

Independent Reporting Mechanism

Action Plan Review:
Czech Republic 2020-2022

Open
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Independent
Reporting
Mechanism

Introduction

Starting in January 2021 the IRM began rolling out the new products that resulted from the IRM Refresh process.¹ The new approach builds on the lessons after more than 350 independent, evidence-based and robust assessments conducted by the IRM and the inputs from the OGP community. The IRM seeks to put forth simple, timely, fit for purpose and results-oriented products that contribute to learning and accountability in key moments of the OGP action plan cycle.

The new IRM products are:

1. **Co-creation brief** - brings in lessons from previous action plans, serves a learning purpose, and informs co-creation planning and design. This product is scheduled to roll out in late 2021, beginning with countries co-creating 2022-2024 action plans.
2. **Action Plan Review** - an independent, quick, technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. This product is scheduled to roll out in early 2021 beginning with 2020-2022 action plans. Action Plan Reviews are delivered 3-4 months after the action plan is submitted.
3. **Results report** - an overall implementation assessment that focuses on policy-level results and how changes happen. It also checks compliance with OGP rules and informs accountability and longer-term learning. This product is scheduled to roll out in a transition phase in early 2022, beginning with 2019-2021 Action Plans ending implementation on August 31, 2021. Results Reports are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of Czech Republic's 2020-2022 action plan. The action plan is made up of five commitments. This review emphasizes its analysis on the strength of the action plan to contribute to implementation and results. For the commitment-by-commitment data see Annex 1. For details regarding the methodology and indicators used by the IRM for this Action Plan Review, see section IV. Methodology and IRM Indicators.

¹ For more details regarding the IRM Refresh visit <https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh/>

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Section I: Overview of the 2020-2022 Action Plan

The Czech Republic's fifth action plan contains promising commitments on increasing transparency of court decisions and establishing a framework for whistleblower protection. A whole-of-government approach in developing and implementing future action plans could lead to a greater number of ambitious commitments outside the scope of the Ministry of Justice.

The Czech Republic's fifth OGP action plan consists of five commitments. The two promising commitments on transparency of lower court decisions and whistleblower protection, as well as a commitment on open data in education, stem from commitments in the previous action plan.

There is a new commitment on improving civil society engagement in participatory processes and another one on consultations on the transparency of grants provided by public funds from central and local government bodies.

The action plan includes amended proposals from civil society which align with the government's strategic goals and programmes – such as on raising awareness of whistleblower protection and transparency around public grants. It reflects IRM recommendations from the previous cycle on continuing and extending commitments on whistleblower protection and efforts to open up the judiciary. The commitments also line up with the government anti-corruption strategy and are linked to the Sustainable Development Goals (SDGs).

The activities of the promising commitments in this action plan are more likely to lead to results than those in previous action plans because they are targeted and specific. However, to improve implementation and enhance the potential results, this Action Plan Review encourages institutions and businesses to establish fully functioning, well-resourced and confidential whistleblowing processes on top of raising awareness. The study on best whistleblower protection practices could be oriented towards providing guidance on implementation of the new law. For the commitment on publishing lower court decisions, the IRM recommends the provision of tailored support to district courts to ensure publication is done in a timely manner, and that key stakeholders are engaged in determining priorities for publishing lower court decisions beyond civil law cases.

AT A GLANCE

Participating since: 2011

Action plan under review: 2020-2022

IRM product: Action Plan Review

Number of commitments: 5

Overview of commitments:

- Commitments with an open gov lens: 5, 100%
- Commitments with substantial potential for results: 2, 40%
- Promising commitments: 2

Policy areas carried over from previous action plans:

- Justice transparency
- Whistleblower protection
- Open data in education

Emerging policy areas:

- Transparency of public grants
- Civil society engagement in decision making

Compliance with OGP minimum requirements for Co-creation:

- Acted contrary to OGP process: No

The process of developing the action plan was well documented and the multi-stakeholder forum – made up of civil society and government officials – engaged the wider public on social media and via the Ministry of Justice website, published feedback on the 15 proposals received, and developed five commitments that went into the action plan.² Four of the five commitments are led by or involve the Ministry of Justice. Civil society felt that the process lacked effective participation from a broad range of other ministries (outside the Ministry of Justice) because they do not share an interest in, or do not fully understand the value of, the open government agenda.³ Ensuring the interest and engagement of officials with decision-making power from different ministries could lead to the inclusion of ambitious commitments from different policy areas which could also bring in new or different non-government stakeholders to the process.

