

Open Information, Contract Management, Transparency and Ethical Standards: In Local Government Units Contracting Out for Case Management Service Delivery

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Abstract

This policy paper discusses issues related to information, contract management, transparency and ethical standards to improve local units of government contracting out for case management in the Czech Republic, Hungary, and Poland. Existing research points to contracting out taking place in a weak macroeconomics context (Petersen et al., 2018; Domberger and Jensen 1997) with budgetary constraints that impact a government's provision of public assistance schemes (Neil, 2004) to review and change service delivery mechanisms. These changes contribute to a more decentralised administration and also reduce the overall quality and performance of the government. Moreover, the administration of governance faces reduced access to information, increased accountability/transparency problems to administer public business, and presents major challenges to institutional compliance and performance management (Berle and Means, 1932). Although the agency relation shows certain local units of government in transitional economies have failed or are inappropriate to administer huge sum of taxpayers' money in contracting out for welfare governance, there is still little policy study research in CEE countries analysing the improvement of local units of government overall contracting out for welfare governance. This also impacts third country nationals and disadvantaged ethnic-minorities employment-related transition in the selected entities. Based on a qualitative cross-country oriented research approach with fewer country comparisons, this policy paper analyses and assesses both centrally directed and locally initiated contracting out governance in the Czech Republic, Hungary, and Poland. The findings show certain service provision is negotiated and exempt from open access to information; contracts are often treated as secret, and the existence of un-

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ethical behaviour, which distorts the core value of trust in corporate governance and impacts third country nationals and (ethnic) minority citizens' transition to work in the selected entities. As a matter of fact, the research recommends open access to (relevant) information, up-skilling and increased public service staff, and open book accounting to combine accountability, integrity, and ethical standards in the formation, delivery and implementation of public service. Not meeting these recommendations may reinforce fraud, penalise vulnerability and belongings, as well as weaken the economy in a global competitive market spectrum.

Goal

The goal is to discuss the basic issues of principal-agent relationship relating to access information, contract management, ethical standards, transparency and accountability in local government contracting out for case management. It also highlights that local units of government action in contracting out corporate governance and its implication for third-country national heterogeneous subgroups' employment-related transition requires clarification. Moreover, third-country nationals' groups and other ethnic-minorities' groups of citizens should not simply be joined together in one monolithic category in contracting out governance. Third-country nationals are a distinct group of people characterised by varying degrees of a political and socio-economic integration process with diverse needs who enjoy a different level of institution depending on their entry routes, residency and work permits. The policy paper put forward the argument that the Czech Republic, Hungary, and Poland policymakers and local units of government administrators must take into account the plurality and dichotomy of the country's third country nationals when addressing the challenges and contracting for employment-related issues relevant to these heterogeneous groups. This kind of construct may be useful to policymakers at communal, municipal, local, and central government levels, and inform actors, institutions, and the administrative level of responsibility for the management of diverse third country national's subgroups and socio-economically disadvantaged multi-ethnic minority groups in the Czech Republic, Hungary and Poland. This policy paper analyses and assesses both centrally directed and locally initiated agency responsibility and administration in employment-related case management governance in the Czech Republic, Hungary, and Poland.

Policy Client/Audience/Target group

This policy paper is addressed directly and indirectly to actors and institutions involved in migration, labour inspectorate, integration and employment policy-making, decision, and management in Central Eastern European economies. The direct actors and institutions are policymakers (for example, Politicians, public administrators, municipalities, public institutions, etc.). The indirect actors and institutions

are policymakers outside of government (such as practitioners, lobbyists, public interest groups, public relations firms, business groups, faith-based organisations, community-based organisations, individual activists and (social) media that function as regulators.

Policy Aims

The main aim of this policy paper is to improve the overall principal-agent agreement in contracting out governance that impacts third country nationals' transition to work in the Czech Republic, Poland and Hungary. This policy paper argues that in contracting out for welfare that deals with third-country nationals' access to employment systems, local units of government (principal) hire an outside party (agent) to carry out the work involved in contracting out service provision, but face challenges with information asymmetry, low administrative capacity, and performance management to monitor and administer agencies' actions and/or behaviour. Hence, this new governance revolves around agency relations and problems that may impair corporate governance in employment-related assistance schemes to enable third country nationals' transition to work. Therefore, it is relevant in this policy paper to analyse principal-agent relations in contracting out relational governance to understand relational corporate governance. In addition, there is a discussion on principal and agent issues related to accessing open information, the professional capability of government officials, transparency and accountability with ethical behaviour to improve contracting out governance in the selected entities. This paper also offers recommendations to principal-agent relational contracting out corporate governance which implicates third country immigrants and other disadvantaged socio-economically ethnic-minorities groups' transition to work in the Czech Republic, Hungary, and Poland.

