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# Shedding Light on Public Contracts

The Register of Contracts  
in Public Spending  
Oversight

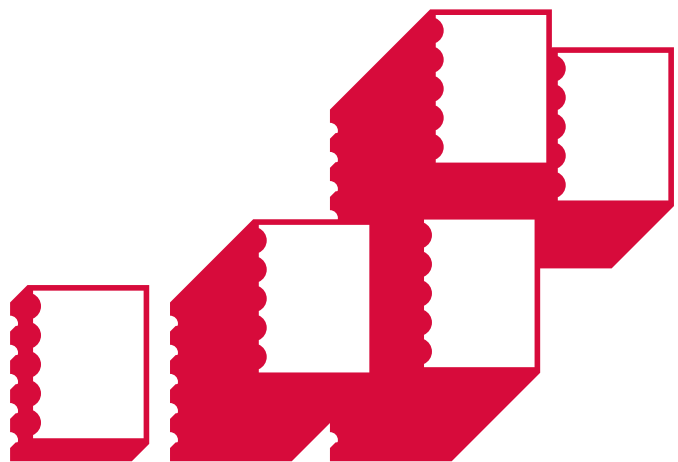


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# Introduction

“There’s nothing to be scared of in open data. Unless you’re taking money where you shouldn’t be taking money.”

— Peter Corbett, CEO of iStrategyLabs<sup>1</sup>

In 2016, the Czech Republic will join Slovakia in introducing a new transparency measure, making a bold move from passive transparency *by demand* to proactive transparency *by default* in public contracting. With certain exceptions, all government entities, including large municipalities and state-owned companies, will disclose the full texts of their contracts and a specified set of metadata in an online central register. Although more and more countries are publishing their government contracts today, none of them has gone as far as Slovakia—and now the Czech Republic. Not only must the contracts be published in full and in an open-data format; but also, their very validity is contingent upon their publication.

**13,500 Czech  
public entities**

**are obligated to publish  
their contracts online**

**480,000  
Slovak citizens**

**have inspected at least one  
public contract since 2011**

**a 25% increase**

**in Slovak media reports  
on public procurement**

**contracts worth  
EUR 12 billion**

**are to be published annually  
—in addition to public  
procurement contracts,  
which are already published  
in the Czech Republic**

**Slovakia’s ranking  
in the Corruption Perception  
Index improved by  
12 places**

**a 20% drop**

**in the share of single-bid  
tenders in Slovakia<sup>1</sup>**

The present publication is intended as a brief introduction to this transparency regime, newly adopted in Slovakia and the Czech Republic in the last few years; and in a more general sense as a contribution to the ongoing discussion about eGovernment, access to public sector information, and the need for greater transparency in public contracting.

Open contracting is a global movement dedicated to making public contracts available and accessible, while enhancing citizen participation in the contracting process, and thus allowing for effective monitoring, accountability, public trust, and ultimately better results.<sup>3</sup> It refers to the “norms and practices for increased *disclosure* and *participation* in public contracting”<sup>4</sup>; and while it originally focused mostly on large-scale concession deals in land, infrastructure, and extractive industries, the concept now also covers a variety of other contracts. The current discussion on open

<sup>1</sup> Stefaan Verhulst (2013): *7 Quotes relevant to Open Gov from Davos 2013*. GovLab, January 2016. Available at: <http://bit.ly/29NoO8u>.

<sup>2</sup> Figures for the Czech Republic have been provided by EconLab, a Czech NGO that promotes data-driven economic research focused on public policies. See <http://www.econlab.cz/en>. The data from Slovakia is from the recent study by Transparency International Slovakia (2015): *Not in force until published online. What the radical transparency regime of public contracts achieved in Slovakia*. Available at: <http://bit.ly/1cicxJ3>.

<sup>3</sup> See, for example, Bacon, Laura (2013): *Open Contracting is a Game-Changer: Opening Up Governments & Busting Silos*, Open Government Partnership blog: <http://bit.ly/1kzpUGD>, or the World Bank’s definition of open contracting: <http://bit.ly/1Tu4xcu>.

<sup>4</sup> Emphasis added. For more details, see the Open Contracting Partnership website: <http://www.open-contracting.org>.

contracting, however, revolves almost exclusively around the issue of public procurement, both among NGOs as well as in the public sector. In a communication last year, for example, the European Commission announced a plan to introduce contract registers to improve the transparency and quality of national procurement systems.<sup>5</sup>

The present study discusses a specific measure for proactive public-contract disclosure—the register of contracts—that covers more than only public procurement: it requires the disclosure of all contracts that deal with public funds. The main question the study aims to answer is: **How can various groups of actors utilize central registers of public contracts<sup>6</sup> for the oversight of public spending?** Such actors include watchdog organizations and the general public, as well as central administration (e.g. ministries) and auditing bodies (e.g. supreme audit institutions), including the European Union and its oversight mechanisms. For the purposes of this analysis, public spending includes any expenses covered using public funds, such as public procurement contracts, awarding contracts for receiving European Structural and Investment Funds, and any other contracts concluded by the State, municipalities, and public institutions.

While the benefits of public access to information held by the State (in the broad sense) have been largely identified and analyzed<sup>7</sup>, often in the context of the fundamental human right to information, the benefits of open government data and its potential for increasing the efficiency of public administration itself—and particularly for the efficiency of the auditing and oversight of the management of public funds—seem to have received relatively less attention.<sup>8</sup> After describing the Czech and Slovak contract registers, we will therefore discuss their possible use by public administration and supervisory bodies within the two countries. To supplement the Czech and Slovak perspective, we have also interviewed several Polish stakeholders to learn their views on the possibility of introducing a register of contracts in Poland.

In a broader sense, this study is a contribution to the ongoing discussion on open government data and its use in improving the independent oversight of public funds. We can only hope that it provides relevant information for public-office holders, at both the national and the European level, on the benefits of proactive disclosure of public contracts, thereby making a case for introducing and effectively implementing a register of contracts (or another similar database). In this respect, the text is also a contribution to the ongoing Czech debate on possible amendments to, and implementation of, the newly adopted Act on the Register of Contracts.<sup>9</sup>

The structure of the text is as follows: Chapter 1 provides a brief overview of the Czech and Slovak central Registers of Contracts. Chapter 2 goes on to define the broader concept of open government data, discussing who may use the data published in a Register of Contracts, and how. In Chapter 3, we then narrow our focus to look at a specific group of end users of such data, one which we believe has received relatively less attention so far, that is, auditors conducting public-sector audits. After briefly describing the legal framework of audits and the oversight of public funds in the Czech Republic, Poland, and Slovakia, we present the main findings from interviews conducted with representatives of Czech, Slovak, and Polish auditing and supervisory bodies. Using the information from these interviews as well as other data and feedback we received from various stakeholders during our advocacy work, we then offer conclusions and recommendations for the Slovak and Czech Registers of Contracts in Chapters 4 and 5 respectively.

<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Brussels, October 28, 2015, COM (2015) 550 final. *Upgrading the Single Market: more opportunities for people and business*, part 3.2. Available at: <http://bit.ly/1NCct0b>.

<sup>6</sup> Please note that we use the terms “register of contracts” and “contract register” somewhat interchangeably in the text, without particular preference for either of the two. This is largely because there doesn’t seem to be any generally accepted and consistently used term for the type of register we refer to. While, for example, European Commission uses the term “contract registers” in its above cited communication; in Slovakia—the only EU member state where the measure has been implemented—the term “central register of contracts” is officially used (see <https://www.crz.gov.sk/>). Additionally, we tend to use lower case when discussing the concept of contract registers in general; upper case is mostly used when specifically referring to the Czech and Slovak registers. Any inconsistencies in this are an omission on our part.

<sup>7</sup> For example the prevention of corruption practices, the monitoring of public administration bodies by investigative journalists, and public oversight and increased interest in political accountability thanks to access to “hard facts.”

<sup>8</sup> More attention has been paid to, for example, the use of open government data by the private sector for commercial activities, as well as greater cooperation between the public and private sectors. See for example the reports published by the IBM Center for The Business of Government (2011): <http://ibm.co/25V12OR>, Deloitte (2012): <http://bit.ly/1S0WXia>, and Capgemini Consulting (2013): <http://bit.ly/1tkjfqG>.

<sup>9</sup> This publication thus builds upon Frank Bold’s previous advocacy work and the activities of the group of Czech non-governmental organizations within the joint project “Reconstruction of the State,” founded to promote the adoption of key transparency and anti-corruption laws—including the Act on the Contract Register—in the Czech Republic. For more information see [www.rekonstrukcestatu.cz](http://www.rekonstrukcestatu.cz).



## CHAPTER 1

# The Register of Contracts in the Czech Republic and Slovakia

“Any kind of process that is more transparent lends itself to becoming more efficient.”

— Kevin Merritt, founder and CEO of Socrata<sup>10</sup>

A contract register is a public-administration information system, i.e. a single electronic database of contracts concluded by the State, municipalities, and public institutions, whose subject matter involves public funds (i.e. including, but not limited to, public procurement contracts). Such a register is maintained by the State and serves for the purpose of disclosing contracts under an Act on the Contract Register or other similar legislation (e.g. the Freedom of Information Act). The obligation to publish contracts in such a register is enforced by the State on the basis of an effective and sufficiently deterrent sanctions mechanism. The register should be made available in a manner enabling remote access free of charge, and the data inside it should be published in a way that allows its further use and reuse.

The key features of the central Register of Contracts recently adopted in the Czech Republic<sup>11</sup>, and likewise the Register adopted before it in Slovakia, include the following:

- **Public money made public:** In principle, any contract to which the State, a municipality, or a state-funded or state-owned institution is one of the contractual parties must be disclosed in the register.<sup>12</sup> This also includes contracts on the provision of subsidies or repayable financial assistance. In both Slovakia and the Czech Republic, there are several exemptions from the list of public institutions obligated to disclose their contracts; such list of exemptions will naturally differ from country to country.
- **An open data format:** In addition to the basic description of each contract (its metadata)<sup>13</sup>, the full text of the contract must be published in the register in an open-data, machine-readable format. Publishing contracts in an open-data format allows for easy and effective monitoring, analysis, and reuse of the data. Personal information and trade secrets remain protected under the relevant acts and may thus be redacted.
- **The “not in force until published” principle:** The key principle of both the Czech and Slovak contract registers is the mechanism under which any contract concluded between the State and another party (public or private) only enters into force after it has been disclosed online in the central register.

Within the EU, Slovakia and the Czech Republic are the only two states in which contract registers in this sense have been introduced:

<sup>10</sup> Lisa Stiffler (2016): *Giant wave of government data could be unleashed by proposed law*. GeekWire. Available at: <http://bit.ly/1ODIs3U>.