The limited participation of a broad variety of public institutions during the development of the action plan restricted the opportunity for proposals in different or new policy areas being included. The action plan contains two commitments with potential for modest results and one with unclear potential for results, and these have not been further analysed in depth. This is either because they are minor commitments that are carried over from the previous plan unchanged (Commitment 3), because the ambition of the commitment at this stage is to run preliminary activities such as pilot exercises (Commitment 4) or because it seeks to run a consultation and only outline possible next steps (Commitment 5). These commitments could potentially have substantial results in future action plans if they go beyond these preliminary activities to introduce ambitious, lasting reforms.

² The call for proposals was published on the Ministry website, social media networks and invitations sent via email. More information on the process can be found in Annex 2.

³ Josef Šmída, Open Society Foundation Prague, interview with IRM researcher, 11 March 2021; Marek Zelenka, Oživení, interview with IRM researcher, 5 March 2021; Jan Dupák, Transparency International, interview with IRM researcher, 3 March 2021.

Section II: Promising Commitments in Czech Republic's 2020-2022 Action Plan

The following review looks at the two commitments that the IRM identified as having the potential to realize the most promising results. This review will inform the IRM's research approach to assess implementation in the Results Report. The IRM Results Report will build on the early identification of potential results from this review to contrast with the outcomes at the end of the implementation period of the action plan. This review also provides an analysis of challenges, opportunities and recommendations to contribute to the learning and implementation process of this action plan.

If fully implemented, both promising commitments, as indicated in the table below, could deliver substantial results in opening government in their respective policy areas. The commitment on the publication of lower court decisions could increase transparency on decisions made by district courts across the Czech Republic. Implementation could also promote consistency in the application of Czech law across district courts, and ensure people understand the application of the law in court. The commitment on raising awareness of whistleblower protection could enhance the impact of the newly adopted law by increasing people's understanding of what a whistleblower is, and improving people's perceptions of whistleblowers in the Czech Republic. If the new law on whistleblower protection is passed, and backed up by resources to protect whistleblowers and guarantee their confidentiality, in the workplace in both the public and private sector, this could lead to more whistleblowers in the Czech Republic reporting wrongdoing or illegal activity in their place of work.

Three commitments only have modest or unclear potential for results. Commitment 3 aims to provide a publicly available, centralised and cohesive database from the Ministry of Education, Youth and Sports and some subordinate organisations. It is a minor commitment from the previous action plan which was not started,⁴ and the same activities have been carried across into this plan, unchanged. It has been given a similar, modest, coding in this Action Plan Review. Commitment 4 seeks to collaboratively develop a methodology for public authorities on how to include the public in decision making, and run a pilot example. While some civil society groups welcome the commitment, they suggest the methodology alone is unlikely to change practice inside institutions without legislative change or mandatory implementation.⁵ These kinds of changes to this commitment would increase the likelihood of change in government practice that fosters more inclusive public participation in decision making. Due to it not being mandatory to implement and only seeking to conduct a pilot example, it has been coded as having just modest potential for results. Commitment 5 promises to run a consultation on creating a database on public grants and publish information on the results of the consultation and possible next steps. The potential results of the commitment are unclear at this stage because the consultations are about the possibility of creating a database, although future commitments that introduce such a register may be more likely to deliver substantial results.

Table 1. Promising commitments

Promising Commitments
<p>1. Publication of lower court decisions: This commitment seeks to secure greater accessibility and transparency of district court decisions. Public access to decisions could make it easier to compare decisions and ensure the law is applied consistently across the 86 district courts and could help to improve public trust in the independence of these institutions.</p>
<p>2. Raising awareness on whistleblowing: The proposed measures are designed to support implementation of the imminent whistleblower protection law. Activities to raise awareness aim to increase stakeholder and public understanding of whistleblowing and the new law and improve perceptions of whistleblowers. The proposed training of judges and prosecutors is intended to provide whistleblowers with more protection in the courts.</p>

Commitment #1: Publication of lower court decisions

(Ministry of Justice)

For a complete description of the commitment see commitment #1 in the [action plan](#).

Context and objectives

This commitment, to publish the final decisions of lower courts, continues and builds on the same activities from Commitment 4.2.2 in the previous action plan which had only limited implementation.⁶

Under the previous action plan, the Ministry of Justice developed and tested the anonymisation software for lower (district) courts to use, and since December 2020 started to publish final district court decisions on civil law issues.⁷ The commitment in this action plan seeks to evaluate the functioning of the process to anonymise and publish court decisions so far, and then expand the publication of different categories of court decisions beyond civil law issues.

Currently, the Constitutional Court, Supreme Administrative Court and Supreme Court publish anonymised decisions on their specific online databases which are publicly accessible. Under the last action plan, district courts were also due to start publishing anonymised decisions, but this was not completed within the implementation period. There are 86 district courts in the Czech Republic.