Background to the Problem

“Much more important than the size of government is its quality...” Francis Fukuyama concluded in his influential book *Political Order and Political Decay* (2014).

The private provision of state-funded services has a long history in United States public service reforms. The state reforms take place in a fragile macroeconomic context, often coupled with a weak central government fiscal position (Neil, 2004: 35) and contracting out of public welfare to sustain public finance and subsidised private activity. In 2018, according to Table 1, the general debt-to-GDP ratios were 32.70 %, (Czech Republic), 70.80 % (Hungary), and 48.90 % (Poland) with local and national reforms in an environment of increased fiscal austerity (Trading Economic, 2019; Czech Fiscal Council, 2019; Eurostat, 2019). Such pervasive budgetary

constraints, even although they were below the EU 28 averages (80, 1 %), had a major impact on the government’s provision of public assistance and design of a fiscal policy regime. The impact revolves around a “new governance” of contracting out for welfare to review and change the service delivery mechanism.

The move to a flexible economy contributes to a more decentralised economy and also reduces the overall quality and performance of the government. Quality and performance are used to understand “trust in government” and public sector performance (Thijs et al., 2017) not forgetting private agencies (such as Nongovernmental Organisation-NGOs) in delivering subsidised public goods. In the Czech Republic, for instance, from 2010 to 2016, citizens’ trust in government fell from 31 per cent to 27 per cent (*ibid*). Furthermore, in the Czech Republic, figures from the Public Opinion Research Centres show that the decline in trust levels of the Czech NGOs has been particularly apparent since 2015/6, with 47 % of people overall saying they mistrusted NGOs in 2015, rising to 51 % in 2017, and 53 % in 2018. In Hungary, from 2010 to 2016, citizens’ trust in government fell from 40 per cent to 30 per cent. In Poland, from 2010 to 2016, citizens’ trust in government fell from 28 per cent to 21 per cent (see Table 2). This suggests in all three transition economies citizens are distrustful of government which indicates corruption and ineffective use of taxpayers’ money. This also indicates that public sector performance reduces access to information and increases problems with transparency to administer public business, as well as presenting major challenges to institutional compliance and performance management (Berle and Means, 1932).

Decentralisation and corporate governance reforms are desirable for market efficiency, but it will take time for public service administration to adapt to the new corporate environment, which requires civil service professional capacity and quality/performance improvement (Thijs et al., 2017). In the Czech Republic, the quality of bureaucrats’ capacity slightly increased from 3.7 in 2012 to 3.8 in 2015 – professional rather than politicised. In Hungary, the quality fell from 3.6 in 2012 to 3.1 in 2015. In Poland, the quality of civil service professionalism increased from 3.7 in 2012 to 4.9 in 2015 – professional rather than politicized. Sustainable public finance is also complicated by the fact that most countries’ expenditure budgets continue to be burdened by outlays of other subsidies, generous transfers in cash or vouchers (Neil, 2004), and huge blocks of state funding disbursed to purchase care for dependent disadvantaged groups of people which include migrants seen as a welfare-dependant underclass paying nothing to the taxman, whilst receiving money from the state.

Contracting out reforms take place in a quasi market (Butt and Palmer, 1985) in the context of efforts to decrease the size of government. In the Czech Republic, for instance, expenditures shrank from about 40 per cent of GDP in 2015 to about 32.7 per cent in 2018. In Hungary, the general budget expenditure was more than

76.7 per cent of GDP in late 2015 and about 70.8 per cent in 2018. In Poland, spending fell from 51.3 per cent of GDP in 2015 to 48.9 per cent in 2018 (see Table 3)

Not surprisingly, contracting out of welfare to subsidise private activities from welfare to workfare policies (Neil, 2004) often dominates the state and inter-organisational socio-political agenda. A reduction of exclusion and sustainable public finance, both at centre and sub-national levels, seems significant to the activation adjustment programme of most transitional economies in order to sustain public finance. The current situation is in sharp contrast to the pre-communist period, when strict central controls ensured full employment. Under the old system, a share of savings was an administrative warrant that identified the system of central resource allocation and budget expenditures were guided by “stringent” planning and procedural norms. This suggests the provision of an employment service was not run in the market, but the government committed to invest taxpayers’ money through building public service capability and suitable regulations to transfer from the central budget.

