in particular progress on the actions relating to lobbying, ethics and whistleblowing reforms, which are classified as "starred commitments" because of their transformative potential impact. TASC has the following comments on specific actions:

1. Freedom of Information – Implementing Code and Reform (Action Plan commitments 3.2, 3.3)

1.1 Reform of FOI regime (Progress Report pages 40-45)

Significant reforms to Ireland's Freedom of Information (FOI) regime were part of the country's first OGP National Action Plan. These include the implementation of a Code of Practice for Freedom of Information and the reform of the FOI regime through the Freedom of Information Bill 2013, (now the Freedom of Information Act 2014). These reforms included the abolition of up-front application fees for FOI requests. The progress report notes that it was too soon to evaluate the effectiveness of the FOI policy implementation when it was being prepared. It also highlights the fact that a strengthened FOI regime comes with positive benefits in terms of transparency and accountability, but also at a cost in terms of resources.

The report states that time series data over several years would need to be analysed to ascertain whether the removal of application fees has resulted in any more FOI requests. It suggests that the government may consider setting up an independent working group for the next National Action Plan. This group would examine the costs and benefits of the

strengthened FOI programme, in order to allow the State to earmark adequate resources to effectively implement FOI policy. Suggestions are made as to its remit and first tasks.

TASC comment:

It has been well documented that when up front application fees for FOI requests were introduced in amending legislation in 2003, the number of requests dipped. While a time series analysis of trends before and after the removal of the fees in the 2014 legislation could indeed provide useful data, such an exercise in itself would not produce a full picture of the success or otherwise of the reforms to FOI ushered in by the new law, of which fees were only one aspect. The FOI Act 2014 restored many of the main amendments introduced in 2003 which had restricted and curtailed Ireland's FOI regime. The 2014 Act also introduced a requirement for public bodies to prepare and furnish publication schemes to promote the proactive publication of information outside of FOI. If these legislative reforms, which form part of Ireland's National Action Plan commitments, were to be properly implemented, we may expect to see a reduction in FOI requests for certain types of information, rather than an increase.

For example, if public bodies were to proactively and routinely publish frequently requested information such as Ministerial diaries, expenditure, salaries and staff expenses, this could lead to a fall in FOI applications for this type of information. Likewise, if all public bodies were to routinely publish disclosure logs – detailing what non-personal information has already been requested and released under FOI – this could allow requesters to see what records have already been released, thereby potentially reducing the need for fresh FOI requests for the same material.

The government has itself acknowledged that administrative costs associated with FOI need to be considered in the context of the increased discipline and efficiency in the use of public funds as well as the substantial savings that can be achieved on account of an effective FOI regime. (See Freedom of Information Bill, 2013 Proposals for Reform of FOI Fees, FOI Central Policy Unit, Department of Public Expenditure and Reform, June 2014)

In the UK, a 2012 Justice Committee report found that complying with its duties under the Act can be a significant cost to a public body, but it also creates savings which accrue from the disclosure of inappropriate use of public funds or, more importantly, fear of such disclosure. (See Justice Select Committee for the Post-Legislative Assessment of the UK FOI legislation <http://www.publications.parlia...>)

An External Review Group on the Implementation of FOI legislation established by the Department of Public Expenditure and Reform, and comprising external experts, FOI users and civil society members, made a set of comprehensive recommendations in 2013 that are still relevant today. These included the reanimation of pre-existing FOI Networks, comprised of FOI officers and users, as an inexpensive and effective fora for problem solving, shared learning, promulgating good practice and mutual support. (Report of the External Review Group on the Implementation of the Freedom of Information Act, June 2013, FOI Central Policy Unit, Department of Public Expenditure and Reform. Available on DPER website: <http://www.per.gov.ie/en/if-wi...>)

The reanimated FOI Networks are a highly suitable fora for monitoring the newly reformed FOI regime. The External Review Group also recommended a very close working relationship between the networks and the FOI Central Policy Unit (CPU) in the Department of Public Expenditure and Reform, to ensure that policy development and good practice is fully informed by a knowledge of what is happening on the ground.

1.2 Legislative Footprint (Progress Report page 42)

The progress report notes the need to develop the National Action Plan commitment to introduce a “legislative footprint” in relation to current legislative initiatives. The National Action Plan envisages that this electronic footprint would be published on each government department’s website including details of publication of general schemes, any consultation documents, publications of draft Bills, pre-legislative scrutiny by Oireachtas Committees, submissions received and meetings held with stakeholders, etc.

TASC comment:

TAC looks forward to working with officials to ensure further progress in developing this initiative, which could be enacted relatively easily and would greatly assist members of the public in understanding how individual pieces of legislation are shaped and which interest groups have made efforts to influence them.

2. Lobbying Reforms (Action Plan commitment 3.4: Progress Report pages 71-73)

The progress report notes that the Regulation of Lobbying Act 2015, which took effect in September 2015, includes a provision for it to be reviewed by the Minister after a year of operation. The reviewer notes that the State has promised, when conducting this review, to engage in consultations with a wide range of stakeholders. The reviewer also makes excellent suggestions as to the issues that these consultations may consider.

TASC comment:

TASC endorses the reviewer’s suggestions in relation to consultations as part of a Ministerial review of the Regulation of Lobbying Act 2015 after one year of its operation. TASC recommends that stakeholders consulted as part of this review should include end-users of the register, such as journalists, academics, experts and civil society organisations.

3. Ethics Reform (Action Plan commitment 3.1: Progress Report pages 68-70)

The progress report states that dealing with conflicts of interest among public officials in Ireland is particularly salient given the corruption that led to financial and economic crisis. The ethics reforms committed to in the National Action Plan seek to develop specific reform proposals for a new ethics regime to effectively address actual and potential corruption risks, thereby increasing public trust.

TASC comment:

In the time period covered by the Independent Progress Report (up until September 2015), draft ethics legislation, the General Scheme of the Public Sector Standards Bill 2015, had been published. The legislation that was subsequently published, the Public Sector Standards Bill 2015, lapsed in February 2016 when a general election was called and the lower chamber of parliament, the Dáil, was dissolved. This long-awaited legislation was a key plank of pledged reforms aimed at enhancing transparency and accountability in government and public life. It is hoped that the incoming Oireachtas will restore this vitally important piece of legislation to the Order Paper by resolution, and ensure that it is given full consideration as a matter of priority. TASC strongly endorses the independent reviewer’s recommendation that ethics reforms are prioritised in Ireland’s next OGP National Action Plan.

Submitted by:

- Nuala Haughey
Project Manager, Open Government/Democratic Accountability
TASC, think tank for Action on Social Change

Two key findings strike me: Page 29, under "moving on", indicates that substantially more needs to be done in terms of the quality data sets published, and in terms of the relevance of the data published.

Without a specific budget and ownership of this task - someone to go make it happen across departments - we will be waiting a long time.

The report also highlights the lack of civil society involvement in the PBWG. What is the sense of hesitation that grips the public service in general when it comes to partnership with ordinary citizens ?

The report itself seems fair and is a useful milestone on the OGP journey.

- Liam O'Connor
2nd Republic.

Ireland welcomes the positive assessments by the IRM of both the progress made on implementation of the National Action Plan and on the process of consultation undertaken during its development and in the implementation of individual actions. Good progress continues to be made on implementation of the actions across all three areas in the National Action Plan.

- Evelyn O'Connor