A recent EU report acknowledged that efficiency in court proceedings differs from region to region in the country, and that proceedings of administrative cases in particular remain lengthy.⁸ However, this commitment is directly linked to the Departmental eJustice Development Strategy for 2016-2020, which includes a specific target on providing information on court decisions.⁹

Looking at notable issues in the judiciary more broadly, accusations in recent years of some politically-connected or senior political figures interfering in court decisions and trying to influence judges have caught public attention relating to the independence and functioning of the institution.¹⁰

Although the government proposed the continuation of this reform during the development of this action plan, the publication of court decisions is also widely supported by civil society groups.¹¹

Potential for results: Substantial

This commitment has the potential to deliver substantial results in making lower court decisions transparent and available to the public. Civil society groups agreed that there could be substantial results in terms of transparency, but noted the slow pace of the reforms up until now.¹²

At the time of writing this report (March 2021), the Ministry of Justice database contains more than 22,000 decisions from lower and regional courts.¹³ The Ministry expects to have 200,000 decisions published in the database even without expanding to new categories of decisions beyond civil law.¹⁴ This would mark an expansion of easily accessible information into the public domain on lower court decisions. The EU 2020 Justice Scoreboard scores the Czech Republic 6.5/9 for the level of online public access to published judgements (for all courts), because they are only partially available online.¹⁵ Increased access to district court decisions would increase this score by the end of the action plan implementation period.

However, the types ('agenda') of cases that would be published has a large bearing on the potential for results. According to an official in the Ministry of Justice, in 2019, the civil agenda formed 70-71 per cent of the Czech judiciary's workload, the criminal agenda 25 per cent and the administrative agenda 4-5 per cent.¹⁶ Therefore, the planned expansion into other areas beyond the civil agenda needs to include cases related to the criminal agenda and administrative agenda. A Ministry of Justice representative explained that the criteria for which categories to prioritise is still open, although one possible avenue could be those cases which have added value for the public or which include substantive reasoning (as opposed to decisions such as payment orders in the civil agenda).¹⁷

Ensuring online access to decisions also helps citizens understand the application of the law and can contribute to consistency in decisions across courts. The government argues that access to information will strengthen the principle of predictability and expectations from court decisions.¹⁸ Non-government stakeholders have said that implementation could improve the independence of the judiciary and the quality of decisions in labour law and private law disputes.¹⁹ The independence of the Czech courts is perceived as 'fairly or very good' by 56 per cent of the general public – an overall increase in recent years.²⁰

Opportunities, challenges and recommendations during implementation

Representatives from the Ministry of Justice acknowledged that implementation of this commitment has had some resistance from courts themselves due to the additional bureaucracy needed to publish anonymised judgements, as well as from technical barriers due to older hardware and software used in some courts.²¹

Each of the 86 district courts faces different obstacles and barriers in terms of administrative capacities or software. The Ministry will need to support all district courts to use the new anonymisation software and do a manual check of decisions before publishing them online. This support may need to take the form of increased funding for human resources, training and/or provision of hardware and software, depending on the needs of each district court.

As the Czech courts begin the process of publishing new court cases beyond civil law cases, there is an opportunity to engage the public, media and civil society in establishing which agendas should be prioritised for publishing because of their added value to the public. Civil society has identified cases from the criminal agenda in general, as key types of cases to publish.²² This could make implementation achieve more impactful results by publishing the kinds of information that key stakeholders (such as the media) are interested in. Other countries have implemented similar mechanisms for public court decisions. In the OGP context, the Czech Republic could learn from implementation of similar activities in Slovakia, where, for example, raising awareness inside the administration of courts could have further improved implementation.²³

- **The IRM recommends that the Ministry of Justice engage with the public and in particular, key stakeholders, to establish the kinds of decisions that courts should prioritise for publishing beyond civil cases.** As recommended in the Design Report of the previous action plan, a multi-stakeholder working group could advise the Ministry of Justice.
- A working group could include other institutions in the justice system who can share lessons learnt from running similar databases. It could **develop guidance for district courts on the application, quality and use of metadata or tagging of published court cases so the data can be analysed across different judicial databases.**
- **The Ministry of Justice could raise awareness inside court administrations and establish tailored support for all courts to efficiently publish decisions.** This could ensure that pre-existing differences in efficiency in processing district court cases does not translate into delayed publishing of anonymised court cases as well. Greater public confidence in the system may come through the publication of decisions in a timely manner across all district courts.

Commitment #2: Raising awareness on whistleblowing

(Ministry of Justice, Working Commission for Whistleblowing)

For a complete description of the commitment see commitment #2 in the [action plan](#).