The new concern for sustainable finance and exclusion reduction has led local government units to view contracting out for welfare governance as an opportunity to replace the monopolistic state providers in two ways. First, the contracting out of services is a devolution of responsibility for social welfare from central to local units of government and from local units of government to private enterprise. Second, the local units of government cooperate with competitive multiple independent non-state providers (European Commission 2012; Gesine, 2016) to reduce centrality and enhance individual autonomy. Third, privatising through contracting out, purportedly increases the beneficial effects of competitive bidding from service providers to contain cost and foster quality of services.

Transferring welfare service delivery responsibility: in some countries operational responsibility for social welfare provision service implementation is being transferred to private economic operators. In the Czech Republic, for instance, the Labour Office may sign contracts and transfer responsibilities for welfare service delivery to private companies and other public entities with a mixed consortium under the Employment Act (European Commission, 2012; 435/2004 Coll ACT dated 13th May 2004 on Employment). In Hungary, the central direction of employment may delegate responsibility to private companies and the third sector to deliver services under the Hungarian Labour Code (Hungarian Act I of 2012 on the Labour Code, Section 207, and Subsection 4, adopted by Parliament on 13 December 2011). In Poland, unless otherwise stated through legislation, the central direction and specialised units (European Commission, 2012) may delegate responsibilities in cooperation for welfare provision and service delivery to temporary employment agencies which are entrepreneurs under the Freedom of Economic Activity Act (Poland Act of 20 April 2004 on Employment Promotion and Labour Market Institutions). The hope seems to have been that local units of

government would attain the political painful selective targeting required, even though the implementation of this service is difficult to manage in the worsening economic situation and the principal agents' conflict of interest. Also, in the Czech Republic, responsibility for employment-related case management, to enable the third national transition to work, was transferred to employers (435/2004 Coll. ACT of 13 May 2004 on employment).

Even although some of the responsibility transferred to private firms is partly due to fiscal burden, some of the contracted out services and some private enterprises are difficult to manage given the heavy burden of administration and management of these private economic operators and the fact that human nature tends to pursue self-interest. Moreover, certain local units of government in "post-communist" CEE transitional economies have failed or are ill equipped to manage and administer huge sums of taxpayer's money in contracting out welfare. These eventualities also impact third-country nationals and disadvantage ethnic minorities groups' transition to work. Within this context, a rigorous policy study to improve contracting out is imperative in the selected entities. The main aim of this policy paper is to fill this gap by improving the overall principal-agent relation in contracting out which also impacts third country nationals' transition to work in the Czech Republic, Poland and Hungary. The next section concerns the policy options to derive recommendations for policy improvement.

Need For a Broader Principal-Agency Framework

The type of data source for this policy analyst paper includes a variety of initial and secondary sources. The primary data and information results are partly from my own research through document analysis. The secondary data or information comes from the research and writings from other scholars in the field of (corporate) governance. This demonstrates the depth and nature of the current research. Thus, as public policy involves a variety of stakeholders, the selection criteria include government (employment) legislation and policy statements, government reports, NGOs reports, other policy studies, academic journals, and conference papers. These considerations, geographical focus, type of data available and audience drives the data selection choice and sources in this policy research paper.

The principal-agency agreement is the main component of this framework. The principal-agency model and its application to analyse principal-agency relations is in the realm of multilevel governance in terms of agencies' respective roles and responsibilities to enhance good governance. The key features of principal-agents relationship issues that are covered include:

- I. Open access to information to enhance transparency (freedom of information);
- II. Improvement of government officials' skills and capacity to prevent conflict of interest; and

III. Restrictive accountability and ethical standard in public business

Without open information, there is no transparency. Without transparency people behave unethically. With open information, transparency and ethical behaviour, there is an increasing tendency for good management and leadership to administer public funds equitable for public benefits that will eventually encourage prosperity and a social cohesive society with respect, dignity, and economic prosperity.

