

## **Legislative impact analysis on contract publication is done, “minimalist version” not hampered by relevant causes**

- According to our expert group, the impact study on the Registry of Contracts legislation did not reveal any previously unsolved obstacles to the implementation of the bill, or any reservations of a new type.
- The analysis includes a number of extreme estimates of costs, which are in conflict with the previous experience and studies as well as conflicts running across the various institutions.
- The current “minimalist version” of the proposal could be adjusted as proposed by the Ministry of the Interior—and then approved.
- Identified publication duplicities should be further worked upon.
- The risk is that the Coalition now decides to succumb to pressure from certain subjects and reopens the “catalogue of exemptions” from the Registry.

The legislation on the publication of state and municipal contracts has therefore overcome the last obstacle, namely the Impact Study provided by the Ministry of the Interior. At present, a draft norm in existence should be acceptable for the Coalition Parties in addition to resolving the reservations raised by municipalities and state-owned enterprises. According to the Reconstruction of the State expert group, this is an acceptable minimalist version of the bill, which stands good chance to be passed by the Chamber of Deputies during this year. The Coalition Council should discuss the draft legislation during this week or next.

The Impact Analysis of the bill, also known as the “little RIA”, finalized by the Ministry of the Interior last week, did not identify any new and relevant obstacle to adopting the legislation. Most protests filed by the institutions and firms concerned have been either settled or they are new requests, asking new exemptions for other entities, which can be easily decided upon in a political way. The demand for removing duplicities is of technical legislative nature only, and it should be processed by the Ministry of the Interior in a matter of days.

The Impact Study also works with a number of estimates concerning the costs of implementing the Register, but these were borrowed from the subjects interviewed and were deemed exaggerated and unrealistic by the experience and studies considered to date. For example:

- The Impact Study reveals completely unrealistic estimates presented by state-controlled companies. While Čepro a.s. estimates the publication costs to be between CZK 33 and CZK 57 per contract (two employees, 150 contracts per month) as many other firms do, the company Mero’s estimate is CZK 400-500, and ČEZ, which will likely be exempted from the legislation, cites CZK 3,400 per contract.
- It is estimated in the Impact Study that 500,000 contracts will be published per month, but the real count seems to be about five times less.

- The Impact Study estimates municipal claims on the basis of research using a non-representative sample of four cities; a similar sample was applied to municipal budget-aided organizations: yet, these are the most significant groups from the angle of estimated costs.
- The personnel requirement estimate is also grossly scattered. While the abovementioned ČEZ estimates the time costs per contract published to be eight hours, the Ministry for Regional Development and, say, the Blansko Municipality will need only 15 minutes per case. In practice, the municipalities that already publish their contracts now take between five and 10 minutes per case.
- According to our calculations, the Ministry of the Interior grossly overvalued the costs of publishing contracts in the Central Register: using a more conservative estimate by the unit method, the Ministry arrived at CZK 1.5 billion per annum, while the Centre of Applied Economics (CAE), using the same method, has estimated the costs to be 218 million CZK. The less accurate personal costs method has arrived at a similar difference of CZK 1.5 billion (CAE), and CZK 4 billion (Interior Ministry).

In its current wording, the bill amends the text tabled by 78 deputies of the Lower House of Parliament after the elections in 2013. It addresses representations of the Coalition deputies and parties, noting in part that:

- Legal vacuum will not affect the state and municipal firms which do not publish the part of their contract they deem to be a trade secret. These companies can correct an unpublished or wrongly published contract without it being rendered invalid.
- Non-applicability of a contract shall not be due to typing or numeric errors made.
- Other subjects can also correct an already published contract without voiding it for a period of up to three months (whereby corrections shall remain part of the Contract Register extant).
- The law clearly specifies who shall have the duty to publish contracts. Reconstruction of the State considers the list of compulsory subjects sufficient, although it is acutely aware of the controversial exemption of several entities, such as public universities. Likewise, the legal entities established under other than Czech law and predominantly active outside the territory of the Czech Republic are not considered compulsory subjects either (this exemption concerning namely certain subsidiaries of ČEZ, a.s.).
- The publication duty shall apply solely to contracts over and above the sum set by the government, which is believed to be CZK 50,000. Invoices and orders will not be made public.
- The publication duty exempts certain contracts for the reasons of security, secrecy and threats to competitiveness. This provision applies namely to the companies quoted on the stock markets, such as ČEZ.
- Double publication is prevented on the buyer's (contracting authority) profile and in the Register.

The Working Group concludes that the list of exemptions covers all contracts whose parties could be damaged by such publication because of a security risk or due to its competitiveness. Furthermore, the respective government regulation could additionally narrow the scope of contracts cited in the

Register in accordance with the value of the subject of contract—however, we do not recommend this option.

**Additional information about the above legislation is available from:**

<http://www.rekonstrukcestatu.cz/cs/smlouvy-na-internetu>

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**History of the Reconstruction bill:**

The Register of Contracts (dubbed “Best Law” due to its smart simplicity) is a bill 165 lawmakers pledged to vote for before the last elections. Seventy-eight MPs tabled the bill in the Chamber of Deputies at the turn of November and December 2013 as the first to be attended to after the polls. Despite such strongly expressed support, however, the Best Law was stuck in the benches for many months and voting was repeatedly shelved. In July 2014, the Coalition agreed to modify the bill in order to achieve political consensus. Prime Minister Bohuslav Sobotka tasked the Ministry of the Interior to work the amendments into the draft text, but the Ministry presented a dysfunctional proposal for sanctions. The original draft includes the basic principle, according to which all public contracts must be posted on the internet; if the basic data about the contract are not published in this way, such contract shall become null and void. A similar legislation is in force in Slovakia.

**About Reconstruction of the State**

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The anti-corruption project Reconstruction of the State was launched in March 2013 with the aim to promote nine key legislations, which would dramatically reduce room for corruption and prevent the ongoing state capture. Commitment to promote the legislation was confirmed in writing before the elections by more than 160 current members of parliament, including the leaders of the main political parties. **Members of the NGO coalition:** Oživení, Transparency International, Frank Bold, Otakar Motejl Fund, Center of Applied Economics (zIndex), Open Society, Brnění, Pražské fórum, Zaostřeno, Green Circle (Zelený kruh), Anticorruption Endowment (NFPK), Inventura demokracie, Glopolis, Good Governance, Naši politici, Iuridicum Remedium, ProAlt, Kohovolit.eu, and PragueWatch. The coalition receives financial support from scores of small donors, companies and foundations, the list of whom can be found on the project website [www.rekonstrukcestatu.cz/en](http://www.rekonstrukcestatu.cz/en).



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