Context and objectives

This commitment comes under the broader context of the EU Directive on whistleblower protection which should be transposed into national law by the end of 2021, and the objectives of the 2018-2022 Czech Government Anti-Corruption Conception.²⁴ The previous action plan included a commitment on awareness-raising activities, which had limited implementation after the new EU Directive on whistleblowing interrupted the process of adopting draft legislation into national law.²⁵

This commitment is a continuation of the commitment in the previous OGP action plan. The commitment seeks to complete the adoption of the law on whistleblower protection. This law aims to establish accountability through a legal framework to protect whistleblowers in the Czech Republic for the first time. The commitment also aims to raise awareness of the law and

implement a project which will have a media campaign, organise expert conferences, conduct a comparative study of good practices, do statistical monitoring and run training(s) of prosecutors and judges.

The objective of this commitment is to address the negative perception of whistleblowers in the Czech Republic and, subsequently, enhance accountability in public institutions and private workplaces by enabling more whistleblowers to come forward safely to report wrongdoing, violations and illegal acts in their places of work. To date, awareness raising on this topic has been led by civil society organisations (CSOs) and international organisations.²⁶ A 2020 civil society poll revealed that 71 per cent of Czechs do not know what a whistleblower *is*, and that often negative impressions come to mind.²⁷

As part of the process to develop this action plan, the government took forward the proposal by civil society for a continuation of the commitment on awareness raising of whistleblower protection.²⁸

Potential for results: Substantial

The adoption of the law on protecting whistleblowers will provide for the first time a legal framework that has substantial potential for results in this policy area and open government value of public accountability. It would give confidential protection for whistleblowers within public institutions and larger private organisations, requires the establishment of internal whistleblowing notification processes, and establishes a whistleblower protection agency which can receive notifications from whistleblowers before such cases are taken up by authorities such as the police.²⁹ This could mark a significant shift in practice in government institutions and larger private organisations in the way that they deal with reports of wrongdoing and ensuring public accountability. In fact, in 2020, 55 per cent of Czechs said they would not know where to report a case of corruption should they experience or witness it.³⁰

The media campaign activities have a budget of US\$180,000 and will be conducted by a consultant for the Ministry of Justice, aiming to reach a minimum of 1,000 public officials, produce more than 100,000 leaflets for the wider public, and develop a 'viral' social media campaign video.³¹ Results from the campaign could lead to a reduction in the number of Czech citizens who do not know what a whistleblower is (71 per cent according to a civil society poll³²), as well as improve the perception of who a whistleblower is. Civil society polling has shown that when the public understand what a whistleblower does, their impressions of them improve.³³

The training of judges and prosecutors and expert conferences could aid the understanding of the law and the role of whistleblowers to core stakeholders who will apply the law. On a practical level, the provision of training and adequate resourcing for HR staff in public institutions and private organisations would also be beneficial to ensure the successful application of the law. Appropriate financial support for the new agency may be necessary for it to function properly and for the public to see that the new legislative framework for whistleblowers is taken seriously.³⁴

A subsequent result from the adoption and implementation of the law, trainings and a media campaign could be an increase in the number of whistleblowers coming forward. Monitoring and publishing statistics on whistleblowing by the new agency will be the first time that the

Czech Republic has collected and published official statistics on whistleblowing. No official statistics are held by government on whistleblowers or whistleblowing cases, but civil society groups have estimated there are about 30 cases each year.³⁵ Transparency International's Legal Advice Centre gave legal advice to 371 clients and took on 35 corruption cases in 2019 (although these may not all be cases of whistleblowing), an increase on the year before.³⁶

Opportunities, challenges and recommendations during implementation

While the adoption of a new law presents an opportunity for delivering ambitious results, CSOs identified and campaigned on weaknesses to the whistleblower protection draft law that may reduce some of its effectiveness in delivering substantial results, regardless of the awareness-raising activities. These include concerns around the independence of the agency that will receive notifications, financing the implementation of new public bodies, and around the lack of tools or technology that would protect the anonymity of whistleblowers.³⁷ Estonia's latest action plan, for example, establishes confidential hotlines and will ensure officials are trained in how to deal appropriately with whistleblowing cases.³⁸

Regarding the awareness-raising activities, while both the Ministry and civil society groups recognise the limited capacity for the Ministry to conduct a media campaign on its own,³⁹ some CSOs question the effectiveness of bringing in a consultant to run the public awareness campaign which is done in parallel by CSOs.⁴⁰ A strong media campaign and vocal support from business and institutions could foster a culture in favour of whistleblowing, as seen through Ireland's OGP commitment from its 2014-2016 action plan.⁴¹