Open Access to Information to Enhance Transparency

While budgetary constraint is clearly desirable from the central government for a market efficiency perspective, government provision of assistance should not be seen as a compressible part of the national budget, as it is in some countries. Many of the services provided by sub-units of governments are essential to political mobilisation and economic development. Several local units of government cannot provide and manage these services at an adequate level from their own administrative resources alone. Even from a short-run contracting out perspective, cutting targeting government provision of assistance may be inadvisable. A reduced size of government may cope with budgetary constraints by using such new governance of contracting out for welfare to review and change the service delivery mechanism. At the same time, in some countries' local units of government's responsibility for contracting out employment in public assistance may result in reduced trust in the government and public sector performance. The only way to keep down such a presumably undesirable development in the coming years in the Czech Republic, Hungary and Poland is likely to be to maintain some openness in the information flow and adjustment in contracting habits required to make sure that taxpayers get the best deal.

Improvement of Government Officials' Skills and Capacity to Prevent Conflict of Interest

Direct control over civil service professional capacity and performance improvement to adapt to the rational new environment is one of the ways for the central government to ensure that local units of government do not create a burden on the taxman. Such a set of skills and competences are resourceful for bureaucrats to facilitate a problem-solving and effective policy-making and implementation process (Thijs et al., 217: 38). Provision of this kind may make sense in times of budget constraint, but the combination of direct controls and soft budget constraints in contracting out governance may create complex outcomes. In response to an apparent rule for the selection of civil servants in the Czech Republic, for instance, the influence of ministers in the selection remain undiminished and the risk of civil servant

politicisation (Frank, 201.: 5) may create a barrier for independent experts to enter the civil service and thus hamper civil service professionalisation (ibid). However, since the Czech Republic, Hungary and Poland’s governments have failed to invest in the right people with the right (commercial) skills that are essential to meet the goals of contracting out and, the capacity by definition, must contain effective and precise specifications of administrators to decide what it is that the public agency is buying. Budget constraints or targeting the civil service will not eliminate incapacity or insufficiency. Moreover, even although contracting out can bring benefits to both citizens and to the taxpayer, the benefits depend crucially on the government’s capacity to manage contracts well. In this environment, a simple selection of local units of government officials without reliable capacity to sustain public finance and enable the reduction of exclusion is not sufficient.

Restricting Accountability and Ethical Standards in Public Buisness

A good case can be made to institutionalise transparency and accountability mechanisms. This enables checks and balances such as by the audit office, control/overseeing/watchdog bodies, external scrutiny, ombudsman, and their external functionality (Thijs 2017: 38–39). A striking feature of the current arrangement for contracting out governance in some countries, however, is the virtually restricted legal access to government information by citizens/public and transparency perception to corruption (such as a whistle blowing mechanism) which impact administrative capacity. In Hungary, for instance, the Law grants a restriction of government information that is clearly less accessible to the public (Schraad-Tischler et al., 2018). In the Czech Republic, for example, the Law on the Act on Public Contracts limits the implementation of country specific contracting out recommendations which frequently use negotiated procedures without publication of a tender notice thereby reducing competition and providing substantial discretion for contracting authorities (435/2004 Coll. ACT of 13 May 2004 on employment; Act on Public Contracts No. 55/2012 Coll, Article 62(3); European Commission, 2019). With regard to the transparency perception of corruption, the Czech Republic, Hungary, and Poland need further policies and measures to tackle corruption (Thijs et al., 2017). Most of the transition governments have introduced some transparency law against corruption. In the Czech Republic, Hungary and Poland, for example, the transparency Amendment Act fights corruption. However, its effectiveness is limited because of information asymmetry which influences the formulation and implementation of a transparency policy for public contracts (Kameník, 2011: 6)

In the past command economy period of the Czech Republic, Poland, and Hungary, sub-national government’s control was determined by the central government. Under the current circumstances, however, these countries’ local units of government employment service are contracting out for employment case man-

agement to private enterprise activities. Restricting transparency and inaccurate accountability may limit accuracy and effective management. The lack of transparency and information asymmetry in many transition economies makes the need to access reliable and relevant information to manage and administer contracting out corporate governance difficult. The actors involved are mostly private companies (see Table 4). The outcome may exclude community-based organisation where some of the members are welfare beneficiaries. In addition, they are hampered by their language inability to draft a project for public calls. The involvement of private companies shows the enabling of state strategy from state to market even although private companies are profit orientated and may not provide information about their real intentions. This makes the restrictive institutional ramifications and the agency's opportunistic behaviour in contracting out governance, seem wholly undesirable. Besides, this shows the unethical standards in the conduct of public business. Moreover, legislation has to enable whistleblowers to report fraudulent behaviour, but its implementation has been unsatisfactory and whistleblowers are not fully protected after the disclosure of such misconduct.

