



NOT IN FORCE UNTIL PUBLISHED ONLINE

WHAT THE RADICAL TRANSPARENCY REGIME OF PUBLIC
CONTRACTS ACHIEVED IN SLOVAKIA



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ISBN 978-80-89791-06-4

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This study has been funded with support from the **Open Society Foundations**. This publication reflects the views only of the authors, and the Open Society Foundations cannot be held responsible for any use, which may be made of the information contained therein.



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SUMMARY

In January 2011, Slovakia introduced the regime of unprecedented openness by deciding to have most of the public contracts published online. The move from passive (by demand) to active (automatic) transparency was to engage wider public control over the dealings of public institutions in a country seen as one of the most corrupt in the European union.

Our study suggests that the reform indeed bore fruits. Almost 8% of public checks at least one contract or receipt online every year. Coverage of procurement and public spending by media increased by a quarter. Scandals take less time to be uncovered. Overall perception of corruption started ebbing down. Other countries started considering emulating Slovakia's example.

Nevertheless, success of such a reform depends on a number of factors. Widespread internet availability is necessary if enough interested public is to make use of information online. Scrutiny of contracts is linked to the freedom and professionalism of local media and NGOs. And not least, naming and shaming stemming from revealed contracts can lead to change only if public officials are responsive enough to take responsibility for their actions.

1. HOW THE CONTRACT TRANSPARENCY REGIME WAS ADOPTED IN SLOVAKIA

The freedom of information Act was adopted in Slovakia in year 2000. Soon it became the cornerstone of the government transparency.¹ Its assumption rested on openness by demand: citizens could ask and get any information on the work of government, bar those that would undermine privacy or national interest.

The 2010 amendment² was focused on having more active transparency. The government would publish its contracts, receipts and orders automatically online, without anyone asking for them. Moreover, no government contract would come into effect unless it was published online. The law says such a contract is not even valid after three months since it was signed if it was not published.

This sweeping amendment concerns any contract dealing with public money, from central and local government bodies to institutions or companies set up by them.³

Following municipalities' example

It was a pair of municipalities that served as powerful inspiration for transparency drive of national politicians. Back in 2005, several local politicians in Šaľa, a town of 25 thousand people in south-western Slovakia, started to publish the list of town contracts on their own website. The group led by Jozef Mečiar were frustrated with the then mayor's opaque dealings and decided to regularly use the information law to ask for contracts, which they would immediately upload to their own website. A year later, they gained enough popularity to take majority in a city council,

and the mayor's seat (Mečiar became his deputy). In 2007, Šaľa's town hall started publishing contracts and receipts online as the first municipality in Slovakia.⁴

Three years later, a north-central city of Martin, with a population of 60 thousand, adopted active transparency approach as well on the recommendation of Transparency International Slovakia, which crafted its anti-corruption reforms by Mayor Andrej Hrnčiar's invitation.⁵ Mayor said he also decided to adopt the contract transparency due to his findings that when he came to the office after the elections he found numerous contracts that neither town hall employees nor councilors knew anything about. Mayors of both cities were re-elected in subsequent elections.

"I think it is important to remind us that we are drawing inspiration from municipalities, who showed us that having contracts, orders and receipts published online does not cause any problems, on the contrary, it raises the trustworthiness of town leadership and also ensures effectiveness and accountability when dealing with municipality resources," said Lucia Žitňanská, the Justice Minister in charge of the transparency reforms, in late 2010 in the national parliament.⁶ Her reforms soon passed and came in effect on January 1, 2011.

However, it was not the first attempt to pass such a law. Back in 2009, two years after Šaľa adopted its active contract transparency approach, two groups of opposition MPs proposed to copy the policy on the national level. In June 2009, the

¹ Láštík, E.: Zákon o slobodnom prístupe k informáciám ako protikorupčný nástroj In: Beblavý, M. a Sičáková-Beblavá, E.: Jedenásť statočných: prípadové štúdie protikorupčných nástrojov na Slovensku, Transparency International Slovensko a Ústav verejnej politiky FSEV UK v Bratislave, 2008, <http://transparency.sk/wp-content/uploads/2010/01/11.statocnych.oprava.pdf>

² <http://www.zakonypreludi.sk/zz/2000-211>

³ See more detailed information on Ministry of Interior's webpage (in Slovak): <http://www.minv.sk/?zverejnovanie-zmluv-informacie-pre-obce>

⁴ Mečiar, J.: Pred desiatimi rokmi začalo otváranie Slovenska, SME blog, Oct 28, 2014 <http://meciar.blog.sme.sk/c/367777/pred-desiatimi-rokmi-zacalo-otvaranie-slovenska.html>

⁵ Transparency International Slovakia: Draft of anti-corruption reforms for the city of Martin, http://www.transparency.sk/wp-content/uploads/2010/03/Martin_navrh_protikorupcnych_opatreni_2_faza_.pdf

⁶ See MPs discussing the draft law in 2010:

<http://www.nrsr.sk/web/default.aspx?SectionId=104>, Session nr.7 of the parliament on Oct 19, 2010,

group of MPs led by Žitňanská and her center-right SDKÚ-DS party proposed⁷ the policy in reaction to the scandalous sale of emission rights by the government, which led to numerous ministers' resignations. They argued that knowing about contract early on the government could have saved a lot of money. The then coalition led by center-left Smer party argued that this would bring chaos and possible misuse of information.⁸ The second attempt⁹, led by conservatives Rudolf Bauer and Pavol Minárik (KDS), a few months later, ended on a similar note. But reactions to the law also indicated that the coalition did not want the opposition to score any big legislative victory just before the national elections in June 2010. After those elections the former opposition turned into coalition and immediately put transparency reforms on the agenda. The proposed amendment to the information law was even more far-reaching than the ones tabled in 2009. Not only contracts, but orders and receipts were to be published. In the parliament, the amendment did not get unanimous support.