On the other hand, there is an opportunity for the comparative study of best practices to provide guidance and influence implementation of the whistleblower protection law in the Czech Republic, particularly on issues raised by civil society. The study could look at the functions and operations of any independent agency on whistleblower protection, the best mechanisms for ensuring whistleblowers can provide information in a confidential (and/or anonymous) manner. The study could also cover common concerns about implementation, including how to best conduct whistleblower disclosures and remedies in a timely manner, how to ensure rapid intervention, effective mechanisms to give whistleblowers free legal support and advice, the best way to produce and publish regular statistics, and how to train stakeholders including judges and prosecutors.⁴² Some studies have highlighted practices in countries like France, Ireland and the Netherlands which have whistleblower protection mechanisms.⁴³ The Dutch agency for whistleblowers is expected to advise and support whistleblowers, and investigate retaliation complaints and reports of wrongdoing.⁴⁴ In Ireland, employees who disclose information according to the law are protected from a wide range of reprisals, as well as from civil liability and criminal prosecution.⁴⁵ France guarantees the confidentiality and anonymity of whistleblowers and in Estonia, anonymity can be lifted only with consent of the whistleblower.⁴⁶

- **The Czech authorities could use good practice examples to ensure strong implementation of the whistleblower law.** Implementation of the law could benefit from strengthening the role, independence and financial footing of the agency for notifying whistleblowing, providing support against retaliation, and ensuring whistleblowers' confidentiality. Such measures could encourage whistleblowers to report cases of wrongdoing without fear of reprisals.

- **The media campaign could benefit from including voices from a wide variety of sectors and backgrounds to demystify whistleblowers and their role.** Institutions and businesses could be encouraged via the campaign to be open with their workers about their whistleblowing policy and demonstrate support for people to come forward. This could ensure that the campaign gets the attention it needs to educate people about whistleblowing and challenge the negative perceptions of the public towards whistleblowers.

⁴ Open Government Partnership, Czech Republic End-Of-Term Self-Assessment 2018-2020,

<https://www.opengovpartnership.org/documents/czech-republic-end-of-term-self-assessment-2018-2020/>

⁵ Vít Samek, Czech-Moravian Confederation of Trade Unions, email exchange with researcher, 2 March 2021; Jan Dupák, Transparency International, interview with researcher, 3 March 2021; Josef Šmída, Open Society Foundation Prague, interview with researcher, 11 March 2021.

⁶ Open Government Partnership, Czech Republic End-Of-Term Self-Assessment 2018-2020,

<https://www.opengovpartnership.org/documents/czech-republic-end-of-term-self-assessment-2018-2020/>

⁷ Ibid.

⁸ European Commission, Commission Staff Working Document 2020 Rule of Law Report Country Chapter on the rule of law situation in Czechia, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020SC0302&from=EN>

⁹ Office of the Government of the Czech Republic, Action Plan of the Czech Republic Open Government Partnership for 2018 to 2020, <https://korupce.cz/wp-content/uploads/2019/01/Action-Plan-of-the-Czech-Republic-Open-Government-Partnership-for-2018-to-2020.pdf>

¹⁰ Freedom House, Nations in Transit 2020, <https://freedomhouse.org/country/czech-republic/nations-transit/2020>

¹¹ Josef Šmída, Open Society Foundation Prague, interview with researcher, 11 March 2021; Jan Dupák, Transparency International, interview with researcher, 3 March 2021; Vít Samek, Czech-Moravian Confederation of Trade Unions, interview with researcher, 2 March 2021.

¹² Josef Šmída, Open Society Foundation Prague, interview with researcher, 11 March 2021; Marek Zelenka, Oživení, interview with researcher, 5 March 2021; Jan Dupák, Transparency International, interview with researcher, 3 March 2021.

¹³ The database hosted by the Ministry of Justice, <https://rozhodnuti.justice.cz/>

¹⁴ Přemysl Sezemský, Ministry of Justice, interview with researcher, 11 March 2021.

¹⁵ European Commission, The 2020 EU Justice Scoreboard, Figure 28 - Online access to published judgments by the general public, 2019, https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2020_en.pdf

¹⁶ David Pánek, Czech Ministry of Justice, email correspondence with IRM researcher, 20 April 2021.

¹⁷ Přemysl Sezemský, Ministry of Justice, interview with researcher, 11 March 2021; Payment orders are simplified judgments issued by district courts upon a motion of the creditor. They order a payment of a sum to the debtor. They are issued in an accelerated procedure based on the motion and submitted documents by the creditor without any court hearing. Only if the debtor disagrees, the case goes to the court hearing.

¹⁸ Open Government Partnership, Czech Republic Action Plan 2020-2022,

<https://www.opengovpartnership.org/documents/czech-republic-action-plan-2020-2022/>

¹⁹ Vít Samek, Czech-Moravian Confederation of Trade Unions, email correspondence with researcher, 2 March 2021.

