

Independent Reporting Mechanism

Netherlands 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. This brief does not constitute an evaluation of a particular action plan and its purpose is to inform the planning process for co-creation based on collective and country-specific IRM findings.

The co-creation brief draws on the results of the research in the [prior IRM reports for the Netherlands](#), 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 [online OGP repositories](#) 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 2022.

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Section I: Action Plan Co-Creation Process

Snapshot of previous co-creation processes in the Netherlands

Iterative dialogue between civil society and government				
Government provides reasoned response				
Civil society could provide input				
Civil society was informed of the plan				
No consultation				
	Action Plan 1	Action Plan 2	Action Plan 3	Action Plan 4

Leading the Netherlands' OGP process, the Ministry of the Interior and Kingdom Relations (BZK) has steadily improved the level of civil society participation in the co-creation processes. The [fourth action plan](#) saw an extensive co-creation that involved a variety of new government agencies and civil society stakeholders. At the same time, past IRM reports have suggested engaging new stakeholder groups like private sector stakeholders, representatives of the Dutch overseas territories and high-level political leaders.

The co-creation of the fifth action plan offers an opportunity for the Netherlands to go beyond the requirements set out in the updated [OGP Participation and Co-creation Standards](#). For example, BZK and *Leer- en Expertisepunt Open Overheid* (LEOO) could proactively engage stakeholder groups that have not taken part in previous OGP processes. Due to the multitude of stakeholders already involved (government institutions, the multi-stakeholder forum [MSF], and the Open Government Alliance), the IRM also recommends prioritizing efficient coordination and agreeing on a clear division of roles between key actors. The MSF could develop a formal process for selecting civil society members, handing the selection to CSOs themselves. The MSF could be co-chaired by a governmental and CSO member. To make the co-creation process more transparent and accessible, BZK could publish draft versions of action plan commitments throughout the co-creation process using tracked changes. Lastly, the creation process could benefit from the provision of information in easily understandable and accessible formats.

RECOMMENDATIONS

Recommendation 1: Identify and address relevant social priorities by engaging previously uninvolved groups in the co-creation process

Despite the Netherlands' strong track record in conducting inclusive co-creation processes, previous IRM reports have noted that some stakeholder groups like the private sector, representatives of the Dutch overseas territories, and high-level political representatives were missing from discussions. The involvement of diverse societal groups could ensure that the action plan is relevant to pressing open government topics. In addition, the [open government agenda](#) of the new Minister of the Interior and Kingdom Relations could create momentum for more high-level political interest in the OGP process.

BZK, LEEO, the MSF, and the Open Government Alliance could jointly identify key groups and organizations who have been absent or underrepresented in previous co-creation processes and proactively engage these groups for the fifth action plan. For example, [Finland](#) and [Estonia](#) have conducted meetings and interviews with previously uninvolved stakeholders in

the early phases of co-creation to identify issues that could be addressed in OGP action plans. The OGP process could also provide a neutral framework for discussing the governance challenges faced by Dutch overseas territories. As a first step, the public bodies of overseas territories could be invited to join the Open Government Alliance to learn more about OGP and exchange ideas with governmental and non-governmental stakeholders. Partnership with the *Rijksdienst Caribisch Nederland* could facilitate engagement with overseas municipalities.

Recommendation 2: Expand the participation and role of non-governmental stakeholders in the MSF

When the Dutch MSF was established in 2017, the government appointed both its governmental and non-governmental members. [IRM reports](#) have highlighted the non-governmental members of the MSF tend to represent the 'usual suspects' who have a well-established working relationship with government agencies, whereas discussions on open government could benefit from the inclusion of more diverse views. The [OGP Participation and Co-creation Standards](#) recommend offering civil society the power to conduct a fair and transparent process to select the non-governmental members of the MSF.

For the fifth action plan, the MSF could act on [discussions](#) on inviting new non-governmental stakeholders to join the forum. The MSF could formalize its role in the OGP process and the role of individual members in the forum. The [statute and rules of procedure of the Czech MSF](#) could serve as an example. Having more formal procedures in place becomes increasingly relevant as new parties without prior experience in the OGP process join the forum. The rules of procedure should also include an explicit description of the process by which the non-governmental members of the MSF are selected, giving the non-governmental participants the power to lead this process (for example, see the [selection criteria and process](#) used by Romania's MSF).