<sup>11</sup> See the unofficial English translation of the Act prepared by Frank Bold (for reference only): <http://bit.ly/1YV4YuX>.

<sup>12</sup> Other examples of entities that are obligated to disclose the contents of their contracts, according to the Czech Act on the Contract Register, include: territorial self-governed units including city districts; state funds; state-funded organizations; public research institutions; public-benefit organizations set up by self-governed territorial units; and state- or municipality-owned enterprises, including legal entities in which the State holds a majority stake. For the complete list, refer to the Czech Act on the Contract Register, § 2 par. 1.

<sup>13</sup> In the Czech case, the metadata mandatorily disclosed in the register include: the identification of the contractual parties, the subject of the contract, the price or value of the subject of the contract, and the date of signing. The Slovak list is very similar.

In **Slovakia**, the Central Register of Contracts<sup>14</sup> has been a part of the Freedom of Information Act since 2011, in line with the Government Policy Statement for the years 2010–2014. The corresponding amendment to the Freedom of Information Act was originally proposed in 2009, drawing inspiration from two municipalities, one of which started publishing all their contracts as early as 2007.<sup>15</sup> Despite two failed attempts to pass the amendment before the national elections in June 2010, it was adopted soon after the elections, coming into effect on January 1, 2011.<sup>16</sup> The central register is maintained by the Government Office of the Slovak Republic and, unlike the Czech version, also includes invoices, orders, and receipts in addition to contracts. While ministries, central administration bodies, public institutions, and their subsidiary organizations are obligated to disclose their contracts in the central register<sup>17</sup>, other obligated entities such as, for example, municipalities publish contracts on their own websites. Obligated entities with no website may use the Commercial Bulletin instead.<sup>18</sup>

In the **Czech Republic**, a pilot register has been in place since 2013.<sup>19</sup> Inspired by the Slovak example, the Czech Bill on the Register of Contracts was first tabled in June 2012, as a parliamentary initiative. However, it took more than three years, two different cabinets, and sustained civil-society pressure before the Act on the Contract Register was finally adopted by the Czech Parliament in late 2015. The measure was long-anticipated and generally welcomed by the European Commission, particularly with respect to the anticipated increased transparency in public procurement and the utilization of EU funds.<sup>20</sup> The new Act no. 340/2015 Coll. will take effect as of July 1, 2016, with the exception of § 6 and 7, on the legal consequences of non-disclosure, which are to take effect on July 1, 2017. However, at the time of preparation of this report, amendments intending to gain exemptions for several public institutions were already being discussed by the Czech Parliament.

In both the Czech Republic and Slovakia, the initial inspiration and main impetus for greater transparency in contracting came from **civil society and municipalities**, with some of the latter having started to publish their contracts voluntarily. During the prolonged legislative process in the Czech Parliament, more and more Czech municipalities and institutions started disclosing their contracts in the pilot register or on their own websites, and several initiatives advocating the central register of contracts were founded. Most notably, “Mayors for Transparency”<sup>21</sup> which brought together towns and municipalities voluntarily disclosing all their contracts, and more recently a coalition of municipalities and NGOs named “Open Cities”<sup>22</sup> which—based on its members’ own experience with contract disclosure—started preparing its own technical standard for publishing contracts.

Despite many similarities and the same key principles, the Czech and Slovak registers differ in several significant ways:

- **Legislation:** The Czech Republic adopted a separate new Act on the Contract Register; the Slovak register was introduced in an amendment to the Freedom of Information Act.
- **Technical solution:** Contracts may be published in several different places in Slovakia, including the obligated entities’ own websites and the Commercial Bulletin; only one central register is expected to be used for all contracts and all obligated entities in the Czech Republic.

<sup>14</sup> The abbreviation “CRZ” is commonly used, standing for “Centrálny register zmlúv,” i.e. Central Register of Contracts.

<sup>15</sup> For more details see Transparency International Slovakia (2015): *Not in force until published online. What the radical transparency regime of public contracts achieved in Slovakia*. Available at: <http://bit.ly/1cixj3>.

<sup>16</sup> Mandatory disclosure of contracts, orders, and invoices was included in the Freedom of Information Act by Act no. 546/2010 Coll., further amending Act no. 40/1964 Coll. of the Civil Code. Other applicable acts and regulations include Slovak Government Regulation no. 498/2011, describing the details on the disclosure of contracts on the internet and information requirements for concluded contracts, the Act on Public Administration Information Systems no. 275/2005, and Ministry of Finance Decree no. 55/2014 Coll., on standards for Public Administration Information Systems.

<sup>17</sup> See <https://www.crz.gov.sk/>. Contracts concluded before December 31, 2010 are available at <http://www.zmluvy.gov.sk/>.

<sup>18</sup> This obviously makes any meaningful comparison and analysis very difficult. Another database, containing all published contracts, was therefore developed and is to this day maintained by two Slovak NGOs, Aliancia Fair-play and Transparency International Slovakia. It runs parallel to the official government-run central register, and is available at [www.otvorenezmluvy.sk](http://www.otvorenezmluvy.sk). Unlike the central register, the NGO “Open Contracts” database also includes contracts published on the websites of territorial self-governed units and state- and municipality-owned enterprises.

<sup>19</sup> See <https://portal.gov.cz/portal/obcan/rejstriky/data/10013/>. This currently used register will stop being actively used by the date when the new Act on the Contract Register enters into force (but will remain accessible).

<sup>20</sup> See the latest Commission’s Country Report on the Czech Republic 2016: <http://bit.ly/1XyUMHz>.

<sup>21</sup> In Czech: Starostové pro transparentnost, see <http://starostoveprotransparentnost.cz/>.

<sup>22</sup> In Czech: Otevřená města, see <http://www.otevrenamesta.cz/>.

- **Orders and invoices:** With some exceptions, mandatory disclosure also applies to orders, invoices and receipts in Slovakia. This is not the case in the Czech Republic, where only contracts must be published.
- **Financial threshold:** The Czech legislation introduces a financial threshold for contract publication; there is no similar threshold in Slovakia, where all contracts (of any value) must be disclosed.

Differences can further be found in the list of institutions that are obligated to actively disclose their contracts, and the types of contracts that are included in—or exempted from—the law:

## The obligated entities: Which public institutions disclose their contracts?

According to § 2 of the **Czech Act on the Contract Register**, the entities obligated to disclose the contents of their contracts include the State, territorial self-governed units, state-funded organizations, state funds, public universities and research institutions, state-owned enterprises including national enterprises, municipally-owned enterprises, public-benefit organizations, health insurance companies, Czech Television, Czech Radio, and other legal entities that are governed or owned by the State or a territorial self-governed unit, including those where the State or a municipality has a majority stake. Our estimate is that more than 13,500 public entities will be obliged to disclose their contracts under the new legislation starting from July 2016.

All of these subjects already have a duty to provide information on demand under the Freedom of Information Act. However, some of the entities that are obligated to provide information under the FOIA have been exempted from the automatic disclosure requirement under the new Act on the Contract Register. These include most **small municipalities**<sup>23</sup> (with a population of roughly 5,000 or less), the **energy company ČEZ**, and other selected institutions such as the Office of the President of the Czech Republic, the Office of the Chamber of Deputies, and the Supreme Audit Office.<sup>24</sup> The currently debated draft amendments propose further exemptions, for example for Czech television, Czech radio, selected state companies, and public universities.

A similar situation occurred in **Slovakia**, where **state-owned enterprises** won themselves an exemption from the disclosure duty within one year after the initial reform. Since 2012, they have only been obligated to publish full contracts that are outside the scope of their core business; contracts concerning their core business are only announced in the form of a list of signed contracts that includes their subject matter, counterparty, and price. Unlike in the Czech Republic, even small municipalities must disclose all their contracts; however, since 2012, they no longer have to publish copies of orders and receipts—unlike other obligated entities in Slovakia.

## The types of contracts: What is (and what is not) disclosed?

In principle, all contracts that are concluded by the obligated entities and that use public funds must be disclosed in the register, in full text, in a machine-readable format, together with a set of metadata. However, in both Czech and Slovak legislation, certain types of contracts are exempt from mandatory disclosure, and certain types of information may be redacted in accordance with the relevant laws on the protection of personal data and trade secrets. In general, both Czech and Slovak contract-register legislation respects the principle that no information is disclosed via the register that would not be provided on the basis of the Freedom of Information Act (which transposed the corresponding EU directives<sup>25</sup>).

<sup>23</sup> Municipalities' opposition against the Act was strong enough to win them this exemption from mandatory publication. In the original draft, all municipalities had a duty to publish their contracts without regard to their size or the extent of their powers. See for example <http://bit.ly/263wFsY>.

<sup>24</sup> For the complete list of exemptions, refer to the Act on the Contract Register, § 3 par. 2.

<sup>25</sup> Directive 2003/98/EC of the European Parliament and of the Council of November 17, 2003, on the re-use of public sector information; and Directive 2013/37/EU of the European Parliament and of the Council of June 26, 2013, amending Directive 2003/98/EC on the re-use of public sector information.

Most of the **exemptions** have been justified by the need to prevent excessive administrative burdens related to the disclosure of contracts, or by the need to protect the trade secrets and know-how, and thereby the competitive advantage, of state-owned enterprises and other entities. In Slovakia, concerns for the administrative costs for certain institutions have led to the addition of thirteen new exemptions beyond the initial seven, within a year after introducing the register. In both countries the exemptions include, for example: technical models, instruction manuals, designs, project documentation, models, the method of unit-price calculation, templates, and calculations; contracts concerning the activities of intelligence services and matters of national security; contracts made at a commodity exchange<sup>26</sup>; or “standard-form contracts” by state-owned enterprises and other specified institutions.

The Czech Act further exempts any contracts whose value is less than or equal to CZK 50,000 before value added tax (roughly EUR 1,850). The reasoning behind the introduction of this **financial threshold** was to avoid unnecessarily publishing contracts of negligible value. In practice, however, this may cause several problems well known from public-procurement contracting: the need to have the subject of the contract evaluated in certain types of contracts, leading to additional administrative costs; difficulties with estimating the contract’s total value in the case of framework agreements and indefinite contracts; and the circumvention of the law by dividing larger contracts into several smaller contracts with a value just below the threshold.