The coalition, which supported it, argued that even if there is no similar law in other European countries, Slovakia needs to have it as its public control institutions keep failing in their duties. "Unfortunately, this country needs the public sector and those in power be checked by five million citizens of Slovakia," argued Miroslav Beblavý, the coalition MP for SDKÚ-DS. The opposition criticized legal uncertainty arising from signed yet unpublished contracts. In the final vote, most of the opposition led by Smer abstained. The law was passed by 77 out of 150 votes in the parliament.¹⁰ The Smer party challenged the law at the Constitutional Court, but under public pressure withdrew its complaint just before the proceedings were about to start.¹¹

From political opponents to advocates

Over time, Smer party came round and became the amendment's advocates. In July 2011 the Smer leader Robert Fico praised the law. His party won the early elections in March 2012 and as Fico became the prime minister, he promised to keep the law intact.¹² A year later, his fellow party member and Minister of Interior Robert Kaliňák said that „it turned out that having contracts online has been meaningful in the fight against the corruption...and we plan to go even further,“ publishing more extensive documentation about the process of public procurement.¹³ Richard Raši, another high-ranking Smer politician, who in 2010 voted against the transparency reforms, now concedes that he does not even remember voting against it, and “it must have been a mistake on my side.”¹⁴

Business supportive, mayors dismissive

Business associations were largely supportive of the new legislation, even though they would have to disclose the contracts as counterparties to the state. They stressed that they saw transparency as an effective tool against corruption, which has been a big worry for entrepreneurs.¹⁵ The law was supported by the US Chamber of Commerce in Slovakia, too.¹⁶ Most of the worries from the business side concerned the protection of their business know-how. It was the construction companies who were the most critical of the lot.¹⁷ The Minister of Justice Žitňanská argued, that the law does leave an exemption from publication for the know-how. She added, however, that this is often a fake excuse to hide contracts from public

⁷ <http://www.itnews.sk/spravy/internet/2009-06-18/c1478-rokovali-o-zverejnovani-zmluv-na-internete>

⁸ See the discussion of the draft, nr. 1116:

<http://www.nrsr.sk/web/default.aspx?SectionId=104>, Session nr.39 of the parliament on June 17, 2009

⁹ See draft law explanation report, text nr. 1159:

<http://www.nrsr.sk/web/Page.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=4&ID=1159>

¹⁰ Voting record to the text nr. 106 as a whole :

<http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlaskub&ID=27740>

¹¹ sme.sk: Smer napadol zverejňovanie zmlúv na Ústavnom súde, Adam Valček, April 19, 2011, <http://ekonomika.sme.sk/c/5857629/smer-napadol-zverejnovanie-zmluv-na-ustavnom-sude.html>

¹² Nový Čas: Prvý rozhovor Fica po voľbách: Čo plánujem so

Slovenskom, author: anc, March 12, 2012, <http://www.cas.sk/clanok/219072/prvy-rozhovor-fica-po-volbach-co-planujem-so-slovenskom.html>

¹³ TA3: 19:50 Theme of the day, Jan 9, 2013

¹⁴ Author's email exchange, February 2015

¹⁵ TA3: 19:55 Theme of the day, Jan 27, 2011

¹⁶ The US Chamber of Commerce in Slovakia: Press release from Feb 24, 2011, http://www.amcham.sk/press/press-releases/slovensky/4762_clenovia-americkej-obchodnej-komory-v-sr-predkladaju-ministerke-zitnanskej-navrhy-do-diskusie-o-pripravovanej-novele-zakona..

¹⁷ Association of Construction Companies in Slovakia press release, http://www.zsps.sk/web/index.php?option=com_content&view=article&id=8891:tlaova-sprava-qn20-vyroiu-zaloenia-zvaezu-stavebnych-podnikateov-slovenska&catid=756:tlaove-spravy-r2010&Itemid=131

eye, and only the real business know-how should be protected.¹⁸

On the other hand, the Mayors Association was the most dismissive, calling it “only a small step towards more transparency, but a big step towards digital bureaucracy.”¹⁹ They feared they would have to shoulder the costs of scanning and uploading, tying up staff and extra spending for technical equipment. Their arguments (and perhaps political influence) made the government take a step back in the following months. First, they limited the publication of scanned copies of receipts for those over 1000 euros for municipalities and those over 3000 euro for others.²⁰ From 2012, only the lists including subject, supplier and price of orders and receipts were to be published automatically, not their copies.

The government also had to backtrack on contracts of state-owned companies as it faced widespread lack of compliance. One year after original reforms, SOEs were made to publish mandatorily full contracts only out of scope of their core business as indicated in the business register. The rest had to be announced in a list of signed contracts, yet without the copy of contracts included.

Other exemptions also mushroomed within the first year of the law’s existence. In the original law, only seven exemptions to the publication regime were listed. They concerned individual work contracts, national security (secret service), diplomacy and business done on commodity exchanges. A year later, there were already 20 exemptions, from state-owned companies core business contracts to social aid contracts, land expropriation and coin minting. State commercial interests and excessive administrative burden were the dominant reasons for limiting the original scope of the law.

