



STEFAN
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FOUNDATION**

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Civic Control of Government Openness

Executive summary of the report from monitoring¹

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1. Introduction

The idea of open government is not new. Periodically, it features in the public debate as a result of various initiatives undertaken on the one hand by citizens and media, and on the other by public authorities themselves. In recent years, a new stimulus for development and discussion of the idea has come from the international Open Government Partnership, being an initiative gathering now sixty six countries – both highly developed, such as the United States or Norway, commonly seen as having very open and transparent governments, and the ones that still have a lot to do in this field.

Poland – though undoubtedly in the last twenty five years has made significant progress to improve the quality of public institution operations, including openness for citizens or ability to counteract corruption – in many respects still has a lot to do to achieve the standards that are in place in more mature democracies. Implementation of aims and values promoted by the Open Government Partnership, such as better access to public information, supporting participation in social life, implementing the highest standards of professional honesty in administration, enhancing access to new technologies for higher transparency and responsibility, still remains a challenge for the Polish authorities.

The Open Government Partnership mission is to implement the aims and values through motivating political leaders to launch appropriate activities in their countries (adopting plans and strategies, preparing relevant legislative measures), to offer expert support (e.g. through possibility to exchange experiences and conduct consultations), to support the role of civic society, to encourage cooperation between governments and non-governmental organisations, to implement mechanisms of mutual evaluation and accountability for commitments undertaken under the Open Government Partnership.

The Polish authorities – despite numerous encouragements and appeals from non-governmental organisations gathered in the Open Government Coalition – refuse to join the useful initiative. It can also

¹ The full report (in Polish only) is available at:
http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Obywatelska_kontrola_otwartosci_rzadu.pdf

be legitimately argued that the Polish government fails to fully implement even its own strategy *Efficient State 2020*², a document adopted in 2013 that in many respects is in line with priorities voiced by the Open Government Partnership and proposals from non-governmental organisations.

For that reason, in the end of 2013 the Open Government Coalition issued a report *Waiting for Open Government*³ to sum up the existing situation – and to diagnose the existing standards in the areas that are crucial for the Open Government Partnership: access to information and openness of public data, openness of decision-making processes, and anticorruption policy. The report was intended both to once again motivate the Polish government to join the international initiative of Open Government Partnership, and to initiate monitoring of the governmental strategy *Efficient State 2020*.

The monitoring results presented in this paper complement watchdog and advocacy activities conducted by the Open Government Coalition. We hope that the ranking of ministries (main government institutions) will motivate not only government administration, but also politicians to undertake further efforts for greater openness and transparency of public institutions, for consolidating their ability to counteract corruption and other irregularities, and for granting citizens opportunities to participate in decision-making processes.

The general scores awarded to the monitored ministries and the Chancellery of the Prime Minister are far from being satisfactory – it can be said that Polish government institutions are half way to the desired goal in this respect, even if we take into account only formal conditions of access to public information, openness for citizens participation in decision-making processes, and preventing corruption that our evaluation was focused on. However, the monitoring showed significant differences between ministries – some are relatively good in conducting consultations, other are more efficient in granting access to public information. Thus, the main objective of the ranking that we present is to encourage Polish government institutions not only to improve the quality and the openness of their activities, but also to learn from each other, cooperate, exchange experiences and introduce common standards.

But above all, we hope that the monitoring that we performed and the ranking based on its results will make different activities really systematic and consistent – and that they will be implemented at least under the strategy *Efficient State 2020*, and ideally under the international Open Government Partnership.

2. Main findings and recommendations

The project "Civic Control of Government Openness" was implemented by the Stefan Batory Foundation, the Unit for Social Innovation and Research "Shipyard" and the Citizens Network Watchdog Poland, but its idea originated from a broader group of fifteen organisations gathered in the Open Government Coalition that initiated activities related to the initiative.

The project is an extension of activities of the Open Government Coalition focused on Polish accession to the international initiative Open Government Partnership, on promoting rules and solutions supporting greater openness and quality in public life, and on implementation of the strategy *Efficient state 2020*, adopted by the Polish Government in February 2013. The project consisted in developing 141 indicators that would help to determine – based on analyses of web pages and Public Information Bulletins of

² *Sprawne Państwo 2020 [Efficient State 2020]*, Warsaw, December 20, 2012 – <https://mac.gov.pl/files/wp-content/uploads/2011/12/SSP-20-12-2012.pdf> [access: September 12, 2015]. See Resolution No. 17 of the Council of Ministers of February 12, 2013, on adopting the strategy "Efficient State 2020" (M.P. 2013, item 136).