As already mentioned, the contract registers do not only contain **public procurement contracts**, but instead cover a much larger portion of the contracts entered into by public institutions. However, mandatory disclosure and the “invalidity sanction” may also shed more light on the notoriously problematic area of public procurement contracts. These suffer from an ineffective oversight and sanctions mechanism and a high error rate in the disclosed contracts, among other problems. In the Czech Republic, for example, roughly 25% of the public procurement contracts concluded by Czech regions (the higher-level territorial self-governed units), with a total value of roughly CZK 4.3 billion, were not published as required by the Act on Public Procurement in the period between April 2012 and April 2013.<sup>27</sup> In addition, the number of errors in Czech public procurement is enormous. According to EconLab, 99% of the contracting authorities’ profiles where the data on public procurement contracts is required to be published contain formal or other errors, such as a missing identification number and missing information on the price or suppliers.<sup>28</sup>

## The legal consequences of (non)disclosure: the sanction mechanism

As mentioned above, the key feature of the Contract Register—included in both the Czech and Slovak legislation—is the “automatic enforcement” of disclosure based on the principle that a **contract does not enter into force until it is published in the Register**. This assumes that all contracting parties have the same vested interest in publishing the contract, which, in principle, any of the contracting parties is allowed to do. In practice, this means that the contracting parties may not start implementing the contract until its disclosure in the Register. Under the Czech regulation, contracts that are not disclosed in the Register within 3 months of their signing date are deemed void from inception.

We strongly believe that this sanction mechanism is by far more effective and deterrent than any financial sanctions for non-disclosure. At one point, the Czech Senate proposed replacing the not-in-force-until-published principle with oversight performed by the Office for the Protection of Competition (ÚOHS)—which would also be given a right to impose financial sanctions. That proposal would have replaced a simple mechanism, where both contracting parties are motivated to publish a contract, with an ineffective mechanism based on financial sanctions where the State would be imposing fines on itself, if at all.<sup>29</sup> Similarly, based on their analysis, our Slovak colleagues suggest: “having

<sup>26</sup> In the Czech Republic, a special provision exempting contracts where at least one party is a joint-stock company (with a majority stake held by the State or a self-governed territorial unit) whose equities have been accepted for trading on a regulated market or the European regulated market, won the exemption for the energy giant ČEZ. Despite our repeated inquiries, it is not clear who and how made the exemption possible during coalition negotiations.

<sup>27</sup> See the project by Oživení, a Czech NGO, assessing the transparency of Czech regions: <http://bit.ly/1SaSycO>.

<sup>28</sup> See the blog post by Jiří Skuhrovec (2015): *Půl milionu chyb ve veřejných zakázkách* [Half a million errors in public procurement]: <http://bit.ly/1QDngzP>.

<sup>29</sup> Furthermore, the Czech Office for the Protection of Competition already faces criticism for not being able to satisfactorily ensure the publishing of public procurement contracts—approximately one quarter of these contracts are not published in accordance with the law today. It is therefore hard to imagine that the Office would be able to effectively oversee hundreds of thousands more contracts annually.

the online publication as a condition of their [contracts'] validity raises the motivation of both contract counterparties to make sure contracts get published."<sup>30</sup> However, they also suggest that a small oversight unit be established to monitor compliance with the law. Such a unit neither exists in Slovakia, nor is expected in the Czech Republic.

## The costs and benefits of contract registers

The fact that contracts are automatically proactively disclosed in an open-data format allowing instant, cost-free, remote access allows for much broader and more active public oversight of the utilization of public resources and the dealings of public institutions. It is estimated that the final total value of the contracts disclosed under the new Czech act will be more than EUR 12 billion annually—in addition to small-scale public contracts and public procurement contracts that are (or should be) already published in the Bulletin of Public Procurement.<sup>31</sup> Had it not been for various exemptions from the Act, the legislation could have led to the disclosure of contracts concluded by public institutions worth roughly EUR 35.5 billion annually.

For obvious reasons, administrative costs were, and continue to be, a large concern frequently mentioned by critics of the measure. In both the Czech Republic and Slovakia, this concern has been behind several of the exemptions introduced into the legislation. However, the results of a Slovak study, as well as the Czech experience with voluntary contract disclosure by municipalities, show that the human costs of uploading contracts to the Register by individual institutions are, for the most part, negligible. The administrative and IT costs are of course real, but not particularly large. In Slovakia, the initial cost of the Central Register was roughly EUR 15–20,000, and the maintenance costs are estimated to be EUR 3,000 per year or less.<sup>32</sup>

Another major concern has been the potential risk of private-sector enterprises, and state-owned enterprises operating in the private-sector environment, having their know-how published in contracts, and thus losing their competitive advantage. The Slovak experience doesn't seem to confirm these fears. Although it is difficult to isolate the effects of the Contract Register itself, public procurement outcomes in Slovakia do not suggest any collusion or companies being hurt in other ways by increased transparency. On the contrary, a study by Transparency International Slovakia has concluded that the average number of bidders has increased and the share of single-bid contests has been cut in half since the introduction of the reform.<sup>33</sup>

The anticipated benefits of the contract registers include more effective public spending and the resulting savings in public budgets, better provision of services, increased citizen trust in public administration, and potentially innovative ways of analyzing and reusing a register's data by both public and private actors. Although it is impossible to assess the effects of the Slovak Contract Register in isolation from other transparency measures, research from Slovakia estimates up to a 30% decrease in state expenditures on public procurements since the introduction of contract disclosure. Slovakia's Register has also helped to uncover several cases of overpriced and rigged contracts<sup>34</sup>; and it is believed to be beneficial for the media and civil society by strengthening their ability to perform a watchdog role vis-à-vis public institutions.

However, **the extent to which a contract register can indeed become a powerful tool for the media, the public, and other stakeholders exercising oversight of the management of public funds heavily depends on its practical implementation.** In the following chapters, we offer some comments on the use of the data from a register, as well as recommendations on its technical implementation based on our research and interviews with auditors and other (potential) users of a contract register. Before doing so, we start the next chapter with a few general remarks on open government data, of which contract registers may be considered a part.

<sup>30</sup> See Transparency International Slovakia (2015): *Not in force until published online. What the radical transparency regime of public contracts achieved in Slovakia.* Available at: <http://bit.ly/1cicxj3>, p. 19.

<sup>31</sup> For more details, see the estimate by EconLab (2015): <http://bit.ly/1FrarCg>.

<sup>32</sup> In response to a FOIA request to the Slovak Office of the Government, we received information that the total initial cost of constructing the register was EUR 15,328. The alternative figure of EUR 20,000 and the annual maintenance costs are based on information provided by the register's IT provider (see Transparency International Slovakia 2015, p. 14).

<sup>33</sup> See Transparency International Slovakia (2015), p. 16.

<sup>34</sup> See Transparency International Slovakia (2015), p. 12; and Frank Bold (2014): *Public money and corruption risks*: <http://bit.ly/1Qd9zsC>, pp. 56–58.

## CHAPTER 2

# Opening up Government Data: Using the Data from a Contract Register

“When the data is open and accurate and disclosed to the public, people can apply it to public good.”

— Alex Howard, Sunlight Foundation<sup>35</sup>

The discussion about contract registers should be viewed within the much larger context of opening up government data—a trend that has gone global in the last few years.<sup>36</sup> In this chapter, we provide a brief overview of what open data, and particularly open government data, means, and how the concept is relevant with respect to the discussion on contract registers. At the end of the chapter, we present a few examples of how, and by whom, the data from a contract register can be used.

Data is considered to be **“open”** if anyone can freely access, use, reuse, and redistribute it, for any purpose, without restrictions.<sup>37</sup> It follows from this that to be considered “open”, the data must be *legally open*, i.e. it must be legal to use (public domain) and reuse, and *technically open*, i.e. it must be published in machine-readable formats that enable the data to be freely downloaded and read using commonly available software tools.<sup>38</sup>

The term **“open government data”** refers to any data generated by public administration and public institutions (i.e. public sector information)<sup>39</sup> that meets the demands placed on open data in what is called the Open Definition and as defined in the Open Data Charter.<sup>40</sup> Such a definition of “open government data” corresponds with the definition used by the OECD and is also consistent with, for example, the Strategy for Cataloging Open Data within the Czech Public Administration<sup>41</sup>, according to which open data must meet the following ten criteria: completeness, primacy, timeliness of disclosure, easy availability, machine readability, unrestricted access, open standards, clear conditions for use, constant availability, and accessibility with minimal costs.<sup>42</sup> The specific technical parameters of open data, however, are not yet stabilized; this did not even change with the adoption of European Parliament and Council Directive 2013/37/EU, amending Directive 2003/98/EC on the reuse of public sector information.<sup>43</sup>

<sup>35</sup> Lisa Stiffler (2016): *Giant wave of government data could be unleashed by proposed law*. GeekWire. Available at: <http://bit.ly/1ODIs3U>.

<sup>36</sup> Please note that the following text is by no means comprehensive. The authors do not have the necessary expertise or ambition to cover the topic of open government data in detail; others have done so much better elsewhere. However, some of the potential upsides and benefits of contract registers are the same as for any other open data, and are therefore worth mentioning in the context of the open-(government-)data debate.

<sup>37</sup> See for example the Open Definition at <http://opendefinition.org/>.

<sup>38</sup> See for example the World Bank’s Open Government Data Toolkit: <http://opendatatoolkit.worldbank.org/en/>.

<sup>39</sup> According to the OECD, the term “public sector information” refers to “information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution”, taking into account the relevant legal requirements and restrictions. See OECD (2008): *Recommendation of the Council for enhanced access and more effective use of public sector information*, p. 4. Available at: <http://www.oecd.org/sti/44384673.pdf>.

<sup>40</sup> Adopted at the G8 meeting in Lough Erne in 2013. For more details see <http://bit.ly/1IRGFxq>.

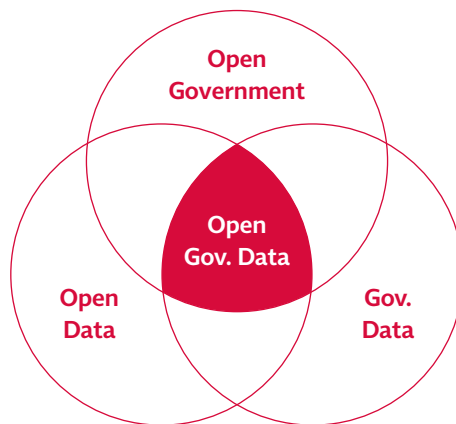
<sup>41</sup> For the full text of the strategy see <http://bit.ly/1Ox5WNI>.

<sup>42</sup> These ten principles also correspond with the Open Government Data Principles. See for example <http://bit.ly/1KbMC0l>.

<sup>43</sup> See the consolidated version of Directive 2003/98/ES at: <http://bit.ly/28JYnC9>.