Setting example abroad

The Slovak example has been received with interest in both the Czech Republic and Slovenia. The Czech parliament has discussed the mandatory contract publication since 2013 and is scheduled to vote on it in summer 2015.²¹ In Slovenia, the government adopted such an amendment in January 2015, although it focuses only on contracts based on procurement results.²²

¹⁸ Rádio Slovensko: 12:00 Rádiožurnál, Oct 29., 2010

¹⁹ sme.sk: Zverejňovanie zmlúv niektorí primátori spochybnili, autor: Lenka Štěpánková, Jan 27, 2011, <http://zahorie.sme.sk/c/5739738/zverejnovanie-zmluv-niektoriprimatori-spochybnili.html>

²⁰ sme.sk: Mestá nebudú musieť zverejňovať faktúry do tisíc eur, autor: sita, tasr, March 30, 2011, <http://www.sme.sk/c/5829670/mesta-nebudu-musiet-zverejnovat-faktury-do-tisic-eur.html>

²¹ http://zpravy.idnes.cz/koalice-se-shodla-na-registru-smluv-babis-chce-zverejnit-i-jiz-platne-1j0-domaci.aspx?c=A150309_164033_domaci_kop

²² See the Law on freedom of information, Article. 10a, par. 5, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12200>

2. BENEFITS AND COSTS OF RADICAL CONTRACT TRANSPARENCY

From 2011 to 2014 over 780 thousand contracts were published by the central authorities in the Central contract register CRZ. We estimate that 2700 Slovak municipalities published over million contracts in total on their own websites within the 4-year period. The dynamics of publication follows seasons – spring and autumn are the busiest periods, summer the slowest.

The largest publishers of contracts were Všeobecná zdravotná poisťovňa, the dominant state health insurer, followed by the RTVS, the national broadcaster and Národná diaľničná spoločnosť, the state highway operator. Together they accounted for almost a quarter of central institution contracts. Private mobile operator Orange was the most common private counterparty on central contracts.

Almost half (44%) of **central** contracts are nominally for zero euros. Many of them include phone or energy customer contracts, framework agreements with specific delivery contracts to follow, some are non-cost related contracts changes, and others genuine free rent or sale agreements. A quarter of contracts were for sums higher than a thousand euros, and **only 3% of contracts (27 thousand of them) concerned more than 100 000 euros.**

Most commonly contracts are five pages long, including an appendix. Over 13% of contracts were labeled as related to core business of state-owned companies, and thus not published in full, as stipulated by law. On the other hand, around a tenth of the published contracts have 10 pages or more. Over 6% of contracts have at least three appendices.

A. UPSIDES AND BENEFITS

In the first part of this chapter we will explore the benefits of the transparency reforms. Despite some initial skepticism, the general public seems to be interested in looking what their taxes are used for. Media and NGOs prove to be key users of new information, creating pressure for more efficiency and accountability. Finally, experts and business analysts perceive a drop in corruption levels in country in the last few years.

Public is interested in what their taxes pay

As many as **11% of adult Slovak population or 480 000 thousand people claim to have checked at least one public contract or receipt online since 2011**, according to the representative opinion poll of Transparency International Slovakia in late January 2015.²³ Almost 8% of them did it in the past 12 months, they said in a poll. There are around **two percent or 90 thousand heavy users, who claim to have checked at least 5 public documents in the four years since the reform was introduced.** The results largely confirm the numbers from the first such a poll by TI Slovakia in early 2012, when 9% of those polled had a direct experience with contracts online.²⁴

Predictably, **heavy users tend to be predominantly young, university-educated, work as entrepreneurs, earn double the average wage and vote center-right** (in Slovakia meaning business, pro-western oriented) parties. However, they do not concentrate in big cities only – many of the heavy users live in municipalities with two to five thousand inhabitants.

Significantly, the **results also show a much more enthusiastic public engagement when being actively provided with information**

²³ 1010 respondents, Jan 27 – Feb 3, 2015, face-to-face omnibus poll, FOCUS poll agency

²⁴ 1076 respondents, Jan 10 – Jan 16, 2012, face-to-face omnibus poll, FOCUS poll agency

online, against using the passive right to ask for it. While 8% looked at the published contracts in the past year, less than 3% bothered to write an official request for information based on the Free Access to Information law, according to our poll (the 2012 poll results showed similar difference).

In 14 years since 2001, when the Information law came into effect in Slovakia, less than 5% of citizens used it to ask public institutions for information, including copies of their contracts. In four years since contracts and receipts started being published mandatorily online, more than double of that number had a look at public documents.

High number of citizens engaged goes hand in hand with above average access to internet in Slovakia. In 2014 as many as 83% of the population had internet access at home, 29th best result in the world, on par with Singapore, Estonia and Ireland²⁵.

Case Study 1:

Teachers fight for better pay, checking ministry's spending

The budget negotiations in late 2012 involved discussions of higher pay for teachers, generally seen as a rather neglected sector. While sympathetic to teachers, the Education Minister dismissed demands of striking teachers by the obligatory "the budget coffers are empty." Peter Farárik, geography teacher from regional city of Skalica, decided to look at the Ministry receipts online. On his blog he exposed²⁶ several cases of suspicious spending, including dozens of luxurious bottles of cognac or rental of top class Audi car for three thousand euros a month. Once mainstream media piled in, the Ministry found it hard to defend itself. In January 2013, they terminated the Audi rental contract ahead of the plan. Later that year, they promised to raise teachers' wages, too.

Online statistics show increase in traffic

Visitor statistics to **contract portals** also show an encouraging picture. Both official CRZ portal²⁶ and unofficial Open contracts portal²⁷ run by non-profit Transparency International Slovakia and Fair Play Alliance organizations together **attracts 54 thousand visits a month, an increase by a third against 2012.** This excludes traffic to municipal websites and at least one other commercial application²⁸, for which we were not able to get enough reliable data.