³ G. Czubek, K. Izdebski, Ł. Jachowicz, G. Makowski, *Waiting for Open Government. Opening Report by the Open Government Coalition.*, Stefan Batory Foundation, Warsaw 2013 – <http://otwartyrzad.org.pl/materialy/materialy-z-konferencji> [access: September 12, 2015].

ministries and of applications for access to public information – to what extent the main government institutions implement principles concerning:

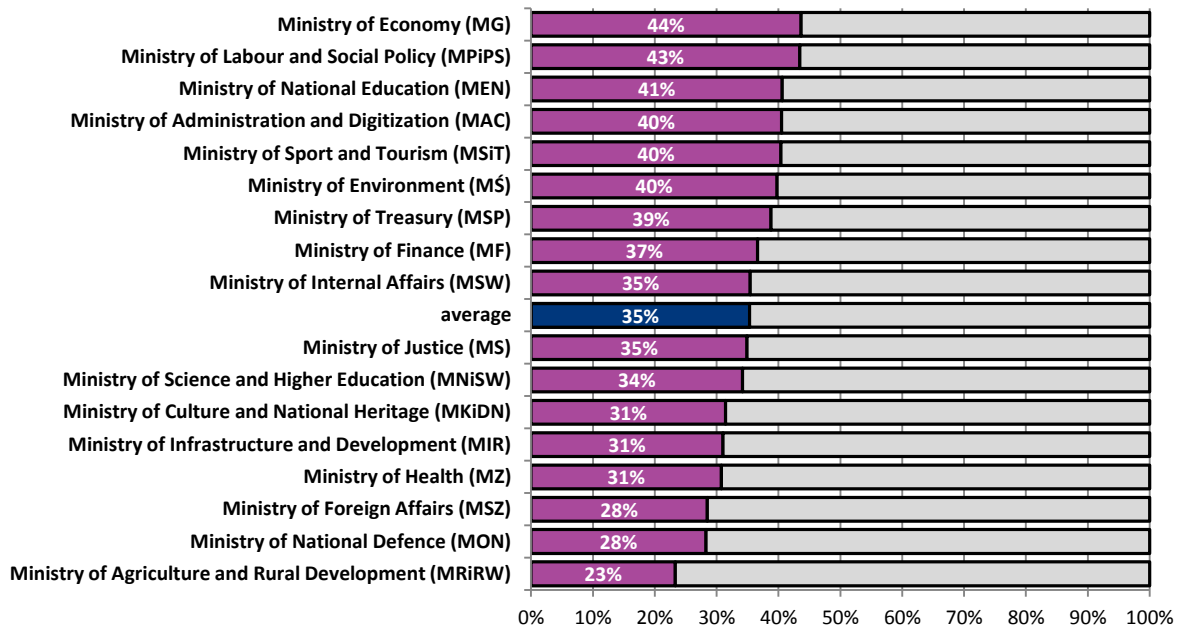
- access to public information,
- civic openness of decision-making processes,
- counteracting corruption,
- we also tried to determine to what extent the principles used correspond to standards promoted by the Partnership for Open Government and by Polish non-governmental organisations.

Under the project we analysed situation, as for the end of 2014, in seventeen ministries and the Chancellery of the Prime Minister. Based on data gathered during monitoring, also a simple ranking was prepared to sum up selected indicators and to describe, using a scale from 0 to 100%, to what extent the ministries meet the basic, formal requirements related to the three above mentioned aspects of public administration functioning.

The activities are aimed at developing an evaluation that would show to what extent the main government institutions are in fact open, ready to cooperate with citizens and able to counteract corruption, conflict of interests and unfair lobbying. Our objective is to motivate decision-makers and public officers to enhance the quality of public administration operations and to implement policies that would support rather than hamper such enhancement. On the other hand, the ranking prepared under the project should encourage competition among ministries for better standards, as well as cooperation (mutual evaluation and exchange of information, experiences and good practices) and common efforts in the field of good standards in government activities. So the ranking is our main focus in the present summary.

The main finding from the monitoring is that – as showed by the indicators used – the ministries, on average, meet 35% of the requirements⁴. Openness for civic participation in decision-making processes, mainly conducting public consultations during governmental law-making processes, is the weakest point in ministries' activities, while the strongest is implementation of anticorruption standards, which may be surprising in view of the common negative opinion about the scale of corruption in public administration. The evaluation of the access to public information lies between the two extremes. However, we have to remember that in general the average scores are low – in the above mentioned areas the respective percentages are 29%, 44% and 33%, and lie rather at the lower end of the scale, which shows that, in general, some standards are met, but in a fragmentary and incoherent way.