By definition, open government data is but a subset of open data, and only one of the tools and criteria of open government<sup>44</sup>:



It is an important one, nevertheless. In fact, Kevin Merrit, the founder and CEO of Socrata, a US-based cloud software company, argues that “the term ‘open data’ may disappear within a decade; and in its place will simply be the term ‘government data.’”<sup>45</sup>

Opening up data, including government data, is also one of the measures promoted and monitored by the **Open Government Partnership** (OGP)—a global initiative that aims to improve governments by securing concrete commitments to strengthen good governance, promote transparency, fight corruption, and empower citizens. Since its launch in 2011, OGP membership has grown from 8 to 69 countries, including the Czech Republic and Slovakia. In their OGP Action Plans, both the Czech Republic and Slovakia have committed to making the data produced by their public administrations available to the public in the form of open data.<sup>46</sup> Poland has not joined the OGP; however, the Polish government has pledged to implement similar activities aimed at the development and use of open data in its strategy “Efficient State 2020.”<sup>47</sup> Implementation of this strategy is monitored by the NGO coalition “Koalicja on Rzecz Otwartego Rządu” [OGP Coalition], which focuses on access to information and the use of open data in Poland.<sup>48</sup>

Open government data has also become an area of interest for the OECD. To enable comparison among OECD member states, it has developed the “**OURdata index**” used to assess selected aspects of open government data. There is detailed information on open government data in Poland<sup>49</sup>; and the OURdata index enables a comparison with Slovakia (neither country is even at the OECD average). There is no data available for the Czech Republic.<sup>50</sup>

<sup>44</sup> Picture adapted from justgrimes on flickr: <https://www.flickr.com/photos/notbrucelee/6897137283/>.

<sup>45</sup> See Kevin Merrit (2015): *The Next 5 Years in Open Data: 3 Key Trends to Watch (Industry Perspective)*. Government Technology. Available at: <http://bit.ly/1w6ddUH>.

<sup>46</sup> See the Czech Action Plan: <http://bit.ly/1tDgdyK>, p. 8; and the Slovak Action Plan: <http://bit.ly/1QdYc3N>.

<sup>47</sup> For the list of activities equivalent to OGP commitments see Grazyna Czubek (2012): *When will Poland join the OGP?* Open Government Partnership blog: <http://bit.ly/1tvzL7w>.

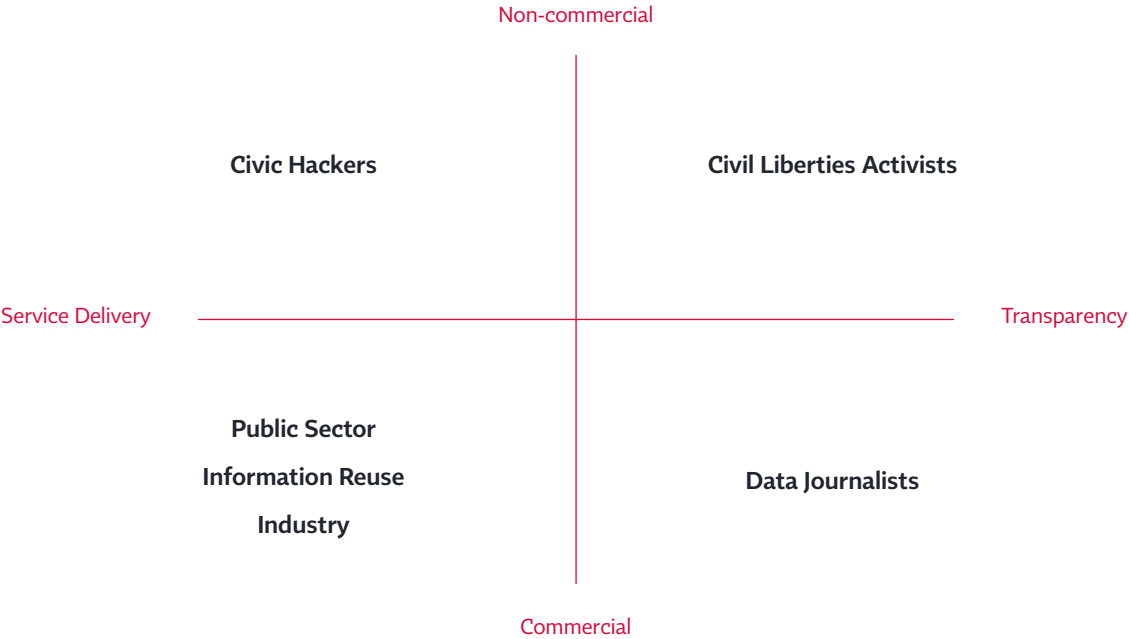
<sup>48</sup> See the OGP coalition website: <http://otwartyrzad.org.pl/>. For more details on the potential of Polish open government data see OECD (2015): *Poland. Unlocking the Potential of Government Data*. OECD Open Government Data Reviews. Available at: <http://bit.ly/1WWHV5k>. For an overall report on access to information and data in Poland see Grazyna Czubek, Krzysztof Izdebski, Łukasz Jachowicz, and Grzegorz Makowski (2014): *Waiting for Open Government. Opening Report by the Polish Open Government Coalition. Conclusions and recommendations*. Stefan Batory Foundation. Available at: <http://bit.ly/1Y2LCHv>.

<sup>49</sup> OECD (2015): *Open Government Data Review of Poland: Unlocking the Value of Government Data*, OECD Digital Government Studies, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/9789264241787-en>.

<sup>50</sup> See the latest OECD report: OECD (2015): *Government at a Glance 2015*. OECD Publishing, Paris. Available at: [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en), pp. 150–151.

There are at least two main reasons why open government data is considered particularly important. First, it represents a huge amount of information that can be mined and analyzed to improve the provision of services and support decision- and policy-making; and second, its collection has been paid for with taxpayers' money, and so it makes sense to make it publicly accessible for further use. In general, there seems to be a broad consensus that opening up government data is beneficial to both governments and their citizens. The main benefits of open data, and open government data in particular, include increased transparency, accountability, and democratic control over the public sector; improved public policies, decision-making, and efficiency of public services; greater returns on public investments and creation of new business opportunities; and increased citizen participation and involvement in policy development and the provision of services.<sup>51</sup> These can then be broadly categorized into the economic, political, and social effects (benefits) of opening and re-using government data.<sup>52</sup> Similar benefits are expected for open contracting.

Despite the anticipated benefits, and despite the shared excitement about the potential of opening up government data, it is generally acknowledged that simply putting the data “out there” is not enough. In other words, **transparency and disclosure in itself does not automatically translate into accountability**; opening up data does not necessarily lead to increased civic participation and better provision of services. Proactive release of the data is of course the necessary first step. However, the quality and accessibility of the data matters as well. In order for citizens to meaningfully engage with the data, applications that help the public to make sense of the data are usually needed. Therefore, journalists, NGOs, civil society organizations, researchers, and analysts, as well as entrepreneurs, should all be encouraged and empowered to reuse the data in a way that will make it accessible to the wider public, thus enabling better-informed civic participation.<sup>53</sup> The following picture shows the scope of such potential users of open government data<sup>54</sup>:



<sup>51</sup> See for example Ron Davies (2015): *eGovernment. Using technology to improve public services and democratic participation*. European Parliamentary Research Service, European Union, September 2015. Available at: <http://bit.ly/1LQxoOp>; or Tim Davies (2010): *Open data, democracy and public sector reform. A look at open government data use from data.gov.uk*. Available at: <http://bit.ly/265w5Lo>.

<sup>52</sup> See Karolis Granickas (2013): *Understanding the Impact of Releasing and Re-using Open Government Data*. ePSIplatform Topic Report No. 2013/8. Available at: <http://bit.ly/1Y2JfnY>.

<sup>53</sup> See for example Georg Neumann (2016): *Open contracting: 3 reasons why citizens benefit most*. Open Contracting Partnership blog. Available at: <http://bit.ly/28KmmUl>; Karolis Granickas (2013): *Understanding the Impact of Releasing and Re-using Open Government Data*. ePSIplatform Topic Report No. 2013/8. Available at: <http://bit.ly/1Y2JfnY>; or Barbara Ubaldi (2013): *Open Government Data: Towards Empirical Analysis of Open Government Data Initiatives*. OECD Working Papers on Public Governance, No. 22, OECD Publishing. Available at: <http://dx.doi.org/10.1787/5k46bj4f03s7-en>.

<sup>54</sup> Adapted from Tom Slee (2012): *Open Data Movement Redux: Tribes and Contradictions*. Available at: <http://bit.ly/28JCTHw>.



As the chart only shows a map of the open data movement, there is one key stakeholder missing in its “landscape”, and that is the public sector itself. Indeed, many would argue that it is government workers who may, and should, benefit the most from their own data.<sup>55</sup> Unfortunately, public-sector employees currently face more risks than benefits when opening up their data. As Waldo Jaquith, director of U.S. Open Data, remarks: “Right now, it is irrational for almost anybody who works in government to open data. It makes no sense. Most people, it’s not in their job description to open data [...]. So if he fails to open data, worst case, nothing bad happens. But if he does open some data and it has PII [personally identifying information], then his worst case is that he’s hauled before a legislative subcommittee, grilled, humiliated and fired.”<sup>56</sup> However, in an ideal scenario, **open government data should make government workers’ life easier, not more difficult**—it should save time and money and improve their operations.

Similarly, the anticipated and intended beneficiaries of the data from contract registers are the following<sup>57</sup>:

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### Active citizens, general public

The possibility for the general public to see how and for what their taxes are being used.

*In Slovakia, 11% of the adult population has checked at least one public contract since the introduction of the reform. Many of the “heavy users” (who have checked at least 5 contracts) come from smaller municipalities.*

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### Media, NGOs, and watchdog groups

More opportunities for media and watchdog organizations to identify possible instances of corruption, and investigate and analyze “in real time” (without delays caused by difficulties with FOIA-based information requests).

*In Slovakia, the media have been the largest supporters and beneficiaries of the Contract Register. There has been a 25% increase in the number of stories on public procurement reported by the mainstream media.<sup>58</sup>*

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### Business community

Businesses and business associations, including chambers of commerce, are generally supportive of contract-register legislation, as they often see corruption as one of the biggest barriers to doing business. Introduction of the Register may bring about some new business opportunities although these are not particularly significant.

*In Slovakia, for example, two IT providers have developed data aggregators for municipalities; another company offers search and analysis using the data from the Register.<sup>59</sup>*

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### Public administration

The obligated entities, i.e. public institutions, may themselves benefit from internal systematization and instant accessibility of contracts. Municipalities will gain real-time access to contracts of their subsidiary organizations, including municipality-owned enterprises and city districts.

*In the Czech Republic, for example, when the budget of the capital city Prague became open to the public, 80% of its users were among the city council’s own staff. The same effect is expected in the case of the Register of Contracts.<sup>60</sup>*

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<sup>55</sup> See for example Kevin Merrit (2015): *The Next 5 Years in Open Data: 3 Key Trends to Watch (Industry Perspective)*. Government Technology. Available at: <http://bit.ly/1w6ddUH>.

<sup>56</sup> Colin Wood (2016): *6 Ideas to Help Government Realize Open Data’s Transformative Power*. Government Technology. Available at: <http://bit.ly/1piODVk>.