Table 1: Visits and users to two main online central contracts registers (crz.gov.sk and otvorenezmluvy.sk)

Year	Sessions (in thousands)	Users (in thousands)
2012	472	224
2013	582	273
2014	650	287

Source: Office of the Slovak Government, Transparency International Slovakia

Note: Portal were not fully-functional from early 2011, hence we do not include that year in comparison.

Since about a third of the traffic on official site CRZ comes from public institutions uploading and checking the contracts, we estimate that some 46 thousand visits might represent a realistic interest of outside parties. To compare, top visited media portals in Slovakia reach 500 times more visitors²⁹.

Google Analytics data for **Open Contracts web** show that only about 20% of the visitors are returning ones. An average visitor spends 1 minute and 44 seconds on the site, looking at 2.5 pages. About 2% of visitor sessions or 170 thousand since October 2011 last more than 10 minutes. Two thirds of all, however, last less than half a minute. Most of the visits recorded on the portal are from Slovakia, about 91%, and most of them can be attributed to people under the age of 35.

²⁵ <http://www.internetlivestats.com/internet-users-by-country/>
²⁵ <http://fararik.blog.sme.sk/c/314638/Kde-nic-nie-je-bude-este-menej.html>

²⁶ www.crz.gov.sk

²⁷ www.otvorenezmluvy.sk

²⁸ Ezmluvy.sk

²⁹ <http://online.aimmonitor.sk/>

Visitors most often search the most expensive and/or the most recent contracts. Ministries of for searches among institutions. Most visited contracts (see below) usually belong to those heavily discussed by the media, from luxurious car purchases to suspicious IT services or grants.

The most visited contract since 2011 was the one for new webpage of the Slovak Tourist Board in Transport and Education are the top two targets charge of promoting Slovakia as a tourist destination abroad.³⁰ The resulting work originally criticized by a couple of coders on Facebook was picked up by the SME daily in an article in late January 2014.³¹ It was later shown that there was no public competition for the work.

Table 2: Most viewed public contracts 2012-2014

Buyer	Supplier	Subject description	Amount (EUR)	Visits
Slovak Tourist Board	Null, s.r.o.	Services - creating a webpage	19 250	3 002
Student dormitory Mladost'	Slovak University of Technology, Bratislava	Student accommodation	0	1 656
University of Economics, Bratislava	Gratex International.	Supply and installation of information technologies	1 857 600	1 413
The Section of Labor of the Ministry of Labor	Xepap	Joining a general contract	2 215 416	1060
Ministry of Finance	SAP Slovensko	License agreement for the use of software	11 998 500	787
Slovak Audiovisual Fund	Peter Bielik	Grant	15 000	651
Slovak Road Administration	T.O.P.Auto Slovakia	2 motor vehicles	95 157	633
Ministry of Economy	KASTOR	Land acquisition	2 330	619
State material Reserves of Slovak Republic	Motor-Car Bratislava	Motor vehicle	67 134	579
Bratislava - Old Town	N/A	Renewal of rent	N/A	571

Source: Otvorenezmluvy.sk, as of Feb 28, 2015

³⁰ <http://otvorenezmluvy.sk/documents/828118-slovenska-agentura-pre-cestovny-ruch-null-s-r-o-zmluva-o-vytvoreni-di#document/1/page/2>

³¹ <http://ekonomika.sme.sk/c/7078778/statny-web-o-slovensku-spravili-za-19-tisic-eur-bez-sutaze.html>

It is worthwhile noting that mandatory publication of contracts and receipts spurred several other commercial and non-profit activities online. Two large IT providers came with contract and receipt aggregator for municipalities.³² Another company copies central register contracts and offers easy search and analysis³³. Finally, a group of activists in small city of Považská Bystrica created an online widget called Eye of the public, which highlights the latest published contracts, receipts and orders from city hall to city-run entities.³⁴

Media report more on tenders

Mass-media have been to date the biggest supporters and users of the new legislation. Slovakia scores consistently among top 25 countries in the world World Press Freedom index produced by the *Reporters without Borders*.³⁵ While they suffer from declining sales and occasional pressure from their owners-oligarchs, their scope for pursuing stories questioning efficiency of government spending is largely seen as wide.

Interviews with four **experienced Slovak journalists** working for the most influential daily, weekly and television news program underlined **their belief that 2011 reforms were hugely beneficial for the ability of media to perform their watchdog role** of public institutions. One aspect specifically has been highlighted by respondents - control "in the real time" was now possible. Journalists agreed that most of the recent scandals in Slovakia were "enabled by this infrastructure" and thus had better results in terms of accountability than cases prior to 2011. SME daily reporter Adam Valček argues that actively published contracts cut the investigative work by as much as 3 months, having the facts available at the click of the mouse.

Having all the contracts online from 2011 did not change the inner functioning of news media outlets. None of the journalists we interview mentioned any systematic approach adopted by editorial staff to motivate journalists to regularly work with contracts.

Table 3: Media coverage of public procurement 2003-2014

	2003-2006	2007-2010	2011-2014	2003-2006
Media citations of "procurement"	877	1398	1765	877
Change	N/A	+59%	+25%	N/A

Source: Transparency International Slovakia calculations from data of Newton IT

The number of reported stories on procurement increased in mainstream media³⁶ by 25% in the four years since the mandatory publication of contracts policy was introduced, as opposed to four years before. However, it is rather hard to estimate how much of a change is due to the contracts being easily available. There was a large increase in the coverage by media of contracting issues in previous period, although most likely much of it stems from two large scandals in 2007-2009 years.

