



**SIGMA**

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**DEVELOPMENT OF POLICIES AND LEGISLATION — ROLE OF MINISTRIES**  
**CZECH REPUBLIC**

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## **Defining Strategic Priorities**

In the Czech Republic, the government is constitutionally obliged to prepare a Government Policy Statement for presentation to the Chamber of Deputies<sup>1</sup> of the Parliament. Parliament's decision to express its confidence in the government or not depends mainly on this statement.

No formal procedures are prescribed for the preparation of the Government Policy Statement, which is usually prepared by the Prime Minister's cabinet of advisors. In the past, however, the Policy Statement has also been prepared by a deputy prime minister and his cabinet.

The Policy Statement is more or less a compilation of submissions presented to the Prime Minister by individual ministries. This procedure can jeopardize — as has often been the case — the consistency and coherence of the Policy Statement. Unfortunately, there is often insufficient time for the final compilation and revision of the Policy Statement. Substantive consultations with ministries do not take place prior to the submission of the Policy Statement to the government and to parliament.

Apart from a few political priorities that are decided and highlighted during coalition negotiations, such as those related to pension reform or to important draft laws, the persons responsible for writing the Policy Statement have discretionary power to decide which legislative or policy tasks will be included in the statement. Many changes occur at the last moment, as departments “compete” to have their own planned piece of legislation or policy proposal included in the statement and thereby given importance. As a result, in one area there may be a very detailed list of legislation to be prepared while in another area there is only a general policy declaration.

The other way of setting government priorities is the preparation of particular strategic concepts, such as the Convergence Programme or the Economic Strategy. A designated minister is usually responsible for preparing such a document. Even though formal procedures for the preparation of government policy proposals exist (see below, section on the preparation of policy proposals by the government), the style, manner of preparation and quality of content of such documents differ.

## **Work Planning and Legislative Planning**

The Annual Plan of Legislative Actions of the Government as well as the Annual Plan of Non-Legislative Actions of the Government are prepared by the Government Office (GO) and approved each year by the government. In addition, Legislative and Non-Legislative Outlooks of the Government Actions are issued every year for the following two years. These documents are collated by the GO, following ministries' submissions, and based on the Government Policy Statement. The GO is also responsible for monitoring the compliance of ministries with the Annual Plans. Every month, the government discusses the Report on Fulfilment of Government Tasks for the previous month.

## **Preparation of Policy Proposals for Approval by the Government**

The preparation of materials that are intended for submission to the government is governed by the Government Rules of Procedure (GRP), as adopted by a government resolution. In addition, legislative materials have to be prepared according to the Legislative Rules of the Government (see below, section on the preparation of legal drafts), which have also been set down in the form of a government resolution (rather than a law). However, these rules apply mainly to documents that have already been more or less prepared; they do not relate to preparatory procedures.

Policy proposals as well as legislative documents are prepared by a ministry, another central state administration authority<sup>2</sup> or the government assignee. Documents can also be prepared in co-operation among those authorities; however, a designated body is the principal authority responsible for the document's preparation.

A concrete approach to policy preparation (prior analysis, consultation with stakeholders, establishment of working groups, etc.) is a discretionary power of the responsible ministry (or another authority). Consequently, the approach differs not only from ministry to ministry but also from one document to another. Usually the minister assigns the task of preparing the proposal to a particular department in the ministry. The department then undertakes the preparatory work, i.e. analyzing the existing situation, data-gathering, etc. Some co-operation with other departments or other ministries may be necessary, and in that case they are asked for concrete help on an ad hoc basis. Less often, a ministerial or inter-ministerial

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<sup>1</sup> The lower chamber.

<sup>2</sup> Bodies that are listed in the Act on Competences, such as the Czech Statistical Office and the Competition Office.

working group is established by the responsible department. Rarely, stakeholders outside the government are invited to participate in the working group.

The GRP sets hardly any formal requirements with respect to the analysis that must accompany the policy proposal, other than the necessity to analyze impacts on the business environment and equal treatment of men and women<sup>3</sup>.

### **Preparation of Legal Drafts**

As stated above, the preparation of legal drafts is governed in a rather different way. The Legislative Rules of the Government (LRG) describe this procedure. However, the LRG focuses more on formal aspects than on preparation procedures. Thus, in a similar way as for non-legislative materials, the concrete approach is again within the competence of the ministry or another central state administration authority.