<sup>57</sup> Adjusted from Ali Clare, David Sangokoya, Stefaan Verhulst, and Andrew Young (2016): *Open contracting and Procurement in Slovakia. Establishing Trust in Government Through Open Data*. Open data’s impact. GovLab, January 2016. Available at: <http://odimpact.org/static/files/case-study-slovakia.pdf>. Please note that the authors of the report do not mention public administration among the intended beneficiaries of the Slovak reform.

<sup>58</sup> For more details, see Transparency International Slovakia 2015, pp. 11–13.

<sup>59</sup> Ibid, p. 11.

<sup>60</sup> See the interview with Jiří Skuhrovec in Ekonom (2015): *Otevřená data. Jak Česko umí využít potenciál, který má internet*. Ekonom, special edition.

Based on what we have discussed in this chapter at least three important conclusions can be drawn for open government data in general, and contract registers in particular:

- First, the contract data must be published at **sufficient quality to allow its easy use and reuse**. Hence, the design and technical implementation of the central contract registers really does matter and should not be underestimated while (or after) navigating through legislative and political stormy waters.
- Second, there needs to be an **ongoing dialogue** between those opening the data and those using it. Users' feedback may help the development of new tools and features and generate added value, and therefore should be actively sought and encouraged.
- Third, **public-sector employees** should be equally encouraged (and given opportunities) to interact with their own data. The publication of open data should not be seen as the end of the activity, as a goal in itself. Rather, it is the means, i.e. the beginning of the activity.

These points have also been echoed by various stakeholders with whom we engaged during the grueling legislative process that eventually led to the adoption of the Czech Act on the Contract Register. They were also confirmed during some of our interviews with workers from auditing and supervisory bodies, as described in the following chapter.

## CHAPTER 3

# Auditing and Oversight of Public Spending

“Auditing is a cornerstone of good public sector governance. By providing unbiased, objective assessments of whether public resources are managed responsibly and effectively to achieve intended results, auditors help public sector organizations achieve accountability and integrity, improve operations, and instill confidence among citizens and stakeholders.”

— The Institute of Internal Auditors<sup>61</sup>

In this chapter, we look more closely at the potential use of an open-data public-contract database, such as the Czech or Slovak Register of Contracts, in the auditing of public spending. In particular we are interested to see if, and how, contract registers can help to make the auditing of public procurement and EU subsidies more efficient, as these areas represent substantial amounts of public finances and therefore, it can be argued, also suffer from an increased risk of corruption and mismanagement. To get a better understanding of the potential benefits of contract registers in auditing activity, we interviewed Czech, Slovak, and Polish public-sector auditors; insights from these interviews are presented in the second half of this chapter.

For the purposes of this analysis, we examine only external public-sector audits performed by public-administration bodies that monitor the actions of entities not directly subordinate to them, or by other independent bodies outside of public administration. These may include both a statutory/financial audit—i.e. a review of the accuracy of financial records<sup>62</sup>—and a performance audit, which typically includes an assessment of the efficiency, effectiveness, and economy of financial management—in addition to legality checks focused on compliance with the relevant legal regulations.<sup>63</sup> Independent government auditing performed by Supreme Audit Institutions as defined by the Lima Declaration<sup>64</sup> is considered a part of such an external public-sector audit. In our analysis we do not, on the other hand, discuss internal audits conducted within public-administration bodies themselves, or the supervision of directly subordinate institutions.

<sup>61</sup> The Institute of Internal Auditors (2012): *Supplemental Guidance: The Role of Auditing in Public Sector Governance*. 2<sup>nd</sup> edition. Available from: <http://bit.ly/28TsWC9>.

<sup>62</sup> According to the Czech Act on Auditors (Act no. 93/2009 Coll.), “statutory audit” means the verification of annual and extraordinary annual accounts or consolidated annual accounts, and/or verification of interim annual accounts; further, “audit activity” refers to reviews of financial management, checks of accounting records, and the verification of other financial information (§ 2, art. a) and b), see <http://bit.ly/29pslhk>.

<sup>63</sup> For more details, see INTOSAI’s *Fundamental Principles of Public-Sector Auditing*. These are part of the International Standards of Supreme Audit Institutions, and they define three types of public-sector audit: the financial audit, performance audit, and compliance audit. See <http://bit.ly/29kwfXb>, p. 5.

<sup>64</sup> For the official full text of the Lima Declaration, see <http://bit.ly/29n8Oy3>.

## The Legal and Institutional Framework for the Auditing and Oversight of Public Spending in the Czech Republic, Poland, and Slovakia

In order to provide an institutional and legal context, and for easy reference, we list below all of the key institutions responsible for external public-sector audits, and particularly for audits of public procurement contracts and the utilization of EU funds, including the relevant national legal regulations, in the three countries in question.<sup>65</sup> In addition to national laws, the regulation of independent external audits in EU member states must also conform to the directives of the European Parliament and Council directive nos. 2006/43/EC and 2013/34/EU; furthermore, audits must be performed in harmony with the International Standards on Auditing.

Country	Auditing Body	Relevant Legal Regulations
<b>CZE</b>	Supreme Audit Office (NKÚ)	Constitution of the Czech Republic, chap. 5, art. 97; Supreme Audit Office Act No. 166/1993 Coll.
	Ministry of Finance	Act No. 320/2001 Coll., on Financial Control Oversight in Public Administration <sup>66</sup> ; Act No. 420/2004 Coll., on the Examination of the Operations of Territorial Self-governing Units and Voluntary Associations of Municipalities
	Office for the Protection of Competition (ÚOHS)	Act no. 273/1996 Coll., on the Scope of Competence of the Office for the Protection of Competition; Act No. 137/2006 Coll., on Public Contracts; Act No. 215/2004 Coll., on Regulation of Relations in the Area of State Aid and on Amendments to the Act on the support of Research and Development; Act no. 139/2006 on Concession Contracts and the Concession Procedure (the Concession Act)
	Private auditors	Act No. 93/2009 Coll., on Auditors; Standards on Auditing and other relevant regulations issued by the country's Chamber of Auditors
<b>SVK</b>	Supreme Audit Office (NKÚ)	Act No. 460/1992 Coll., Constitution of the Slovak Republic, Arts. 60 to 63; Act No. 39/1993 Coll., on the Supreme Audit Office
	Ministry of Finance	Act No. 575/2001 Coll. on the Organization of the Activities of the Government and on the Organization of the Central State Administration; Act no. 502/2001 Coll., on Financial Control and Internal Audit and on Amendments to Certain Acts
	Office of Government Audit (formerly Financial Control Administration)	Act no. 357/2015 Coll. on Financial Control and Audit; Act no. 502/2001 Coll., on Financial Control and Internal Audit and on Amendments to Certain Acts; (formerly Act no. 440/2000 Coll., on Financial Control Administrations)
	Office for Public Procurement	Act no. 575/2001 Coll., on the Organization of the Activity of the Government and on the Organization of the Central State Administration; Act no. 25/2006 Coll., on Public Procurement; Act No. 10/1996 Coll. on Control in State Administration
	Private auditors	Act No. 540/2007 Coll., on Auditors, Audit, and Audit Oversight

<sup>65</sup> Please note that terminology in the area of auditing activities is not uniform even within individual states; a range of terms is commonly used, such as monitoring, oversight, inspection, or audit, without these terms being consistently used to designate specific parts of public-administration oversight within a particular legal system. Comparing these concepts in different member states is therefore rather complicated.

<sup>66</sup> For easy reference and traceability, we use the official English translations of acts and institutions' names, where applicable. Please note that the word "control" in these cases is used in its sense frequently found in European English, i.e. to check, monitor, or oversee.

<b>POL</b>	Supreme Audit Office (NIK)	Dz.U.1997.78.483, Constitution of the Republic of Poland, art. 202–207; Dz.U.2015.1096, Act on the Supreme Audit Office
	Ministry of Finance	Dz.U.2013.885, as amended, Act on Public Finances Dz.U.2016.720, Treasury Control Act
	Regional Chambers of Audit	Dz.U.2016.561, Regional Chambers of Audit Act Dz.U.2016.446, Act on Commune Self-government Dz.U.2016.814, Act on County Self-Government Dz.U.2016.486, Act on Voivodship Self-Government
	Public Procurement Office	Dz.U.2015.2164, Public Procurement Law; Dz.U.2013.168, Act on Responsibility for Violations of Public Financial Discipline
	Private auditors	Dz.U.2015.1011, as amended, Act on Statutory Auditors, Their Self-governing Organisation, Entities Authorised to Audit Financial Statements and on Public Oversight

In general, in all three studied countries, external public-sector audits are performed by independent Supreme Audit Institutions, private auditors (these are legal or natural persons that conduct external audits under specific legal regulations and international standards<sup>67</sup>), and other supervisory bodies with the authority to perform external audits of specific entities and specific types of public spending—e.g. the relevant ministries or the Public Procurement Office.

In the table below, we outline the scope of audited entities and the types of public spending that each of the supervisory bodies is entitled to audit, as well as the types of audit they conduct.<sup>68</sup>

Country	Audit body	Audited Entities	Type of audit
<b>CZE</b>	Supreme Audit Office (NKÚ)	State, state bodies, and public institutions; natural persons and legal persons that receive public funds (including EU funds and public procurement) <sup>70</sup>	“3E” audits—for efficiency, effectiveness, and economy, <sup>69</sup> as well as the legality of financial management
	Ministry of Finance (Section 04 – Financial Management and Audit, especially departments 17 – Control Department, and 52 – Audit Authority)	Territorial self-governing units, state bodies, and other public bodies under Art. 7 Par. 2 of Act No. 320/2001 Coll., including natural and legal persons if they receive public money from EU funds	3E audit and an audit of the legality of financial management (including a financial audit of accounts concerning the usage of EU funds from public procurement)
	Office for the Protection of Competition (ÚOHS)	Public-contracting authorities; supervision of public procurement and state aid	Audit of legality, i.e. compliance checks for tender procedures

<sup>67</sup> For the list of International Standards of Auditing, see for example: <http://bit.ly/29mn09a>. These are complemented by national binding regulations. In the Czech Republic, for example, those include national auditing directives issued by the Chamber of Auditors of the Czech Republic (see <http://bit.ly/29bKXMv>), and Czech Accounting Standards issued by the Ministry of Finance under § 36 of Act no. 563/1991 Coll., on accounting (available at <http://bit.ly/29oFYNU>).

<sup>68</sup> Please note that for some institutions listed, public-sector audits are only one of the many tasks they perform; furthermore, we exclude those institutions whose authority to perform public-sector audits is rather marginal and therefore not relevant for this analysis and our interviews. For the sake of brevity, we keep the information in the table as concise as possible; more details are available in relevant legislation and on the individual institutions’ websites.