However, journalists started to use them rather incrementally and all media outlets with investigative journalists do have several people who use contracts systematically, on a day-to-day basis.

Journalists believe that there is less wasteful spending as a consequence of public contracts being published online. But they remain convinced about the scope for improvement. "Maybe you do not over-price the contract by 40% but only by 25% now," says Daily N editor Konštantín Čikovský.

³² <http://zmluvy.egov.sk>, <http://www.digitalnemesto.sk/hurbanovo>

³³ <http://ezmluvy.sk/>

³⁴ <http://povazska-bystrica.otvorene.sk/Members/smatana/oko-verejnosti>

³⁵ <http://en.rsf.org/>

³⁶ Dailies SME, Hospodárske noviny and Pravda, Radio Slovakia news program, and evening news shows of STV, Markíza and TA3 (data by Newton IT)

Case Study 2:

Investigation before the Reform: “Noticeboard tender”

In May 2007 Ministry of Construction published a tender call for marketing and legal services worth 119 million euros for up to 7 years to be funded from the EU structural funds – on a simple noticeboard inside the Ministry’s building. The tender was won by a single bidder – companies close to chairman of the Slovak Nationalist Party, whose nominee was running the Ministry. It was four months later that media first broke the story through an insider’s tip, and only one and a half years later that the whole extent of the contract was revealed. Almost 12 million euros were spent already. Under intense media pressure and criticism from the European Commission, the tender was terminated through mutual agreement of both parties in April of 2009. For years, the tender became one of the most visible symbols of abuse of power. The nationalist party lost over half of its voters in the following elections to the parliament of 2010.

Media professionals agreed that the **best stories based on contracts came from tips from the public**. “Cold search” among thousands of contracts can be tedious. In general, journalists said, they rely on common sense, experience and their network of experts in their respective fields, including other journalists, companies, area experts and ministries abroad, mainly in the Czech Republic. The most common method is to benchmark contracts with similar ones elsewhere.

Cross-checking with public procurement documentation is another common method. Since many contracts are a result of procurement process, and Slovakia has one of the most extensive data on procurement in the world (including all the bidders’ offers), one can often

trace suspicious prices or suppliers back to single bid contests or tenders laced with discriminatory conditions from the start. **Certainly, publishing contracts cannot work independently as an anti-corruption tool. Rather, it is a piece of mosaic in a much wider change towards higher transparency and more efficient government spending.**

Case Study 3:

Hospital purchases from shell companies

In mid-October 2014 state hospital in Piešťany published 1.6 million euro contract on the purchase of the CT scan. Two weeks later, TV Markiza produced an expose of how similar scans were bought for less than half the price elsewhere. Other media piled in. The new supplier, it turned out, was owned by a Belize-based shell company and potentially connected to a high-ranking politician in the ruling party.

Less than two months later, daily SME and Transparency International Slovakia analysts reported on four suspicious contracts for hospitals catering services and reconstructions worth up to 80 million euros for 10 years signed in 2013 and 2014. Each tender had two interconnected bidders, one of them a shell company from Luxembourg. Closer reading of the published contracts revealed that hospitals ordered more services than they needed and most likely overpaid by millions.

The reports had immediate effect: the Minister of Health and three hospital directors were dismissed. In December 2014 the parliament passed a legislation barring shell companies from any public procurement.

Case Study 4:

Governmental "shrimp cocktail"

In late February 2014 TV Markíza criticized the Government Office for ordering 300 thousand euros worth of luxurious seafood for the next four years. The contract itself was signed and published in December 2013. The office explained that the seafood was for official visitors and diplomatic guests, but they in fact usually serve foreign guests typical Slovak dishes, not seafood (Slovakia has no sea coast). A day later, the Office cancelled the contract.

Higher competition in tenders, lower perception of corruption

Analyzing the role of transparency reforms on the change in corruption perception or quality of procurement is notoriously hard, given many other policy changes introduced. In 2011 the then government made electronic auctions in tenders mandatory for goods and services. Most of the tender documentation was made public. In 2014 new laws made whistleblowers less risk-prone and put political party financing under more oversight. Moreover, political competition together with media and public pressure led to higher ethical standards for public officials.

Table 4: Corruption Perception Index

	2011	2012	2013	2014
Score (100 best)	40	46	47	50
Standing (1 best)	66	62	61	54

Source: Transparency International

Still, Slovakia can boast some progress on the anti-corruption front. **Since 2011 Slovakia jumped 12 places in the Transparency International anti-corruption rankings, one of the best records in the world in that period.**

This perception is based on views of business leaders and country analysts, both Slovak as well as foreign.

Similarly, the public procurement has shown some signs of improvement in the recent years. **While in 2010 over half of all tenders ended with a single bidder, in 2014 this share fell to an all-time low of 34%. The average number of bidders rose from 1,6 firms in 2010 to more than double that – 3,7 companies in 2014³⁷** (the rise is however less evident when the competition is analyzed without taking volume of tenders in account). Public institutions have almost stopped using the least transparent methods of procurement such as restricted contest and direct purchases. Their share of tenders dropped from 21% in 2010 to less than 4% in 2014.

Certainly, these indicators should be taken with a grain of salt. Either way, prominent anticorruption analysts (including the authors of this report) believe that **transparency reforms did contribute to Slovakia's better results.**

³⁷ Transparency International Slovakia's analysis, January 2015, <http://www.transparency.sk/wp-content/uploads/2015/01/TIS-Analyza-Verejneho-Obstaravania-januar-2015.pdf> (in Slovak)

B. DOWNSIDES AND COSTS

The biggest concern about the contract transparency has been its cost, especially for smaller municipalities. From the point of view many of them the costs in both human work and new software are real, yet benefits unclear. Overall, we estimate that the introduction of mandatory contract publication could have had direct initial costs of up to a hundred thousand euros. As for the fear of collusion in tenders or loss of interest of companies in dealings with the state, we find little evidence of their existence.