⁴ The Chancellery of the Prime Minister is dealt with separately, mainly because its functions are different from other ministries and because the chancellery as such prepares no legal drafts, so it cannot be evaluated in the area of its openness for citizens participation in decision-making processes, in this case seen only as processes of drafting legislative proposals.



Graph 1. Ranking of government openness – summary evaluation of ministries in the areas of access to public information, openness of decision-making processes and counteracting corruption (average scores for all three areas)

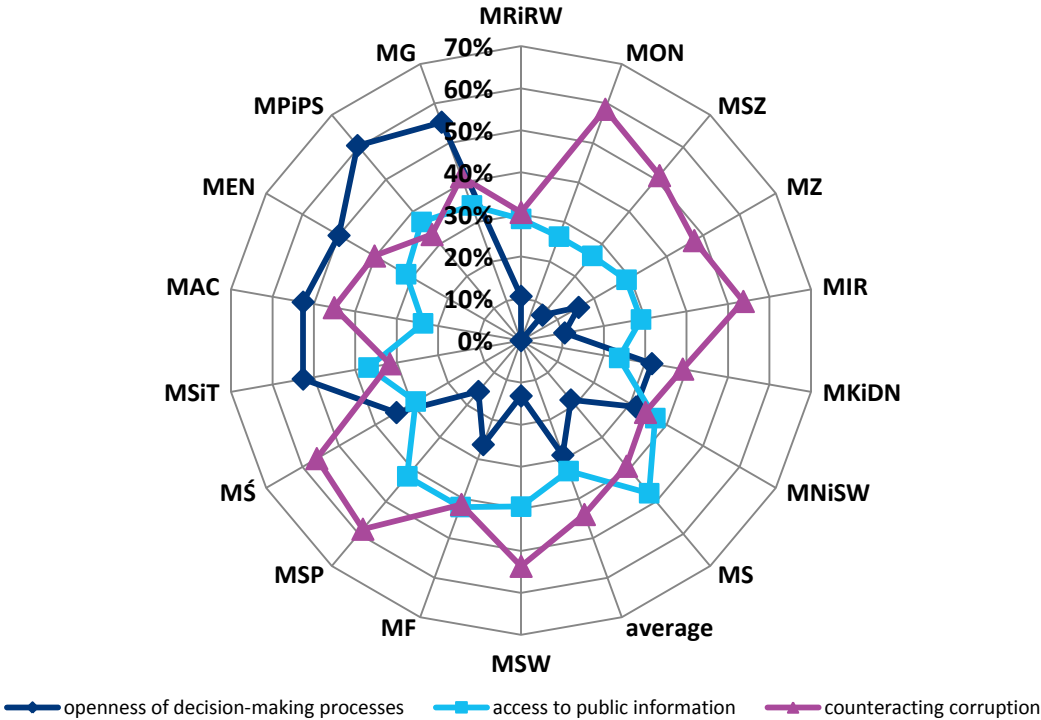
Source: Own materials based on data gathered under the project "Civic control of government openness".

For example, the low score for the openness of decision-making processes, 29%, resulted mainly from two factors – the absence of trainings on consultations and communication with citizens and scarce guidelines on conducting public consultations. The guidelines were adopted by eight out of seventeen ministries, and only some of them contained regulations on answering received remarks or on circumstances where the guidelines may be ignored (for example, only in few cases the guidelines contained requirements concerning public presentation of results of consultations). However, it should be appreciated that in 2014 most of the ministries already had their internal documents implementing the general governmental guidelines on conducting public consultations.

In the field of counteracting corruption, the score was 44%. The relatively low evaluation resulted, among others, from the fact that most of governmental institutions have no internal policies, strategies or plans to prevent corruption. Some ministries adopted more or less fragmentary solutions in this field, but comprehensive policies are in place only in three ministries, of economy, internal affairs and foreign affairs, and partially also in the ministry of justice. The evaluation in this area is also negatively influenced by two other factors – the lack of solutions protecting against negative consequences of conflict of interest situations and weak instruments to control lobbying activities (for instance, no requirement to promptly inform on lobbying activities or insufficient information on rights and obligations of potential stakeholders). It is really surprising that, though in mid-2014 the government anticorruption programme came into force, only one institution – the Ministry of National Defence – informed on its webpage on who was the ministerial coordinator of the programme. On the other hand, it should be noted that as many as nine ministries developed "internal procedures to react to threats or cases of corruption" despite the fact that no special regulations protecting whistleblowers are in place and the priority was removed from the governmental anticorruption programme.