<sup>69</sup> “3E” is a commonly used abbreviation for the principles of efficiency, effectiveness, and economy of financial management. Adherence to these provides the best value for money. For definitions of efficiency, effectiveness, and economy, see the INTOSAI’s *Standards and guidelines for performance auditing based on INTOSAI’s Auditing Standards and practical experience*. In brief, “economy” means keeping costs low, “efficiency” is related to economy and refers to making the most of available resources, and “effectiveness” has to do with achieving stipulated aims or objectives. For more details, see <http://bit.ly/29gVlbf>, p. 17ff. The INTOSAI’s definitions are reflected in the corresponding national legislation.

<sup>70</sup> Please note that the Czech Supreme Audit Office cannot audit territorial self-governing units, or state- and municipality-owned enterprises, except in cases where these are recipients of state subsidies, in which case it is entitled to audit only the relevant grant or subsidy.

	Private auditors	Any legal entity with which an auditing contract is concluded, including e.g. territorial self-governing units	Primarily financial audits of accounts, i.e. legality audits; in specified cases (e.g. when auditing territorial self-governing units), also a 3E audit
<b>SVK</b>	Supreme Audit Office (NKÚ)	The state, public institutions, and state bodies, including state-owned enterprises and territorial self-governing units; natural and legal persons if they receive public money, including EU funds	3E audit and an audit of the legality of financial management
	Ministry of Finance	The state, public institutions, and state bodies, including the Supreme Audit Office, Slovak Information Service, and Military Intelligence Service; territorial self-governing units; state-owned enterprises and other corporations founded or owned by the State; any natural or legal persons if they receive public money, including EU funds	3E audit and an audit of the legality of financial management
	Office of Government Audit (formerly Financial Control Administration)	The state, public institutions, and state bodies; territorial self-governing units; state-owned enterprises and other corporations founded or owned by the State; any natural or legal persons if they receive public money, including EU funds	3E audit and an audit of the legality of financial management (including adherence to international contracts and contracts on the utilization of EU funds)
	Office for Public Procurement	Public contracting authorities, e.g. state bodies, the state, territorial self-governing units, and other legal entities of which a public contracting authority is a member or owner, or which it directly or indirectly controls	Legality audit, i.e. compliance checks for tender procedures
	Private auditors	Any legal entity with which an auditing contract is concluded	Primarily a financial audit of accounts, i.e. an audit of legality (and especially of compliance with Act no. 431/2002 Coll., on accounting)
<b>POL</b>	Supreme Audit Office (NIK)	State bodies, the state, territorial self-governing units, and any legal persons that perform public contracts or receive government grants and subsidies, including EU funds	3E audit and an audit of the legality of financial management <sup>71</sup>
	Ministry of Finance	State bodies, the state, and public institutions; entities involved in the handling of EU funds	Audit of legality and effectiveness
	Regional Chambers of Audit	Local government units of all levels; their unions and associations; other legal entities handling and administering public money received from the budgets of local government units	3E audit <sup>72</sup> and an audit of the legality of financial management (including public procurement)
	Public Procurement Office	Public contracting authorities; checks of the contract-awarding process	Legality audit
	Private auditors	Any legal entity with which an auditing contract is concluded	Primarily financial audit of accounts, i.e. review of financial statements

<sup>71</sup> Please note that the Polish Act on the Supreme Audit Office uses slightly different terminology for performance audits. Art. 5(1) of the Act says that the Supreme Audit Office shall perform audits with regard to *legality, sound management, expediency, and integrity* (emphasis added). While sound management could be interpreted as economy, and expediency as effectiveness, integrity most likely does not correspond with efficiency. However, according to its English website, the Polish SAO “checks whether public institutions do their job *effectively, efficiently and economically*” (emphasis added, see <http://bit.ly/29yRj4A>). Furthermore, different types of audits are performed on different entities. According to Arts. 5(2) and 5(3), territorial self-governing units are audited with regard to legality, sound management, and integrity, while state-owned enterprises, for example, are only audited on the basis of legality and sound management. For the English translation of the Polish Act on the Supreme Audit Office, see <http://bit.ly/29qu6tz>.

<sup>72</sup> Ibid.

## Contract Data and Red-flagging in the Auditing and Oversight of Public Spending

To assess the extent to which public contract registers may become a useful tool for public-sector auditing bodies, we conducted a series of interviews with representatives of most of the above-mentioned institutions.<sup>73</sup> The matters discussed during the interviews included public databases and other data sources that the auditing institutions routinely use in their practice, sampling methods, and particularly the use of risk indicators (red flags) to identify potentially problematic projects or contracts. We further asked interviewees about the use (or potential use) of the Register of Contracts in their auditing activities, and gathered any other comments they might have related to the Register's contents and functionalities.<sup>74</sup> These concrete suggestions are then reflected in the last two chapters of this work, in which we present recommendations for the improvement and implementation of the Slovak and Czech Registers of Contracts.

### Registers of Contracts as a Relevant Information Source

In general, our hypothesis that a contract register may serve as a useful information source in public-sector auditing was confirmed by most of the auditors interviewed. Even though all of the institutions interviewed have access to other databases and registers—including some that are not publicly available—and they have legal tools for requesting information from audited entities if necessary (including specific contracts), they still confirmed that they use, or would use, data from a contract register to supplement these other sources. The Slovak practitioners indeed stated that they regularly use the Central Register of Contracts in their auditing activities—some on a daily basis.

The scope of the information used during auditing activities is generally determined by the relevant legal regulations, and depends on the audit's subject and type. The most commonly used databases include various public-administration information systems such as—in the Czech Republic—the State Treasury Integrated Information System (IISSP), the Business Bulletin, the Evidence Subsidy System (EDS), the Central Register of Subsidies (CEDR), and the Information System on Public Contracts (ISVZ), which consists of several other databases, including the Public Procurement Bulletin (Tenders Electronic Daily), the List of Approved Economic Operators, the List of Systems of Certified Economic Operators, statistical outputs on public contracts, the register of concession contracts, etc.<sup>75</sup> Similarly in Slovakia, interviewees mentioned using the Commercial Bulletin and other business registers, the Public Procurement Bulletin administered by the Office for Public Procurement, and contracting authorities' profiles, among other sources. In some cases, auditors also used tools and systems developed by NGOs, such as the Slovak "Open Contracts" database, or the Czech "zIndex" database, which combines public procurement data from several different sources.<sup>76</sup>

Generally, supervisory bodies also develop and use their own information systems suited to their own needs, combining data from various sources. These systems or internal databases are typically not publicly available, and include the institutions' own historical data from past audits, as well as information from publicly available audit reports by other auditing bodies.

In light of this, a contract register is likely to become an additional source of information that will be combined with the existing databases and—in at least some cases—used as an input for the internal information systems developed by individual institutions. Furthermore, while the discussions with Czech (and Polish) auditors were slightly

<sup>73</sup> Namely: the Czech, Slovak, and Polish Supreme Audit Offices; the Czech Ministry of Finance, Slovak Financial Control Administration, and Polish Public Procurement Office; and private auditors from all three countries. The interviews were conducted by Frank Bold Society (Czech Republic), Fundacja Frank Bold (Poland), and Slovak Governance Institute (Slovakia) in July–October 2015.

<sup>74</sup> Please note that each country had fundamentally different experience (or lack of it) with a contract register at that time. Slovakia's Central Register of Contracts had been in place for four years; in the Czech Republic, on the other hand, the legislative process and efforts to introduce the Act on the Register of Contracts were still ongoing. Meanwhile in Poland, the idea of a contract register as a measure for proactive contract transparency was not even present in the political debate.

<sup>75</sup> In accordance with OGP requirements, most datasets available in ISVZ are published as open data.

<sup>76</sup> zIndex is a benchmarking tool for public procurement based on a set of clearly determined criteria: <http://zindex.cz/en/>. For a description of its data sources, see <http://wiki.zindex.cz/doku.php?id=en:start>.

hypothetical, in Slovakia, the Central Register of Contracts is already routinely used by all the auditing bodies interviewed. Some specific examples of such use include checking a particular contract in the Register after identifying discrepancies or potential problems in the Public Procurement Bulletin and/or on contracting authorities' profiles, or using information from the Register for benchmarking during performance audits (i.e. comparing prices for similar products and services in different contracts).

It follows from the above that most of the auditors emphasized the need to have the data in the Register (as well as in other databases) disclosed in an open-data format and, where possible, to have it linked with other available datasets.

## **Red Flags in Sampling and Auditing**

Our assumption that contract information could also be used before the actual audit, during the process of sampling and identifying potentially problematic projects and contracts, was proven only partially correct during the interviews. In general, the topic of using red flags—risk indicators that may highlight potential problems and thus help in narrowing the scope of audited tenders, subsidies, contracts, etc.—is a rather complex one, and it depends on the type of audit conducted. In some cases, the auditing bodies receive samples from superior institutions (e.g. ministries or European Commission), or they are obliged to use official manuals that guide them through the sampling process. Some use statistical sampling methods, while others receive tips and requests from other institutions, etc. Various EU level tools are also available and used, such as the ARACHNE project, which enables the authorities involved in the management and oversight of Structural Funds to identify the most risky projects.

It seems that there is only rarely a written set of risk indicators that might be routinely used by all of the auditors within an institution. In fact, while some of the interviewees' institutions do use their own internal risk analyses, it was generally emphasized to us that in the end, it always depends on the experience and expert judgment of the individual auditors. Furthermore, the risk analysis and (potential) list of red flags must be sufficiently flexible, as the behavior of contracting authorities changes over time, and some indicators that may have been relevant in the past may no longer be applicable in the present.

Even though it is a combination of several indicators—rather than individual red flags—that is considered relevant, certain risk indicators seem to be commonly used in public procurement monitoring. These include: use of a negotiated procedure without prior publication of a contract notice, dividing contracts up into lots, contracts of indefinite duration, frequent repetition of the same suppliers, and a large number of amendments to a contract. The amendment count was highlighted by several interviewees as particularly important, and also as a potentially useful feature for the Register of Contracts—assuming that the amendments can easily be traced to the original contract in the Register.

In general, the discussion about red-flagging and the use of indicators in public-sector auditing further highlighted the need to link the Register of Contract with other existing databases, such as Public Procurement Bulletins or national registers of subsidies, or at the very least to enable easy reuse of the data by downloading it in bulk and merging it with other existing records, including internal ones. This nonetheless requires that the data be complete and reliable—which was another common concern that arose during the interviews.

## **Reliability and Data Reuse**

Concerns about the reliability of the information in the Register of Contracts were a core theme during the interviews. These concerns were not unsubstantiated; the interviewees mentioned bad experiences with data quality in some of the existing public-administration information systems, including the Slovak Central Register of Contracts. As a result, most auditors tend to approach all the information they obtain from various public databases with extreme caution.