Administrative costs most salient

The central register of contracts cost 20 thousand euros to build and extra 4500 euros for update in the first four years of its existence³⁸. Its maintenance costs are estimated at up to 3 thousand euros per year.

However, central costs have never been a large concern. From the beginning the largest warnings about high administrative burden came from municipalities. The Association of municipalities warned of "rise of digital bureaucracy." This partly stemmed from an exceptionally strong degree of decentralization in Slovakia. The country of 5.4 million inhabitants has over 2700 municipalities, many with tiny staff in mayors' offices.

For the purpose of analysis we conducted four semi-structured interviews in four different cities. We looked at the cases of Pezinok and Žiar nad Hronom, two mid-sized cities who earned excellent marks for the quality of publishing contracts in Transparency International Slovakia's previous study, and two small cities where the quality was rather bad³⁹ - Senec and Šamorín. For the interviews we focused on Chiefs of staff as well as IT support people⁴⁰.

³⁸ Information provided by Michal Polan, Aglo Solutions' director, the register's IT provider

³⁹ See the ranking of transparency of municipalities conducted by Transparency International Slovakia in the Fall 2014. Evaluation of the quality of publishing contracts included indicators such as whether the contracts were published with all necessary Appendices and information, whether one can search in them, copy the text and so on. For more information please consult: <http://mesta2014.transparency.sk/en/sets/mesta-2014> or contact us at: tis@transparency.sk

⁴⁰ In Pezinok the respondents were: Peter Štetka, lawyer of the city office; and IT administrators Alexander Pravda and Matej Sandtner; in Senec it was: the chief of staff Jarmila Répassyová and IT

Out of four cities two are currently publishing their contracts on the platform eGov, which is offered by a private company developing and administering information technologies for self-administrations but for private sector as well⁴¹. The other two are publishing contracts by themselves on their own websites without any external help. Žiar nad Hronom has been publishing its contracts since 2009, hence more than a year before there was a legal obligation to do so. The city has been using, according to the Chief of staff, services of eGov since 2003 and continually kept purchasing new necessary modules and for that reason did not need to invest any extra resources after the law passed. Services of the eGov are used by city of Pezinok as well, however their path was quite different. Matej Sandtner, its IT administrator said: "The first three months we did not use any software. We were doing it manually on our website, but then we bought an extension of the license for eGov which cost about 10 500 EUR, it came with everything - implementation and so on, and we are using it since about March 2011." Both cities expressed satisfaction with the software; portal offers such functions as meaningful searching and assorting mechanisms, variety of metadata in lists of documents, and also possibility of data export. The staff also mentioned that they needed to purchase a few new computers as well.

On the other hand, Senec and Šamorín both publish documents on their own websites. The chief of staff from Šamorín explained it is mainly due to lack of money. In Senec the story and the reason for reliance on their own capabilities was different. At the time of legislative change the city was working on a project of making most of the city services available online. The objective of this activity was however different and so is the software solution behind it. Štefan Pap, IT manager explained: "We are currently using CMS system that can be dated back to 2005 when the website was created. The purpose of the website was different than the goal it serves currently. It was more for information, tourism and tourist traffic". That means that in Senec they adjusted the existing website, created new subpages with subsections for contracts, invoices and orders

manager Štefan Pap; in Šamorín the chief of staff Ervin Sármanyi; and in Žiar nad Hronom the chief of staff Mariana Páleníková.

⁴¹ <http://www.egovsystems.sk/content/view/o-nas>

and started to publish the information there manually. According to TIS' evaluation of 100 largest municipalities' websites, the better performing are those cities that are using external software. It saves them time and usually provides with higher quality solutions.

Human costs of uploading contracts are negligible

Human costs of uploading contracts are negligible, our findings show. In interviews two approaches could be identified: first, delegate a responsibility for contract publication to a person in charge of any particular contract, hence to which department it belongs to, based on its content; or create a centralized system where one particular office or one person is responsible for all the contracts. In Pezinok they chose the first variant. "It was added to the existing agenda. Currently it works like this - everybody is responsible for their contracts. The responsible person is the one, whose budgetary item is affected by the contract", Sandtner said. The rest of the interviewed cities proceed in a more centralized way - a specific person is responsible for all the contracts.

In Šamorín and Žiar nad Hronom the process revolves around a process of central records of contracts. In Šamorín the city has two copies of each contract, one goes to the employee working with the contract in an office with particular agenda, the other goes to the central records office, where the contract is assigned a number in the evidence, and in addition to former responsibilities, it is now uploaded to the website. Šamorín's chief of staff added: "It does not burden her [the responsible colleague] too much, she had to keep records before. We have about 350 contracts a year so it is like one contract a day, it can be handled easily". In Žiar nad Hronom, the responsible office is the Secretariat of the Mayor, which is also responsible for record-keeping. In Senec the system is to some extent a combination of the two possible paths. IT administrator is the one who is responsible for actually uploading documents, however particular offices are responsible for scanning of the documents, blackening out possible personal

information data and sending it to the IT administrator, who has to upload the contract the very same day due to the fact that the contract is valid only after its publication.