In the area of access to public information, evaluated at the level of 33%, the evaluation is lowered by the fact that, among others, no information is made available on how to exercise the right to information. Almost all government institutions have on their web pages and in their Public Information Bulletins special information on how to access public information, but most of them give no guidelines on appeal procedures when public information is denied, and on legal measures that can be taken in such situation.

The fact that applications for public information filed in ministries and in the Chancellery of the Prime Minister and answers to the applications are not published is another grave problem. The relevant documents are made available only by the ministry of economy which should be seen as a model for other government institutions. No ministry presents on-going information on processing applications, nor ministers' calendars are published, though the practice has already become an international standard.



Graph 2. Ranking of government openness - evaluation of ministries' performance in different areas (access to public information, openness of decision-making processes, and ability to counteract corruption)

Source: Own materials, based on data gathered under the project "Civic control of government openness".

When the evaluation results are analysed for individual institutions, it appears that three best scores were given to the Ministry of Economy, the Ministry of Labour and Social Policy and the Ministry of National Education which had similar scores in all three areas, with the exception of the Ministry of Labour that received exceptionally high score in the area "openness of decision-making processes" - 61%. Two other leaders were better in counteracting corruption. On the other hand, the poorest scores were given to the Ministry of Agriculture and Rural Development, the Ministry of Health, and the Ministry of National Defence - for them, the general score is lowered by their results in the area of openness for citizens' participation in decision-making processes and poor standards of access to public information (even though the ministry of defence had quite good score in the area of counteracting corruption). The score of the Chancellery of the Prime Minister which could be fully evaluated only in two monitored areas, is in general average - 45% in the area of counteracting corruption and 45% in the area of access to public information, but the scores are better than for other institutions.

But the general results of the monitoring can be seen as promising. The differences in scores awarded to individual institutions from a group gathering only eighteen entities are quite big which means that different parts of the Polish government administration can learn a lot from each other. The process should be enhanced by sensible implementation of programmes such as the strategy *Efficient State 2020* or *the Government Programme to Counteract Corruption for 2014-2019*.

And finally, we should mention what measures should be taken – in the opinion of the authors of the evaluation and the report – to improve the results and scores in the next ranking:

In the area of access to public information and openness of data, the following measures should be taken:

- to re-organise and standardise Public Information Bulletins and web pages of ministries, to introduce a common platform for Public Information Bulletins, to introduce similar information architecture in all ministries, to maintain one web page meeting the standards for Public Information Bulletin that would allow to search and to download easily relevant information,
- to make available proactively more information through Public Information Bulletins and web pages, and in particular reports and expert opinions as well as calendars of ministers, and registers of applications for access to public information together with relevant processing documents,
- to make available all information in a manner that would allow their electronic processing.

In the area of openness of decision-making processes, it is in particular necessary:

- to standardise within the government institutions and to consistently implement a policy on publishing information on public consultations (the existing tools, such as the portal konsultacje.gov.pl, should be used for this purpose),
- to develop a common government standard for publishing feedback on consultations, related mainly to reports from consultations, and to set deadlines for publishing reports,
- to develop and to implement common electronic communication procedures, and in particular to introduce the practice to create databases containing addresses of stakeholders who should be invited to participate in consultations (such database should also allow registration from outside),
- to conduct permanent training and educational activities in the field of organising and conducting consultations.

In the area of counteracting corruption, it is in particular necessary:

- to develop framework requirements concerning counteracting corruption in government administration,
- to launch legislative initiatives at least in the fields of: mechanisms of filing, publishing and reviewing financial disclosures, lobbying activities, protection for whistleblowers,
- to introduce in government administration external procedures for detecting irregularities, and to develop appropriate organisational culture that would build favourable climate for whistleblowers and positive attitudes among public workers,
- to improve implementation of management control to include issues related to counteracting corruption, and to improve activities in the field of publicising control results,
- to develop anticorruption educational programs for employees of government administration

3. Methodology of monitoring

As a point of departure for the monitoring and the ranking based on its results – prepared under the project " Civic Control of Government Openness" – we took the already mentioned report *Waiting for Open Government*⁵, describing standards used in the Polish public administration in the fields of access to public information and openness of data, openness of decision-making processes, and preventing corruption. The report was also meant to be a basis for evaluation of progress in improving the quality of public

⁵ *Ibidem.*

institution operations in those three areas in connection with implementation of the government strategy *Efficient State 2020*⁶, and after possible accession of Poland to the Open Government Partnership.