Unreliability of the data in the Central Register was repeatedly brought up by several Slovak auditors, who mentioned for example the fact that they often find contracts that are incomplete, draft contracts instead of final versions, or



contracts disclosed in two versions by both contracting parties at different times. Therefore, if possible, an oversight mechanism should be introduced to prevent such cases.

In addition to missing or incomplete information, further problems are caused by the technical aspects of the Register and the way data is entered—and later accessed. All the interviewed auditors agreed for example that the register must allow full-text searches, and while the four basic metadata items are considered useful and largely reliable, anything beyond these is considered potentially problematic. To avoid errors and inaccuracies, the auditors emphasized the need for metadata entry to be as simple and standardized as possible. Once again, the necessity of linking the register with other existing databases and registers was mentioned—e.g. using a business identification number rather than by typing in a contracting party's full name. This was generally confirmed by the Slovak auditors, who mentioned that they cannot rely on search results to be complete and accurate, which limits the data's reusability. Concrete recommendations on how these and similar drawbacks may be overcome so as to improve the Register's data quality—and thus its reliability and usefulness in public-sector audits—are presented in the following two chapters.

## CHAPTER 4

# Lessons from Slovakia and the Possible Way Forward

Slovakia's 2011 transparency reform provides a remarkable example of how far a country can go with openness and transparency in public contracting, and what positive social, political, and economic effects increased access to information can have. The story of this legislation also goes to show that local, grassroots efforts can inspire and positively influence national policies.

Nonetheless there's still a lot left to be desired. The publication of contracts itself is only the first step, albeit a necessary one. Simply disclosing contract information online does not make the data truly "open" in the sense we discussed earlier in this work. Slovak civil-society groups have played a significant role in making the contract data complete, machine-readable, and easily accessible to the broader public, thus encouraging watchdog groups, the media, and ordinary citizens, as well as public-office holders, to engage with the available data. More effort on the government's part is now needed to improve the data's quality and accessibility, so that NGOs can stop filling in the gaps in its work in this area and can instead focus on adding further value to the disclosed data. Furthermore, Slovakia needs to continue looking for effective ways to enforce accountability, and impose sanctions in cases of corruption revealed thanks to contract disclosure. This will require more than just active citizens, concerned journalists, and dedicated civil-society groups; institutional changes and a gradual shift in the political culture will be needed to systematically ensure accountability and enforce it when necessary.

These challenges and observations translate into several concrete recommendations Slovak policy-makers should, in our opinion, consider<sup>77</sup>:

→ **All contracts published on a single website**

The current Slovak legislation permits the publication of contracts in several different places, including municipalities' and public institutions' own websites. This makes comparison and further analysis of the data difficult. As a result, Slovak NGOs, particularly Transparency International Slovakia and Aliancia Fair-play, spend considerable time and resources scraping data from the several available sources and adding basic analytical tools, thus supplementing the official government register and its functions. To improve the current situation, the contracts of all obligated entities should be disclosed in a single central database, rather than being dispersed across various websites. This includes, but is not limited to, contracts concluded by towns and municipalities.

<sup>77</sup> For recommendations on Slovakia's way forward see also: Transparency International Slovakia (2015): *Not in force until published online. What the radical transparency regime of public contracts achieved in Slovakia*. Available at: <http://bit.ly/1cixj3>; Ali Clare, David Sangokoya, Stefaan Verhulst and Andrew Young (2016): *Open contracting and Procurement in Slovakia. Establishing Trust in Government Through Open Data*. Open data's impact. GovLab, January 2016. Available at: <http://bit.ly/28XWXW4>; Alexander Furnas (2013): *Transparency Case Study: Public Procurement in the Slovak Republic*. Sunlight Foundation blog, August 12, 2013. Available at: <http://bit.ly/28VUs3d>; and Gabriel Šipoš (2015): *Once Riddled with Corruption, Slovakia Sets a New Standard for Transparency*. Open Society Foundation, June 2, 2015. Available at: <https://osf.to/28U6E5g>.

→ **Improved user-friendliness and search options**

All contracts published in the Register should be fully searchable—both within the set of published metadata, and within the text of the contract. Search options should be improved to make them more user-friendly. Common problems mentioned by our interviewees included the following:<sup>78</sup>

- Multi-word names are not easy to search for (quotation marks are necessary which is not common knowledge); the same institution is sometimes entered under several different variations of its official name,<sup>79</sup> making search results unreliable.
- Predictive search is not supported; also, more categories and key words for searching should be provided.
- The display of search results should be improved, e.g. the total number of results and an overview of them should be shown after the search is completed. Search results should also be easily downloadable in formats that allow their further analysis and use (e.g. CSV or XLS).<sup>80</sup>
- Difficulties with tracking down amendments to the original contracts.

→ **Linking the available data together**

As much as possible, the Central Register of Contracts should be linked to other existing registers and databases; namely, to the public procurement and business registers such as the Commercial Bulletin.<sup>81</sup>

→ **Independent supervisory body to monitor compliance**

Despite the self-enforcing sanctions mechanism, a small independent unit responsible for monitoring compliance with the contract-disclosure obligations should be established. Such a supervisory body could oversee all requirements stipulated by the Freedom of Information Act; these include, but are not limited to, the publication of contracts. This should improve the reliability of the data published in the Register, which was another concern expressed by our interviewees: currently, many contracts are missing from the Register, it often contains drafts instead of final copies, sometimes several different versions of a contract are uploaded to the Register, etc. Also—although this could not replace an oversight body—some of the data-quality checks could be automated.

→ **Collaboration between the government and civil society**

One noteworthy observation we made during our interviews with the auditing bodies and the Office of the Government is that there seems to be little interaction among the Register’s administrators, obligated entities, and other users of the Register’s data. Some of the comments and suggestions raised by the interviewed auditors were news to the Office of the Government’s representatives, and vice versa. The same applies to NGOs: their experience with scraping, “opening,” and analyzing contract data would be extremely helpful for the process of improving the official governmental Central Register.

→ **Informing and engaging the public**

The point above is closely related to our final recommendation, which is to improve the Register’s information-service ecosystem for the general public. Citizens should receive better information on possible uses of the Contract Register, provided with concrete examples of how to use it, and equipped with easy-to-use tools for reporting possible errors and suspicions of overpriced contracts, rigged procurement, and other instances of corruption and misuse of public funds.

<sup>78</sup> Based on the authors’ communication with Slovakia’s Office of the Government, the Office is aware of some of these shortcomings; they claim to be working on improvements for example in full-text search.

<sup>79</sup> Transparency International Slovakia mentions the example of the National Highway Company [Národná diaľničná spoločnosť] which published its contracts under the names “NDS, a.s.,” “Národná diaľničná spoločnosť, a.s.,” “Národná diaľničná spoločnosť, a.s. Mlynské Nivy 45, 821 09 Bratislava,” and several others. The automated linking of the Contract Register to e.g. the national Business Register would solve similar problems.

<sup>80</sup> Auditing bodies would find this particularly useful as they could easily merge the data from the Register with their own historical data from audits.

<sup>81</sup> According to the Office of the Government, there are no immediate plans to link the existing databases with the Central Contract Register, with financial constraints being the number one reason why. In addition, the Office had not received any information about there being a demand for this [information from an interview conducted in August of 2015].

## The Register of Contracts—a tool for citizens, or the State?

One of the largest benefits of public contract registers, such as the Slovak Central Register of Contracts, is the fact that they provide the country’s citizens with a simple tool for the oversight of public spending. Databases like these indeed have the potential to increase civic participation in this area; however, for that potential to be fulfilled, and not merely declared, these registers must be sufficiently user-friendly and provide citizens with clear guidance on why and how to use the available data.

Obtaining reliable information on how much the Slovak public uses the data from the Central Register has proven difficult. Although website traffic statistics provided by the Office of the Government show a gradual increase in its total traffic, it is impossible to establish how much of this traffic comes from the obligated entities themselves as they go about uploading and checking their own contracts, and how much can be attributed to other external users.

A quick look at the information and functionalities available on the official Central Register website makes it clear, however, that it is the obligated entities, not citizens, that are considered the site’s primary users. Among the frequently asked questions, not a single one concerns possible use of the portal by citizens, journalists, and civil society groups. On the whole, the questions cover various situations that can occur during publication, providing obligated entities with step-by-step guidance on how to correctly publish the mandatory information. Obligated entities must also register to get their own user account to access the Register.<sup>82</sup>

The Office of the Government does not provide any information to citizens on how and why they may use the Central Register of Contracts, nor does it provide any concrete examples of such use. Likewise, it does not inform potential users on what to do and to whom to report any errors they find in published contract information, nor any suspicions of possible corruption. Therefore, it may be argued that the Slovak Central Register of Contracts has not lived up to the expectation of its becoming a powerful anti-corruption tool for the public. The above-described problems with search options and the website’s overall design, which is clearly intended to suit the needs of the obligated entities rather than citizens, may also contribute to the fact that the public does not use the Register as much as it could. By this measure, the alternative “Open Contracts” portal run by Transparency International Slovakia and Aliancia Fair-play seems to be more popular among users. Not only does it combine data from multiple sources, including municipalities, but it also offers better search options (e.g. contextual search and filters) and added functionalities such as RSS feeds, tagging, commenting, highlighting interesting or problematic passages, etc.

Despite the above-mentioned shortcomings, the Slovak Contract Register amounts to a significant improvement in the country’s transparency. Both watchdog organizations and the media use the information published in the Register and make it more accessible to the wider public, with the media increasingly citing it as a source of information in their articles.

<sup>82</sup> In Slovakia, contracts can only be published by the governmental contracting party—unlike in the Czech legislation, under which either of the two parties may upload the contract into the Register via its data mailbox.

## CHAPTER 5

# Implementation of the Czech Republic's Contract Register

Following Slovakia's lead, the Czech Republic has recently stepped out on the path towards greater transparency in public contracting. Czech legislators and policy-makers have had the rare opportunity to learn from the Slovak experience; the new Czech Register of Contracts may thus avoid some of the shortcomings of its Slovak counterpart. In a similar way, we hope that the Czech experience will provide inspiration for other member states and EU-level stakeholders who may wish to replicate such a measure elsewhere.

In this chapter, we summarize our main recommendations for the implementation of the Czech Contract Register, using insights from our interviews with auditors, the Slovak experience, and our own experience from three years of advocacy work on the topic, during which we have spoken with numerous stakeholders from among the obligated entities as well as the Register's potential end users. At the time of preparation of this report, the technical solution of the Czech Register of Contracts was already being developed and pilot-tested by the Ministry of Interior, which will be the Register's administrator.<sup>83</sup> Some of the recommendations we mention below are already included in the testing version being prepared by the Ministry; others may be taken into consideration and implemented later, during the Register's first year of functioning. However, we include all relevant points, as they may be used by civil-society players and policy-makers looking to emulate the Slovak and Czech practice of proactive public-contract disclosure.