According to the LRG, the preparation of legal drafts is preceded by an analysis of the current legal and factual status. If the existing Act is to be replaced by a new substantial amendment or if unregulated matters should be regulated, the substantial intent of the Act must be prepared first of all and submitted to the government. Only once the substantial intent has been approved by the government may the ministry begin to work on the wording of the text. The substantial intent should comprise an analysis of the legal and factual status and a proposed solution, with a justification of the necessity of government action and an analysis of the economic, social and environmental impacts (including impacts on public budgets, the business environment and fair treatment of men and women). The guidelines for impact assessment procedures as well as for public consultation are under preparation<sup>4</sup>.

### **Inter-ministerial Consultations**

Inter-ministerial consultations are described in both the Legislative Rules of the Government (LRG) and Government Rules of Procedure (GRP). According to the GRP, non-legislative documents must be sent for comment to all ministers, deputy prime ministers, and the Head of the Government Office. The

material is also sent to the Prime Minister's Cabinet for information. Heads of other central state administration authorities, the Ombudsman and/or heads of regional governments will obtain the document for comments, but only if it relates to their agenda. Ministries (and other authorities mentioned above, if applicable) then have 10 working days for the submission of comments. This term can be shortened, but only in exceptional cases and with the agreement of the Prime Minister.

If the document relates to EU affairs, the inter-ministerial comment procedure described above can be replaced by the formal procedures set for the Government Committee for the EU. This can happen only if none of the committee members asks for standard inter-ministerial consultations.

Similar procedures also apply to the preparation of legislative documents. The draft (whether a substantial intent, draft law, or draft government resolution or by-law) is submitted for comment to all ministers, deputy prime ministers, the Head of the Government Office, and the Governor of the Czech National Bank. The draft must be sent to other authorities indicated in the LRG (e.g. President's Cabinet, Constitutional Court, Supreme Audit Office, and regional governments), but only if it relates to their area of competence. In addition, in selected cases the draft is also sent to the Economic Chamber and the Association of Co-operatives. Last but not least, if the draft has an impact on employers' and employees' interests, it is also sent to their respective associations included in the "tripartite"<sup>5</sup>.

The time limit for submission of comments is a minimum of 15 working days (20 in the case of a paragraph wording of a draft law). This term can be shortened only in exceptional cases and with the agreement of the Prime Minister or the Head of the Legislative Council of the Government. The draft is also sent for information to the Department of Compatibility<sup>6</sup> and to the Department of Government Legislation of the Government Office.

If any comment is marked as "fundamental", the submitting ministry must deal with it and try to find a consensual solution. If such a solution is not possible, this "disagreement" has to be clearly indicated in the report accompanying the submitted document.

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<sup>3</sup> For legislative materials the requirements are different – see section on the preparation of legal drafts.

<sup>4</sup> Guidelines for Assessing the Impact of Regulation are in a pilot testing phase.

<sup>5</sup> The "tripartite" (Council of Economic and Social Agreement) is an institutional platform for social dialogue among the government, trade unions and employers. Various associations of employers and employees are represented in the tripartite. These associations must be consulted if the document has an impact on employers' and/or employees' interests.

<sup>6</sup> i.e. for its compatibility with European legislation.

The report on inter-ministerial consultation, including a list of the authorities which received the document for comment, the delay in receipt of comments, and the results of the comment procedure (e.g. whether there are any “disagreements”) are part of the “submission report”<sup>7</sup> that must accompany the submitted document. If the document has been significantly changed following the inter-ministerial comment procedure, it must be sent for another round of comments.

It should be noted that the electronic system is used for the inter-ministerial comment procedure as well as for the submission of documents to the government. Nevertheless, hard copies of submitted documents still have to be circulated in parallel.

### **Submission to the Secretariat of the Government**

The final wording of the document that is intended to be presented at the government session has to be sent to the Government Office at least seven days before the session takes place. The legislative draft is also sent to the Department of Compatibility and to the Legislative Council of the Government.

### **Review by the Secretariat of the Government**

The document is submitted to the government via the Government Office (Department for the Government Agenda). This department reviews the formal aspects of the document and may return the document to the submitting body if the formal obligations set by the GRP have not been followed.

In addition, legislative drafts are sent to the Legislative Council of the Government (LCG) for its statement. The Legislative Council is an independent commission, consisting of civil servants, independent experts and academics, chaired by the minister responsible for legislation (sometimes this minister is also a deputy prime minister, and sometimes this function is also merged with the function of the Minister of Justice).

The LCG reviews the legal aspects of the draft. The term for this review is 60 days as from the date of delivery in the case of paragraph wording of draft laws or 30 days in the case of other legislative documents, such as the substantial intent of a law or draft government decree or by-law.