Based on findings presented in the report *Waiting for Open Government* and results of discussions on the report, the Open Government Coalition prepared, between the spring and the autumn of 2014, basic concept of public institution monitoring. It was decided that the monitoring would cover government administration – being leaders of change and a group of institutions that most persistently should be required to implement various initiatives related to the idea of openness in public institutions, as well as their own commitments described in government strategies and programmes. Members of the coalition also prepared an initial set of indicators.

Then, three member organisations of the Open Government Coalition – the Stefan Batory Foundation, the Unit for Social Innovation and Research "Shipyard" and the Citizens Network Watchdog Poland – between the autumn of 2014 and the spring of 2015, prepared, refined and developed a list of over a hundred indicators intended to be used for evaluation of public institutions (the full list of indicators is available on the web page: www.otwartyrzad.org.pl).

The indicators were grouped according to the three areas described in the already mentioned report *Waiting for Open Government* and priorities voiced by the international Open Government Partnership:

- **Openness of decision-making processes** – monitoring and evaluation focused mainly on accessibility of the process of government legal drafts preparation, organising of public consultations, and communicating with stakeholders (here the Chancellery of the Prime Minister was excluded from evaluation – but not from monitoring – because no original legal drafts are prepared by the institution, so most of the indicators in this field are not applicable).
- **Access to public information and open data** – monitoring and evaluation focused mainly on the procedures intended to help citizens in accessing public information, information policies of public institutions, managing Public Information Bulletins.
- **Preventing corruption** – monitoring and evaluation focused mainly on three areas: infrastructure intended to reduce the risk of the proper corruption (preparation of anticorruption plans, strategies and systems by public institutions), solutions for conflict of interest management, mechanisms to control lobbying activities and related risks.

Two basic assumptions were adopted. First, the monitoring was based on an analysis of readily available documents describing the existing procedures or regulations, because it was not aimed at evaluating their practical implementation (though interesting, it would not be possible under the project in view of its time frame and available resources). Thus, the monitoring was focused on a kind of infrastructure that formally exists (is somehow documented) which, of course, does not mean that the infrastructure works appropriately in practice. Second, the monitoring was performed from the perspective close to the one of an average citizen – a person who may want to learn, for example, how to join the consultation process concerning legal drafts prepared in a given ministry, how different ministries answer to applications for access to public information, or what instruments they have at their disposal to reduce the risk of corruption. Thus, our main source of data were Public Information Bulletins and web pages of ministries, for most of the information needed to calculate relevant indicators under the project should be simply made available to citizens, and these are the sources of information that they would themselves consult. In addition, the monitoring covered only those sections of ministerial operations that should be in principle made available proactively, without the need to apply for information or perform any other activities to access relevant information. The approach remains, to a great extent, in line with the idea of openness of public institutions and with the spirit of the Act on access to public information of 2001.

⁶ *Sprawne Państwo 2020, op. cit.*

The activities led under the monitoring were divided between three organisations: the Unit for Social Innovation and Research "Shipyard" gathered and analysed data concerning openness of decision-making processes, the Citizens Network Watchdog Poland focused on the issues of access to public information, and the Stefan Batory Foundation dealt with problems of counteracting corruption. The information were analysed by five persons (one person from the Citizens Network Watchdog Poland, and two persons from each of the remaining two organisations), having long experience in dealing with the respective areas.

The monitoring covered eighteen government institutions:

- Chancellery of the Prime Minister (KPRM),
- Ministry of Administration and Digitization (MAC),
- Ministry of National Education (MEN),
- Ministry of Finance (MF),
- Ministry of Economy (MG),
- Ministry of Infrastructure and Development (MIR),
- Ministry of Culture and National Heritage (MKiDN),
- Ministry of Science and Higher Education (MNiSW),
- Ministry of National Defence (MON),
- Ministry of Labour and Social Policy (MPiPS),
- Ministry of Agriculture and Rural Development (MRiRW),
- Ministry of Treasury (MSP),
- Ministry of Sport and Tourism (MSiT),
- Ministry of Internal Affairs (MSW),
- Ministry of Foreign Affairs (MSZ),
- Ministry of Justice (MS),
- Ministry of Environment (MŚ),
- Ministry of Health (MZ).