As was already mentioned, a provisional register of contracts has been in place in the Czech Republic since 2013, as a part of the Public Administration Portal, which is the country's main public-administration information system. Although this system does not comply with the requirements of the new Contract Register Act, and will be replaced, the experience of the users who have been publishing their contracts voluntarily in this pilot register has been instrumental during the process of designing and implementing the new central Register.

According to § 5 art. 1 of the Act, a contract is to be disclosed by entering a specific set of contract metadata and an electronic image of the contract's textual content in an open, machine-readable format. The definition of "open" and "machine-readable" formats is provided in the Czech Freedom of Information Act<sup>84</sup>, and corresponds with the definitions described in Directive 2013/37/EU, whose provisions the Czech Republic was obliged to reflect within Czech law by July 2015.<sup>85</sup> The actual disclosure of contracts through the Contract Register will be performed automatically. To ensure reliable sender identification, the nation's already existing system of data mailboxes will be used to submit contracts in an electronic form. In practice, the act of disclosure will thus involve completing and submitting an electronic form with metadata, together with an attachment with the full text of the contract (either as a text document or as a machine-readable PDF file).<sup>86</sup>

<sup>83</sup> Continuously updated guidance on implementation of the new legislation, mainly targeting the obligated entities, is provided by the Ministry at <http://bit.ly/28KEqvp>. The testing website of the new Register of Contracts is available at <https://www.isrs.cz>. Please note that the Ministry of Interior, which has been charged with the responsibility of implementing the Register, is primarily concerned with the database's technical aspects. It is not the guarantor for the correctness of the contracts and their metadata disclosed in the Register; for this, the contractual parties remain the sole guarantors.

<sup>84</sup> Act no. 106/1999 Coll., § 3 art. 7 and 8.

<sup>85</sup> For the full text of the Directive see <http://bit.ly/28LrllS>.

<sup>86</sup> Please note that, based on the above, it becomes clear that contracts will not be published in the form of signed and scanned documents, as is one of the popular misconceptions.

The publication process itself and the format for the contracts mandatorily disclosed in the Register are not expected to cause any significant technical or legal problems, and were also rarely mentioned during our interviews. The main challenges therefore remain the redacting of contracts in order to protect personal information and trade secrets (or any other information which is to be refused based on the Freedom of Information Act<sup>87</sup>) and an implementation for the actual Contract Register allowing easy use and analysis of the data by various stakeholders including auditors, watchdog organizations, citizens, and public administration itself.

In this final section, we offer a set of recommendations for practical implementation of the Czech (or any other, for that matter) Register of Contracts. The primary concern expressed by both Czech and Slovak auditors—and one that is generally relevant for any open data—is the data’s quality, i.e. how reliable it is and how easily it can be further analyzed and reused by a wide range of potential users. However, even with “clean,” complete, and reliable data in easily downloadable formats, attention should be paid to the general user-friendliness of the database, to encourage further reuse of the available data by both the obligated entities themselves and other users. Finally, ongoing cross-sectoral dialogue and collaboration is necessary in order to build upon the potential the Register of Contracts offers.

## Data quality

- As a general rule, **metadata entry should be as simple and easy for the obligated entities as possible**. The less the contracting parties are asked to enter in the Register, the less likely they are to omit something or include inaccuracies (even inadvertently) and the more reliable the data will be. Although it is tempting to include various types of information that would allow easy analysis of contract data, the contracting parties cannot be reasonably expected to fill in more than basic information about the contract.
- However, as much as possible, data in the Register should be **linked to other online databases and registers** such as business registers<sup>88</sup>, the Bulletin of Public Procurement, and contracting authorities’ profiles (public procurement data). This demand has been echoed by our interviewees from auditing bodies, both in the Czech Republic and Slovakia.
- In particular, linking the Register with information on **public procurement and grants and subsidies**, where relevant (e.g. the type of procurement procedure), is considered very useful. This may again be done by linking contracts to relevant bids via unique identification numbers, etc.<sup>89</sup>
- **Predefined categories** should be used for filling in **types of contracts**. While there should be an “other” option (i.e. an open category for cases where the type of contract is too rare to justify adding a category), standardized categories are important for any meaningful search and analysis.
- Similarly, some auditors have suggested using so-called CPV codes, or another method of **uniform categorization**, for defining the **subject of the contract**, rather than leaving the description of the subject matter up to the users. This will make it easier for the obligated entities to enter the information in the Register, and it will also allow easier comparison and benchmarking.
- Some of the auditors and other experts have pointed out anticipated problems with the data on the **price of the contract**. While they have all agreed that the price should be among the mandatorily disclosed metadata, as it allows comparing prices for similar services and products,<sup>90</sup> they anticipate practical difficulties with stating the price for some types of contracts.

<sup>87</sup> Act no. 106/1999 Coll., which further refers to other regulations; for example, Act no. 101/2000 Coll., on Personal Data Protection, or Act no. 412/2005 Coll., on the Protection of Classified Information; Act no. 123/1998 Coll., on Access to Information on the Environment; and § 27 of Act no. 240/2000 Coll., on Crisis Management.

<sup>88</sup> For example, the ARES (Access to Registers of Economic Subjects) information system providing information on economic entities registered in the Czech Republic.

<sup>89</sup> Please note that in order to avoid duplicate obligations, according to § 8 art. 4 and 5 of the Czech Act on the Register of Contracts, if a contract is published in the Register, the obligation to publish it in other databases under other types of legislation is fulfilled. This applies, for example, to contracts on subsidies and repayable financial assistance, public procurement contracts, concession agreements, and contracts disclosed via the information system for research, development, and innovation. However, this does not apply in reverse: disclosing a contract on a contracting authority’s profile, for example, does not fulfil its obligation to publish it in the Register of Contracts.

<sup>90</sup> This may be extremely useful for more than just effective oversight of public spending by auditors or watchdog organizations; it is also helpful for public-administration bodies themselves, e.g. when looking for service providers.

- Most interviewees have mentioned a contract's **amendment** count as a potentially useful indicator (“red flag”). Meanwhile, amendments must be easy to connect with the original contract. This has also been confirmed by the Slovak experience.
- Furthermore, the Slovak experience also suggests that any **additional changes** or additions to already published contracts must remain visible and accessible in the Register. This has been reflected in the proposed implementation of the Czech register.<sup>91</sup>

## Adding value to the data

- As the Slovak experience with the government-run register and its NGO counterpart suggests, and as has also been mentioned by Czech auditors, to allow easy analysis of the data, user-friendly ways of **filtering, sorting, and searching** the data should be available on the Register's website.<sup>92</sup>
- Both the obligated entities and other users should be **encouraged to use the contract portal, and should be offered guidance and examples for how to do so**. While it is natural that attention is now mostly paid to the public institutions that are obligated to publish their contracts under the new law, the Contract Register should ultimately become a useful tool for citizens, media, municipalities, auditors, and other users as well.

## Impact assessment and inter-sectoral dialogue

- The Czech public administration should **evaluate the Register's functioning** in terms of its user-friendliness and correct use by obligated entities as well as other stakeholders.
- In collaboration with academic institutions, think-tanks, or watchdog organizations, the **impact of the new legislation** should be evaluated within the first few years after its introduction. Although isolating the impact on e.g. public procurement figures is notoriously hard, analysts should be encouraged to do so, in order to provide data for further improvements to the Register, as well as for other member states considering the introduction of similar registers.
- **Auditing bodies** responsible for oversight of public spending, including tenders and EU funds, should inform the Register's administrator about how they will use the Register together with their other data sources; their feedback should be incorporated into any future technical (or legislative) changes to the Register.
- As a result—as one of our interviewees pointed out—the Register's implementation should not be considered final and should **allow for further modifications**, new features, new ways of linking with other databases, etc. Although frequent changes to the data submitted by obligated entities are certainly undesirable, new functionalities may evolve based on the above-mentioned evaluations, new available datasets, and feedback from users, among other things.
- Consequently, both obligated entities and other users of the Register (including citizens, media, NGOs, municipalities voluntarily publishing their contracts, auditors, etc.) should be given an outlet for their feedback and suggestions. **Collaboration between the Ministry of Interior** (the Register's administrator), **other ministries and public institutions, and researchers and analysts** from both the NGO sector and the academic community is essential both for continuous improvement of the Register's data quality and for potentially expanding its feature set.

<sup>91</sup> § 5 art. 7 of the Contract Register Act stipulates that when incorrect information (incorrect metadata or contract text) has been submitted to the Register, this can be corrected within a set period of time. The original contract and metadata, however, remain saved and accessible in the Register.

<sup>92</sup> See the previous chapter for concrete recommendations on how to improve search options, the display of the search results, etc.

To conclude, as long and complicated as the trek of the Czech Act on the Contract Register has been, it is still just the beginning. For contract disclosure to live up to its promise and become a truly powerful transparency and anti-corruption measure, more work will be necessary by the government as well as civil society, the media, and other players:

“The most common mistake I see governments make with open data is thinking that publication is the end of the activity, rather than beginning of the activity. Because publishing data can be, if we live in a perfect world, simply a prefatory step to allowing residents to talk about how data affects their lives and helps them live better. But usually, what happens is they publish data and they run as fast as they can in the other direction.”

— Dan O’Neil, executive director of the Smart Chicago Collaborative<sup>93</sup>

We hope that neither the Czech administration nor civil society will “run away” from the data published in the newly introduced Register of Contracts—but will instead seize the various opportunities it opens up.

<sup>93</sup> Colin Wood (2016): *6 Ideas to Help Government Realize Open Data’s Transformative Power*. Government Technology. Available at: <http://bit.ly/1piODVv>.



## About

**Frank Bold Society** is a public-interest law organization with offices in the Czech Republic, Poland, and Brussels, Belgium. At the EU level, Frank Bold is a steering-group member of the European Coalition for Corporate Justice, which promotes corporate responsibility within the EU; a member of ALTER-EU, promoting lobby transparency across Europe; and a founding member of the Justice & Environment network. Within the Czech Republic, Frank Bold is a main coordinator and a steering-committee member of the anti-corruption NGO coalition Reconstruction of the State.

[www.frankbold.org](http://www.frankbold.org)

**Slovak Governance Institute** is a non-profit, non-partisan civic association whose mission is to propose and promote solutions for good, accessible, transparent, and effective public services for the citizens of Slovakia and other countries.

[www.governance.sk](http://www.governance.sk)

**Reconstruction of the State** is a joint national program of Czech anti-corruption organizations, politicians, independent experts, business partners, and active citizens aiming for the adoption of key transparency and anti-corruption legislation.

[www.rekonstrukcestatu.cz](http://www.rekonstrukcestatu.cz)