²⁰ European Commission, Commission Staff Working Document 2020 Rule of Law Report Country Chapter on the rule of law situation in Czechia, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020SC0302&from=EN>

²¹ Přemysl Sezemský, Ministry of Justice, interview with researcher, 11 March 2021.

²² They were not specific about subcategories of the criminal agenda which could be prioritised. Jan Dupák, Transparency International Czech Republic, email correspondence with IRM researcher, 19 April 2021.

²³ Open Government Partnership, IRM Slovakia Implementation Report 2017-2019, https://www.opengovpartnership.org/wp-content/uploads/2020/04/Slovakia_Implementation_Report_2017-2019_EN.pdf

²⁴ Dalibor Fadrný, Ministry of Justice, interview with researcher, 2 March 2021.

²⁵ It was deemed better to update the current draft law to match the requirements of the EU Directive on whistleblower protection, than to adopt a new law and then transpose the EU Directive via amendments. Open Government Partnership, Czech Republic End-of-Term Self-Assessment 2018-2020, <https://www.opengovpartnership.org/documents/czech-republic-end-of-term-self-assessment-2018-2020/>

²⁶ Dalibor Fadrný, Ministry of Justice, interview with researcher, 2 March 2021; Marek Zelenka, Oživení, interview with researcher, 5 March 2021; Jan Dupák, Transparency International, interview with researcher, 3 March 2021.

²⁷ Oziveni, Whistleblowing Quantitative Research 2020, https://www.oziveni.cz/wp-content/uploads/2021/01/v4-Whistleblowing_EN.pdf

- ²⁸ Jan Dupák, Transparency International, interview with researcher, 3 March 2021.
- ²⁹ As outlined in the draft law going through parliament. CEE Legal Matters, Recent Whistleblowing Directive Imposes New Obligations on Companies, <https://ceelegalmatters.com/czech-republic/14095-recent-whistleblowing-directive-imposes-new-obligations-on-companies>
- ³⁰ European Commission, Commission Staff Working Document 2020 Rule of Law Report Country Chapter on the rule of law situation in Czechia, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020SC0302&from=EN>
- ³¹ Dalibor Fadrný, Ministry of Justice, interview with researcher, 2 March 2021.
- ³² Oziveni, Whistleblowing Quantitative Research 2020, https://www.oziveni.cz/wp-content/uploads/2021/01/v4-Whistleblowing_EN.pdf
- ³³ Ibid.
- ³⁴ Civil society has raised concerns that the budget for implementing the new law has come from pre-existing funds from within the Ministry of justice, rather than new funding. Transparency International Czech Republic, Frank Bold and Oziveni, The government approved a bill on the protection of whistleblowers, <https://www.oziveni.cz/wp-content/uploads/2021/02/Zm%C4%9Bny-a-nedostatky-v-nov%C3%A9m-n%C3%A1vrhu-z%C3%A1kona-o-ochran%C4%9B-oznamovatel%C5%AF.pdf>
- ³⁵ A Change of Direction, Briefing Paper: Whistleblower Protection in Czech Republic, <https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Czech%20Republic%20-%20english.pdf>
- ³⁶ In 2018, TI Czech Republic gave legal advice to 261 clients and took on 12 corruption cases. In 2017 they gave legal advice to 441 clients, in 2016 they gave legal advice to 270 clients. Transparency International Czech Republic, Annual Reports, <https://www.transparency.cz/?s=V%C3%BDro%C4%8Dn%C3%AD+zpr%C3%A1va>
- ³⁷ Oziveni, Frank Bold and Transparency International Czech Republic, Společné připomínky tří protikorupčních neziskových organizací k návrhu zákona o ochraně oznamovatelů a změnovému zákonu, https://www.oziveni.cz/wp-content/uploads/2020/07/P%C5%99ipom%C3%ADnky-neziskov%C3%A1ho-sektoru_final.pdf
- ³⁸ Open Government Partnership, Estonia Action Plan 2020-2022, Establish and train operators of confidential whistleblower hotline, <https://www.opengovpartnership.org/members/estonia/commitments/EE0059/>
- ³⁹ Dalibor Fadrný, Ministry of Justice, interview with researcher, 2 March 2021.
- ⁴⁰ Marek Zelenka, Oživení, interview with researcher, 5 March 2021.
- ⁴¹ Open Government Partnership, IRM Ireland End-of-Term Report 2014-2016, https://www.opengovpartnership.org/wp-content/uploads/2017/07/Ireland_EOTR_2014-16.pdf
- ⁴² Blueprint for Free Speech, Safe or Sorry: Whistleblower Protection Laws in Europe Deliver Mixed Results, <https://www.changeofdirection.eu/assets/uploads/BLUEPRINT%20-%20Safe%20or%20Sorry%20-%20Whistleblower%20Protection%20Laws%20in%20Europe%20Deliver%20Mixed%20Results.pdf>
- ⁴³ Ibid.
- ⁴⁴ A Change of Direction, Briefing Paper: Whistleblower Protection in Netherlands, <https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Netherlands%20-%20english.pdf>
- ⁴⁵ A Change of Direction, Briefing Paper: Whistleblower Protection in Ireland, <https://www.changeofdirection.eu/assets/briefings/EU%20briefing%20paper%20-%20Ireland%20-%20english.pdf>
- ⁴⁶ Transparency International Nederland, Mapping the EU on Legal Whistleblower Protection, <https://www.transparency.nl/wp-content/uploads/2019/04/Mapping-the-EU-on-Whistleblower-Protection-TI-NL.pdf>