All the surveyed institutions (except the Chancellery of the Prime Minister, as mentioned earlier) were evaluated using 141 indicators (40 concerning the area "access to public information and openness of data", 47 concerning the area "openness of decision-making processes", 54 concerning the area "counteracting corruption"). Each indicator was supplemented by remarks describing sources of information and possible reservations, e.g. problems with obtaining information. The final score for every indicator was determined based on the following possible answers:

- **„yes”** – when given element was undoubtedly present,
- **„yes, but”** – when given element was present, but raised some reservations (for example, in Public Information Bulletins we searched for sections with basic information on the rules of lobbying activities in the ministry; though such sections were in fact present, the information contained in them were very incomplete),
- **„no”** – when given element was not present,
- **„impossible to determine”** – when efforts to find given element in Public Information Bulletins and on web pages of a ministry, or from its employees, led to no definite answer as to whether or not given element is present in the ministry.

In some situations (mainly when we needed statistical data, e.g. on the numbers of employees participating in trainings), we filed an application for access to public information⁷. We also used answers to the application for access to public information received under the project " Civic monitoring of the conflict of interests", implemented by the Stefan Batory Foundation in 2014. Sometimes (e.g. when

⁷ Applications for access to public information filed under the monitoring form appendices no. 2, 3 and 3b to this report.

documents presented in Public Information Bulletins were unclear), experts tried to contact monitored institutions in order to clarify their doubts concerning circumstances relevant for evaluation related to a given indicator.

Based on the results of the monitoring, a simple ranking (index) was developed, after selecting 79 out of 141 indicators adopted under the project. The selection was made by experts from the three above mentioned organisations, after analysing the whole gathered material and based on Open Government Partnership standards, their own analytical and advocacy expertise, and guidelines from international organisations. The ranking excluded descriptive indicators containing particular statistical information (e.g. numbers of trained employees or numbers of applications for access to public information filed) – they were used as contextual data. A few indicators were also discarded when it was hard to determine positive or negative scores. Finally, the ranking was prepared by calculating the maximum scores achievable in different areas, and then by calculating for each monitored institution the percentage of the maximum score that the institution achieved in the three already mentioned areas. General score of openness for each institution is an average of those percentages. The points were awarded as follows:

- answer "**yes**" – 2 points⁸,
- answer "**yes, but**" – 1 point,
- answer "**no**" – 0 points,
- answer "**impossible to determine**" – 0 points (it was assumed that all information needed for evaluation should be made available proactively, and when it was impossible to determine whether or not an institution had some solution, then citizens lacked necessary knowledge, so it could not be assumed that given solution could work – thus such deficiencies were noted for analytical purposes, but relevant indicators were given 0 points).

It should be noted that the monitoring we performed presents situation in surveyed public institutions as for 2014. The project team was aware of new solutions introduced in 2015, but excluded them from evaluation. First, for methodological reasons, it was necessary to select a time span for the survey, and calendar year was an objective and most appropriate choice. Otherwise, the evaluation could raise controversies and questions about reasons for selecting other time frame. Second, though the monitoring – as was already mentioned – did not cover practical aspects, nonetheless an assumption seemed reasonable that solutions that were introduced only several months or weeks before the end of the survey could not be seen as fully operational even from a formal point of view. Thus, the presence of such solutions was noted, but they were ignored in the monitoring and in the ranking – they will be taken into account in the next edition of the survey.

In addition, when the initial version of the ranking was ready, it was sent to all institutions covered by the monitoring, together with a request to comment on the results within fourteen days. Answers were received from ten institutions: the Chancellery of the Prime Minister, the Ministry of Administration and Digitization, the Ministry of Infrastructure and Development, the Ministry of Economy, the Ministry of Science and Higher Education, the Ministry of Labour and Social Policy, the Ministry of Treasury, the Ministry of Justice, the Ministry of Sport and Tourism and the Ministry of Health. Some of their comments were taken into account during preparation of the final version of the ranking, other were discarded after discussion within the project team, but all reservations voiced by ministries were published on the web page presenting full results of the survey.

Results of the monitoring and the present report were accepted by thirteen organisations gathered in the Open Government Coalition.

⁸ With one exception. In the area "access to public information" we evaluated the indicator "Does Public Information Bulletin define conditions for re-use of public information?", and in this case – in view of the fact that the Act on access to public information sufficiently defines the conditions, and their additional definition in internal documents of different institutions usually makes it harder than easier to re-use public information – we gave 2 points when such rules were not defined or 1 point when they did not complicate re-using of public information.

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