Recommendation 3: Publish all stakeholder contributions and timely feedback on how these contributions are considered.

Reporting back to stakeholders on how their contributions were considered during the co-creation process is required under the updated [Participation and Co-creation Standards](#). Previous IRM reports have found that the Netherlands has improved how it provides feedback to stakeholders during co-creation processes. However, for the fourth action plan, BZK did not share draft versions of the commitments that would have allowed stakeholders to track the results of consultations more closely.

For the fifth plan, BZK could publish draft versions of commitments on the national OGP website following each round of consultations, adding new versions with tracked changes and explanations for key decisions (see [Finland](#) as an example). It is important that draft versions of the action plan contain the government's responses on how the feedback informed its development, such as why stakeholder proposals were or were not adopted.

Recommendation 4: Make information about the co-creation process more transparent and accessible.

BZK and LEOO could make the co-creation process for the fifth action plan more transparent and inclusive by ensuring that information on all steps of the process is available promptly and accessible to broad audiences. BZK could make information on the process available in plain language and formats that are accessible to people with visual or auditory impairment. Providing frequent and accessible information could help engage diverse stakeholder groups, such as people with disabilities or special linguistic needs, into the OGP process (see also Recommendation 1).

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS

The Netherlands continues to perform well in many key aspects of open government, including citizens' rights and liberties, press freedom, rule of law, and anticorruption. Its past action plans have focused on improving public access to government information, open data, local open government, digital democracy, and political party financing. In the fifth action plan, the Netherlands could take up past civil society priorities like beneficial ownership transparency, lobbying transparency, and whistleblower protection, while continuing to improve access to government-held information.

AREA 1. Beneficial ownership transparency

The Netherlands established a central beneficial ownership register in 2020. Although the register is public, users need to [request an access code](#) and [pay a fee](#) per file to view the data. According to Transparency International (TI), these barriers [limit the ability of civil society and the media](#) to use the data. Dutch CSOs have raised the [need to improve public access to beneficial ownership data](#) during the co-creation of the previous action plan. In addition, the EU's recent economic sanctions on Russia in response to its military attack on Ukraine have exposed the [difficulties that countries such as the Netherlands face](#) in tracking beneficial ownership information in practice. [Full and free public access to beneficial ownership data](#) would better allow civil society and journalists to analyze the data and help track hidden wealth.

In the fifth action plan, the Netherlands could consider abolishing the barriers to access UBO data. As a leader in digital government, the Netherlands is well positioned to make the data accessible, reusable, and interoperable, following the highest transparency standards. More specifically, the data could be published following the [TI recommendations](#) and the [Beneficial Ownership Data Standard](#) (see the [experiences of Latvia and Armenia](#)). As a next step, the Netherlands could introduce mechanisms to [verify the accuracy](#) of the information on the register. Lastly, the Netherlands could join the [Beneficial Ownership Leadership Group](#) to lead global efforts on beneficial ownership transparency.

Useful resources:

- Open Ownership: [Beneficial Ownership Data Standard](#) and [disclosure principles](#);
- [OGP recommendations](#) on beneficial ownership commitments;
- Partners that can provide technical support: [Open Ownership](#), [Transparency International Netherlands](#);

- Portugal ([2021–2023](#)) and the Slovak Republic ([2019–2021](#)) are working on this policy area.

AREA 2. Lobbying transparency

The Group of States against Corruption (GRECO) has found the Netherlands [not meeting its recommendations](#) on public officials' communication with lobbyists and employment after leaving public office. In 2021, the Dutch government [extended the scope of employment bans](#) and set up an independent advisory commission. However, the proposed amendments [still lack enforcement mechanisms](#). Also, due to the voluntary nature of lobby registration, ministries [only publish a fraction of information on their meetings with lobbyists](#). The new Minister of Interior and Kingdom Relations has [expressed her intention](#) to introduce additional integrity measures following GRECO's recommendations.