Section III. Methodology and IRM Indicators

The purpose of this review is not an evaluation as per former IRM reports. It is intended as an independent quick technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. This approach allows the IRM to highlight the strongest and most promising commitments in the action plan based on an assessment of the commitment per the key IRM indicators, particularly commitments with the highest potential for results, the priority of the commitment for country stakeholders and the priorities in the national open government context.

To determine which reforms or commitments the IRM identifies as promising the IRM follows a filtering and clustering process:

Step 1: determine what is reviewable and what is not based on the verifiability of the commitment as written in the action plan.

Step 2: determine if the commitment has an open government lens. Is it relevant to OGP values?

Step 3: Commitments that are verifiable and have an open government lens are reviewed to identify if certain commitments need to be clustered. Commitments that have a common policy objective or commitments that contribute to the same reform or policy issue should be clustered and its “potential for results” should be reviewed as a whole. The clustering process is conducted by IRM staff, following the steps below:

- a. Determine overarching themes. They may be as stated in the action plan or if the action plan is not already grouped by themes, IRM staff may use as reference the thematic tagging done by OGP.
- b. Review objectives of commitments to identify commitments that address the same policy issue or contribute to the same broader policy or government reform.
- c. Organize commitments by clusters as needed. Commitments may already be organised in the Action Plan under specific policy or government reforms or may be standalone and therefore not clustered.

Step 4: assess the potential for results of the cluster or standalone commitment.

The filtering process is an internal process and data for individual commitments is available in Annex I below. In addition, during the internal review process of this product the IRM verifies the accuracy of findings and collects further input through peer review, the OGP Support Unit feedback as needed, interviews and validation with country-stakeholders, and sign-off by the IRM’s International Experts Panel (IEP).

As described in the filtering process above, the IRM relies on **three key indicators** for this review:

I. Verifiability

- “Yes” Specific enough to review. As written in the action plan the objectives stated and actions proposed are sufficiently clear and include objectively verifiable activities to assess implementation.

- “No”: Not specific enough to review. As written in the action plan the objectives stated and proposed actions lack clarity and do not include explicit verifiable activities to assess implementation.

*Commitments that are not verifiable will be considered “not reviewable”, and further assessment will not be carried out.

II. Does it have an open government lens? (Relevant)

This indicator determines if the commitment relates to open government values of transparency, civic participation or public accountability as defined by the Open Government Declaration, the OGP Articles of Governance and by responding to the guiding questions below. Based on a close reading of the commitment text, the IRM first determines whether the commitment has an open government lens:

- **Yes/No:** Does the commitment set out to make a policy area, institutions or decision-making process more transparent, participatory or accountable to the public?

The IRM uses the OGP Values as defined in the Articles of Governance. In addition, the following questions for each OGP value may be used as a reference to identify the specific open government lens in commitment analysis:

- **Transparency:** Will the government disclose more information, improve the legal or institutional frameworks to guarantee the right to information, improve the quality of the information disclosed to the public, or improve the transparency of government decision-making processes or institutions?
- **Civic Participation:** Will government create or improve opportunities, processes or mechanisms for the public to inform or influence decisions? Will the government create, enable or improve participatory mechanisms for minorities or underrepresented groups? Will the government enable a legal environment to guarantee freedoms of assembly, association and peaceful protest?
- **Public Accountability:** Will the government create or improve opportunities to hold officials answerable for their actions? Will the government enable legal, policy or institutional frameworks to foster accountability of public officials?

III. Potential for results

Formerly known as the “potential impact” indicator, it was adjusted taking into account the feedback from the IRM Refresh consultation process with the OGP community. With the new results-oriented strategic focus of IRM products, this indicator was modified so that in this first review it laid out the expected results and potential that would later be verified in the IRM Results Report, after implementation. Given the purpose of this Action Plan Review, the assessment of “potential for results” is only an early indication of the possibility the commitment has to yield meaningful results based on its articulation in the action plan in contrast with the state of play in the respective policy area.