In other words, each of the above can be seen as a prerequisite in contracting out case management in a way that best serves taxpayers' money and protects inclusion. If information is disclosed and transparent, there is a possibility that diverse contractors will participate and share the burden. Without open information, there is limited assurance that taxpayers' voices are heard or that the most favourable terms for the implementation of employment services are available to the disadvantaged. Similarly, without transparency and accountability there is a strong possibility of corruption and distrust with selectivity in the process to find new contractors. Moreover, without transparency, most people are excluded from the contracting process, and they are mostly people from the minority group with multiple disadvantages. In this case, the bigger picture and potential benefit of critical thinking, evaluation and expertise are blurred and under-represented.

Conclusion and Recommendations

In this policy study, the Czech Republic, Hungary and Poland public policy measures with regard to contracting out governance is marked by weakness. A substantial part of contracting out employment services is exempt from open information. Contracts are often treated as a secret with negotiations and asymmetry information, and unsatisfactory transparency and accountability to manage taxpayers' money with ethical standards. Under these circumstances, distrust prevails in contracting out corporate governance and the core idea of sustainable public finance, societal participation and reduction of exclusion is blurred.

As a matter of fact, the research recommends the following reforms in this area for improvement:

- 1) Employment case management contracts should be subject to freedom of information and access to relevant information should be made available to the public.
- 2) Cooperation and openness needs to be sustained and applied to all private contractors that provide public services.
- 3) Community-based organisations should be provided with language courses and training to draft contracts as well as nationals to act as secretaries to help them draft a concept in the national language and break barriers to offer tenders for fair competition.
- 4) Local government unit’s professional capacities and skills should include a commitment to cut government spending in consulting and reinvest taxpayers’ money to rebuild public services capability with permanent jobs and increased staffing. This is good news for democracy – less corporate interest and more frank and fearless advice to government.
- 5) Ethical standards in public business includes (a) standardise open-book accounting provisions, (b) data information that is focused, proportionate, and relevant to the process, (c) requirement for reports’ disclosure and complaints by contractors, (d) legislation that nominates and protects whistleblowers in public or a contracting department to expose fraudulent behaviour and (e) legislation should set specific ethics which include honesty, integrity, and fairness in the treatment of service users and employees.

In conclusion, local units of government activities in contracting out governance are decisive, not only in the management and administration of taxpayers’ money, which regulates fiscal imbalances and adjusts budgetary deficits, but also reduces private activities that impact third country immigrants and ethnic-minorities citizens’ transition to work through work protection for an aesthetic inclusive society. Not meeting these goals might be devastating to the people, society and the economy in a global competitive market.

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Appendix

Table 1
Government debt of selected transitional countries relative to their GDP,
2015–2018

State	Government debt relative to GDP (in %, data)			
	2015	2016	2017	2018
Czech Republic	39,955	36,806	34,633	32,958
Hungary	76,607	75,864	73,251	69,393
Poland	51,283	54,277	50,569	48,363
Average EU-28				80,001

Source: The Czech Fiscal Council, 2019; Eurostat, 2018)

Table 2
Trust in government (respondents who tend to trust the government in %)

Country	Trust in Government	
	2010	2016
Czech Republic	31	28
Hungary	40	30
Poland	28	21

Source: Eurobarometer, seen in European Commission, 2017

Table 3
Government debt of selected transitional countries relative to their GDP,
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Average EU-28				80,001

Source: The Czech Fiscal Council, 2019; Eurostat, 2018)

Table 4
Types of provider and the administrative level of responsibility

PES	Type of provider				
	Private companies	Third sector	Other public	Mixed consortium	Total
Czech Republic	7		1	1	9
Hungary	5	4			9
Poland	3				3

Source: Survey on contracting out by PES, DG-Employment (June 2012), seen in EC 2012