Based on our interviews **it seems clear that the human factor – from supervision to having transparency as part of its mission - is crucial.** In Pezinok the atmosphere of the interview was very favorable to transparency. The lawyer of the city office, Peter Štetka for example stated: "At the beginning there was a debate, whether such and such contract must be published or not. We always contemplated whether we are handling public property or resources, but I usually said to publish every contract without too much thinking about it, so we do not need to worry so much whether the contract is actually effective or not [because the public pressure will motivate employees to make them so.]"

NGOs, local activists and citizens themselves can exert a powerful pressure on transparency. Several city officials mentioned TIS bi-annual rankings as the crucial motivator to make their publication regime more user-friendly. Elections periods also serve as time of greater interest in published contracts. However, in general none of the cities have experienced continuous pressure for higher levels of transparency.

Occasionally, officials find themselves that proactive publication is actually less burdensome than dealing with random queries for information from citizens. "I will offer a real-life example from the city of Prešov" Alexander Pravda, IT administrator in Pezinok said. "People were asking for information under the Freedom of Information Act, of course it is a larger city, so they decided to publish information people were most interested in on their own, beyond the scope of the law. Later they found out that there were fewer information requests as a consequence, that way they do not burden employees so much as before".

As mentioned above, concerns for administrative costs for some specialized institutions led to an increase in exemptions to the mandatory publication of contracts. Thirteen new exemptions were added a year after the reforms to the initial seven. Most of

them concern small yet numerous contracts for social work and subsidies, land purchases by the highway authority and artists' contracts. Another three are likely to be passed, if the government amendment passes in 2015. Exclusions should also include cemetery grounds, water supplies and school dorms contracts.

Collusion, loss of competitive advantage not a visible issue

As noted in earlier section, private sector had generally positive attitude towards mandatory publication of public contracts. In discussions, some of them voiced concern about having their know-how published in contracts, says the former Justice Minister Lucia Žitňanská, who pushed the reforms through. In reality, however, **we registered little negative feedback from the private associations.**

Martin Filko, senior government economist at the Ministry of Finance, holds the view that "everything that is not secret should be published". He said there is no evidence that transparency led to collusion or hurt companies in any way. He elaborates the idea from a theoretical point of view saying that: "well-functioning market has perfect information. You do not want one party to have better information than others as that is causing market failures". Hence a more transparency, means better functioning market, he says.

As described above, **procurement results do not show any signs of collusion, rather the opposite. Since the introduction of reforms the average number of bidders increased while share of the single-bid contests halved.** The Anti-monopoly Office has not made any conclusions that publication of contracts has increased the risk of collusion.

Our analysis was not able to make a meaningful comparison of contracts written before and after the transparency reforms. It is possible that the current contracts leave out more sensitive information to appendices, many of which are perhaps deliberately left out from publication. Whether this is really so needs to be studied more carefully in the future.

Finally, **the biggest complainers about contract transparency were state-owned companies (SOEs).** They repeatedly argue that they would lose competitive advantage, as in number of instances they actually have to compete against private competitors, who do not have to publish any of their supplier contracts. One year after initial reforms SOEs won themselves an exemption from mandatory publication – from 2012 it is sufficient for them to publish only the price, subject and counterparty of contracts concerning their core business, rather than their full text. However, the public can still get hold of complete contracts through request - at least in theory. In practice, though, we have encountered numerous instances when state-owned companies do not release full contracts. Over years, they already lost a few court cases for this reason.

The opposition politician Miroslav Beblavý suggests that one way to solve this problem is privatization. If there are indeed private companies able to deliver services, the government should pull out from such markets and focus on areas where private sector is not able to operate.

3. ONGOING CHALLENGES AND RECOMMENDATIONS FOR REFORMERS

From the Slovak experience we identify three key challenges for mandatory publication of state contracts: enforcement, public engagement and finding the balance between business know-how protection and transparency of state-owned companies.

Implementation: the devil is in the details

What all of the respondents who work with contracts, including the study authors, find problematic is how incomplete published data often are. **There is no authority in Slovakia in charge of monitoring the compliance.** While there is a strong internal motivation to publish the contract (the law stipulates that a contract not published is not in force), this still leaves much room about in what shape the documents get published online.

In 2014 Transparency International Slovakia carried out a massive evaluation of the quality of contracts published both by hundred largest municipalities and 30 large state- and city-owned companies. **Of almost 1100 contracts checked, almost a fifth have not been published completely.** Mostly, at least some of their appendices were missing. As for the content, **in quarter of them one could not see the subject of the contract, in 12% of documents the price was missing, and in 4% of them the name of the counterparty was blackened out.** Only two thirds of the contracts were published in such a format that one could copy text inside it.⁴²

While there are legitimate and legal reasons for parts of contracts to be redacted, such as personal information, trade secrets or security

⁴² The numbers come from combining our review of state-owned companies' transparency at <http://transparency.blog.sme.sk/c/353624/Teplarenske-firmy-zverejnuju-zmluvy-lahkovazne.html> and city transparency ranking of 2014, see <http://mesta2014.transparency.sk/sk/sets/mesta-2014/rank>

reasons, it certainly does not apply to basic information such as price, names of parties or subject of the contract.

1 out of 10 contracts is published in insufficient quality

As the sample of our study of quality of published contracts focused on notoriously problematic subjects (municipalities and state companies), we assume that the overall scale of the data incompleteness will be perhaps only half of what the study results showed. Still, that would still mean that **about tenth of the contracts are not published in quality sufficient for the public to be able to judge its efficiency.**

A study⁴³ by Fair-play Alliance, a non-profit anti-corruption group, identified another problem – there is little official control of the online register itself. They found 30 contracts that were uploaded yet later disappeared from the register, and another hundred whose data had been changed after the upload. The Ministry of Justice planned to introduce digital footprint to prevent such back manipulation later in 2015.