In the fifth action plan, the Netherlands could develop a binding legal framework on lobby transparency and political integrity, covering ministers, public officials, and Members of Parliament. An ambitious framework should include mechanisms for public monitoring of lobbying activities as well as sanctions for non-compliance. The Netherlands could make the policy-making process more transparent by establishing a mandatory lobby register with information on public officials' and political decision-makers' meetings with lobbyists, including names of contact persons and topics discussed. Information on the register should be publicly accessible and searchable, downloadable, available in open machine-readable formats, and easy to understand. Furthermore, the data could be integrated into the legislative drafting process to add a transparent '[footprint](#)' to new legislative initiatives.

Useful resources:

- [International Standards for Lobbying Regulation](#);
- [OGP blog: Common challenges in lobbying transparency](#);
- [OECD Council Recommendation: Principles for Transparency and Integrity in Lobbying](#); [OECD: Lobbying in the 21st Century](#);
- [Transparency International: Recommendations on lobbying for OGP action plans](#);
- Partners that can provide technical support: [Open State Foundation](#), [Transparency International](#), [TI Netherlands](#);
- Ireland ([2014-2016](#)), Finland ([2019-2023](#)), Latvia ([2019-2021](#)), and Estonia ([2020-2022](#)) are working on this policy area.

AREA 3. Whistleblower protection

As of April 2022, the Netherlands' transposition of the EU Whistleblower Directive is delayed, and experts argue the [existing legal framework](#) and the [current bill to implement the directive](#) do not adequately protect whistleblowers from retaliation by their employers. [Several public scandals](#) in recent years have demonstrated the consequences of insufficient protections. The Dutch Whistleblower Authority (established in 2016) [has faced challenges](#) in conducting investigations in an efficient and timely manner. Independent evaluations of the authority's work have resulted in [proposals to revise its mandate](#).

In the fifth action plan, the Netherlands could revise the Whistleblower Authority's mandate in line with the EU directive, allocating it with sufficient resources to support whistleblowers. Commitments could put in place secure tools for anonymous reporting of wrongdoing in both public and private organizations. The Netherlands could also create new public monitoring

tools and enforcement mechanisms to ensure that organizations comply with the rules and effectively handle whistleblowers' reports. In addition, the government could raise public awareness of reporting mechanisms and whistleblowers' rights to anonymity and protection. [Regular publication of data on disclosures, outcomes, and prevalence of wrongdoing](#) could improve public awareness and help assess the effectiveness of the new measures.

Useful Resources:

- [OGP: Open Government Reforms Need to Protect Whistleblowers;](#)
- [OECD: Whistleblower Protection;](#)
- Partners that can provide technical support: [Blueprint for Free Speech](#), [OECD](#), [TI Netherlands](#);
- Italy ([2016–2018](#)), Czech Republic ([2020–2022](#)), Estonia ([2020–2022](#)), Latvia ([2017–2019](#)), and Spain ([2020–2024](#)) are working on this policy area.

AREA 4. Access to government-held information

A new Open Government Act ('Woo') will take effect in May 2022, replacing the Freedom of Information Act ('Wob'). In addition to disclosing government documents in response to freedom of information requests, the new law mandates public sector organizations proactively publish certain categories of information as open data. Although experts believe the Woo could [significantly improve](#) public access to information, stakeholders have [raised questions](#) on the implementation of the requirements in practice. The [timeliness and completeness](#) of responses to information requests also continue to be a concern. A particular area of debate is the ability of government officials to refuse (or heavily redact) information requests on the grounds that they contain personal views of government officials.

In line with the [priorities](#) of the new Minister of Interior and Kingdom Relations, the government could prioritize implementation of the Woo in the fifth action plan. This could involve providing the necessary resources and political support to the advisory and supervisory mechanisms established by the Woo, as well as co-designing public monitoring and capacity-building measures to ensure published information meets the highest standards of openness and accessibility. The government could also continue to mainstream open and [FAIR principles](#) in data management. The recommendations of the [Open State Foundation and Instituut Maatschappelijke Innovatie](#) as well as the [World Bank Institute](#) could provide input into this work. The Netherlands could expand on [the commitment in the 2020-2022 action plan](#) on publishing public complaints as open data and apply it to other areas of proactive transparency under the Woo. Lastly, the Netherlands could continue shaping the future of "policy intimacy" under the Woo.

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: [Open State Foundation](#), [Access Info](#), [Open Knowledge Foundation](#);
- Brazil ([2016-2018](#)), Spain ([2020–2024](#)), and Tunisia ([2016-2018](#)) are working on this policy area.