The scale of the indicator is defined as:

- **Unclear:** the commitment is aimed at continuing ongoing practices in line with existing legislation, requirements or policies without indication of the added value or enhanced open government approach in contrast with existing practice.

- **Modest:** a positive but standalone initiative or changes to process, practice or policies. Commitments that do not generate binding or institutionalized changes across government or institutions that govern a policy area. For example, tools like websites, or data release, training, pilot projects
- **Substantial:** a possible game changer to the rules of the game (or the creation of new ones), practices, policies or institutions that govern a policy area, public sector and/or relationship between citizens and state. The commitment generates binding and institutionalized changes across government

This review was prepared by the IRM in collaboration with Alexandra Dubova and overseen by the IRM's International Experts Panel (IEP). The current IEP membership includes:

- César Cruz-Rubio
- Mary Francoli
- Brendan Halloran
- Jeff Lovitt
- Juanita Olaya

For more information about the IRM refer to the **"About IRM" section of the OGP website** available [here](#).

Annex I. Commitment by Commitment Data⁴⁷

Commitment 1: Publication of lower court documents

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 2: Raising awareness on whistleblowers

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Substantial

Commitment 3: Open data on education system

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 4: Development of methodology for civil society participation

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 5: Consultations on creation of a publicly accessible open data aggregated database on public grants

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Unclear

⁴⁷ **Editorial notes:**

1. For commitments that are clustered: the assessment of potential for results is conducted at the cluster level, rather than the individual commitments.
2. Commitment short titles may have been edited for brevity. For the complete text of commitments, please see Czech Republic's action plan: <https://www.opengovpartnership.org/documents/czech-republic-action-plan-2020-2022/>

Annex 2: Minimum Requirements for Acting According to OGP Process

According to OGP's Procedural Review Policy, during development of an action plan, OGP participating countries must meet the "Involve" level of public influence per the IRM's assessment of the co-creation process.

To determine whether a country falls within the category of "involve" on the spectrum, the IRM assesses different elements from OGP's Participation & Co-creation Standards. The IRM will assess whether the country complied with the following aspects of the standards during the development of the action plan, which constitute the minimum threshold:

1. **A forum exists:** there is a forum to oversee the OGP process.
2. **The forum is multi-stakeholder:** Both government and civil society participate in it.
3. **Reasoned response:** The government or multi-stakeholder forum documents or is able to demonstrate how they provided feedback during the co-creation process. This may include a summary of major categories and/or themes proposed for inclusion, amendment or rejection.

The table below summarizes the IRM assessment of the three standards that apply for purposes of the procedural review. The purpose of this summary is to verify compliance with procedural review minimum requirements, and it is not a full assessment of performance under OGP's Co-creation and Participation Standards. A full assessment of co-creation and participation throughout the OGP cycle will be provided in the Results Report.

Table 2. Summary of minimum requirements to act according to OGP Process

<i>OGP Standard</i>	<i>Was the standard met?</i>
A forum exists. The Government Anti-Corruption Council Chair's Working Commission for Open Government and State Administration Transparency operates as the multi-stakeholder forum and oversees the action plan process. ⁴⁸	Green
The forum is multi-stakeholder. The forum is chaired by the anticorruption coordination unit of the Ministry of Justice. It has the same nine government members and nine civil society members as for the previous action plan cycle. Civil society is able to choose its members. ⁴⁹	Green
The government provided a reasoned response on how the public's feedback was used to shape the action plan. The multi-stakeholder forum processes the proposals received and publishes feedback on these proposals in the minutes of the multi-stakeholder forum meeting. ⁵⁰	Green

⁴⁸ Ministry of Justice, Commission on open governance and transparency of public administration, <https://korupce.cz/rada-vlady/pracovni-komise-predsedy-rady-vlady-pro-koordinaci-boje-s-korupci/komise-k-otevrenemu-vladnuti-a-transparentnosti-statni-spravy/>

⁴⁹ Ministry of Justice, Creation Phase, <https://korupce.cz/partnerstvi-pro-otevrene-vladnuti-ogp/narodni-akcni-plany-nap/paty-akcni-plan-2020-2022/faze-vytvoreni/>

⁵⁰ Ministry of Justice, Minutes of the 22nd Meeting of the Working Committee, Commission on open governance and transparency of public administration, 10 March 2020, <https://korupce.cz/rada-vlady/pracovni-komise-predsedy-rady-vlady-pro-koordinaci-boje-s-korupci/komise-k-otevrenemu-vladnuti-a-transparentnosti-statni-spravy/>