Misinformation stemming from lack of analytical capacities in media, activists

Several of our interviewees showed concern whether the sudden availability of contracts might lead to superficial analysis and populist name-calling. The former Justice Minister Lucia Žitňanská who herself introduced the radical transparency laws admits that at times due to limited competence the discourse based on contracts oversimplifies reality. Media or activists often compare contracts solely based on price without regard to other factors, which might make an “awfully overpriced purchase” look suddenly

⁴³ Many deals could be secret, Pavol Lacko, Denník N, March 5, 2015, <https://dennikn.sk/63160/stat-tvrdi-ze-ukazuje-zmluvy-naozaj/>

rather reasonable. Leading opposition politician Miroslav Beblavý agrees. Both, however, think that **contracts permanently available online decrease rather than increase risks of manipulation or, for that matter, misinterpretation.**

Case Study 5:

Vampires of paper – or not?

In August 2012 blogger Oldřich Kovář posted a short analysis of how state institutions buy paper, titled “State Vampires, overpriced paper purchases by 48%⁴⁵.” Kovář compared nominal prices from contracts published online with retail price at Tesco’s and was incensed to find out that retail was cheaper than wholesale purchases by most of state institutions. The article became one of the most-read blog posts of the week. While the piece recorded mostly positive reactions, several discussants argued that Kovář compared apples and oranges. Two days later, Tomáš Trenkler, a procurement expert, penned his skepticism in his own blogpost.⁴⁶ He noted that Kovář’s study did not take into account varying delivery costs (you have to pick paper up in Tesco’s but state institutions had goods delivered all over the country). Moreover, he compared prices over two years while the market price of paper did go up and down. Finally, no account was made for differences in scale of deliveries.

No mainstream media picked up on Kovář’s findings.

head of the financial analytical unit at the Ministry of Finance summed it up like this: **“These scandals lead mainly to marketing solutions. The ability to transform such scandals into a long-term policy change is something we need to work on”.**

Contracts of State-owned companies

Finding a workable system of publication of contracts of state- or municipal-owned companies has proved elusive even after four years since the reforms were introduced. More and more formerly state monopolies such as post office, airports or telecoms find themselves in competitive market, whether with private upstarts or with state companies from abroad. They feel disadvantaged by having to disclose their contracts while at the same time not being able to see those of competitors. Moreover, they say their foreign counterparties often do not want to allow them to publish the mutual contracts. The state-owned Bratislava airport for instance said the foreign airlines they deal with do not agree to any publication, and so they either publish contracts or do hardly any business.

The Slovak government has decided to go the middle way – it excludes “core business” contracts from mandatory publication, and the public only has to be notified about such a contract being signed with data on total price, counterparty and its subject. Also, companies can still use the business know-how clause in the information law to avoid disclosing sensitive data. Still, there is a widespread feeling among watchdog NGOs that state-owned companies tend to abuse these exemptions and hide many more contracts than they entitled to. This happens at the time when state companies seem to be favorite conduits of corrupt deals in politics.⁴⁴

What was also clear, our interviewees explained, is that such a wholesale transparency is undoubtedly not sufficient in erasing corruption. It needs to go hand in hand with general attitudes towards unfair practices, political culture and ability of all of the stakeholders to properly and effectively utilize the published data. Martin Filko,

⁴⁴ See Gorilla scandal and others, http://en.wikipedia.org/wiki/Gorilla_scandal

⁴⁵ <http://oldrichkovar.blog.sme.sk/c/304895/Upiri-statu-predrazene-nakupy-papiera-A4-na-ciernobielu-tlac-o-48.html>

⁴⁶ <http://eaukcie.blogspot.sk/2012/08/predrazene-nakupy-alebo-hrusky-s.html>

4. RECOMMENDATIONS

Based on the above analysis, we offer several recommendations for policy-makers hoping to introduce the contract openness similar to Slovakia.

- **Make contracts valid on condition of them being published online first**

Enforcement is crucial to success, yet also difficult as it is hard for outsiders to know the scope of contracts that were in fact signed. Having the online publication as a condition of their validity raises the motivation of both contract counterparties to make sure contracts do get published.

- **Make publication regime simple, complete and structured**

All contracts should be published in a single website, making them easy to search and compare. Every single contract should be searchable within a set of metadata, with names of counterparties, subject of the contract, price and data being the key ones. Make sure the text of every contract is searchable itself.

Linking and connecting databases would also be immensely helpful. Ideally, contracts database would be interconnected with orders and invoices, with procurement documentation and business register, grants and subsidies databases and so on. This would help find gaps in documentation as well as make analyzing contracts more fruitful.

Amendments to contracts should be published just like any contracts. Moreover, it is advisable to publish (or link, if already published) original contract and previous amendments together with newly signed amendment, to make it easy to understand the context.

Also, make sure that documents are impossible to manipulate without detection. Changes to the data should be noted with time of change.

- **Make benchmarking as easy as possible**

Homogeneous product or service contracts should be benchmarked to weed out inefficiency quickly. Hence, unit prices might be included in metadata, such as price per kilo or per Megawatt, just like many retail stores do it for food items.

- **Set up an oversight regime**

Public officials will repeatedly try to publish less information than needed and find ways to avoid transparency. A small oversight unit should be established to watch over the publication duties. Ideally, it would be part of the body in charge of monitoring access to information law, such as information commissioner. This unit should also analyze who uses the data and try to help spread the use to wider public through campaigns, prizes and competitions.

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