The LCG usually discusses its statement with the submitting ministry. The LCG’s statement is an integral part of the dossier submitted to the government session. The government usually accepts the document in the wording suggested by the LCG.

Lately, the quality of the assessment of impacts on the business environment has also been reviewed by the Department for Regulatory Reform and Central State Administration Reform in the Government Office, in co-operation with the Cabinet of the Deputy Prime Minister for Economy. This is a pilot phase that should result in a systematic quality control of all economic, social and environmental impact assessments.

### **Review by Ministerial Committees**

Some government committees and councils usually have an advisory role in the decision-making process. Most of these bodies were created on an ad hoc basis prior to 2002, when general rules unifying the structure and rules of procedures were set down<sup>8</sup>.

The Legislative Council of the Government (LCG) has already been mentioned above in the section on review by the secretariat of the government. Chaired by the minister responsible for legislation, the LCG deals with and co-ordinates the legislative activities of the government.

The Government Committee for the EU co-ordinates government policies related to the European Union. It is chaired by the Minister of Foreign Affairs and consists mainly of deputy ministers. In selected cases, the proceedings of this committee may replace formal inter-ministerial consultations (see above, section on inter-ministerial consultations).

The Economic Council of the Government was established quite recently. It is chaired by the Deputy Prime Minister for Economy. Its members are the economic ministers as well as economic advisors of the Prime Minister; there are also observers, such as the Governor of the Czech National Bank and Head of the Czech Statistical Office, as well as observers from both chambers of parliament. The Council co-ordinates the preparation of the Government Economic Policy and of important policies and tools supporting this policy.

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<sup>7</sup> “justification report” in the case of a draft law - see below.

<sup>8</sup> These rules should be improved in the framework of the Central State Administration Reform.

Many other councils and committees are responsible for various horizontal agendas, such as sustainable development, human rights, Roma community affairs, minorities, and business environment simplification. Some of these bodies have their official “seat” and secretariat in the Government Office, while others are placed in ministries (those chaired by a specific sectoral minister). Although in some cases they have a co-ordinating role, the main function of these councils and committees is the preparation of concrete measures or policies rather than co-ordination.

With the exception of the Government Committee for the EU, there are no formal rules as to what should or must be discussed by the above-mentioned bodies. Neither are there any obligations concerning the results of discussions. Consequently, it may happen that a policy that had been agreed unanimously in a council or committee (for example, in the Economic Council, which is attended by deputy ministers instead of ministers) is then not agreed by the government, where ministers may present completely opposite views.

### **Decision by the Government**

The agenda of the government session is prepared by the Government Office six days in advance. It is then distributed to members of the government. By that time, all of the documents that are going to be discussed during the particular session should already have been submitted to the Government Office and then distributed to members of the government by the GO, both electronically through a system called “eVlada” and in paper form. As there are no sanctions for breaking this six-day rule, sometimes documents are distributed later than six days before the session starts. What is even worse, ministries sometimes change the documents after distribution, and the minister then brings the new version directly to the government session. This situation can also be illustrated by the fact that the system for electronic exchange of government documents has had to be changed recently to enable a revision of documents even after they have been placed on the agenda of the upcoming session.

Ministerial officials usually prepare a statement concerning a particular document for their minister. One unit is responsible for this task, which asks other units in the ministry for their opinions and then prepares the final statement. It is not ensured that the officials commenting on the draft final statement are the same as those who had commented on the document during the inter-ministerial comment procedure.

The minister is not bound in any way by the positions presented by the ministry during the preparatory processing of the document. As a result, it is possible that a document that did not have any problems during the inter-ministerial comment procedure is then rejected by the government.

All government resolutions are published on the Internet. This publication applies, however, only to resolutions and not to documents and/or accompanying reports. The most important policies may then be published on the particular ministries’ web sites, but there is no obligation to do so.

### **Passage by Parliament**

The final version of the document, as approved by the government, must be prepared by the submitting ministry in accordance with the conclusions of the government session. In the case of draft primary legislation, the final version is signed by the Prime Minister and then sent (by the Government Office) to the lower chamber of parliament.

During discussions in parliament and its committees, the ministry represents the government before the MPs. The Government Office does not have any role in co-ordinating the government’s representation in parliament.

### **Implementation and Monitoring**

The Office of the Government is responsible for monitoring the implementation of the government’s decisions. If a government resolution assigns a task to some ministers (usually to prepare a paper or draft law and/or submit it to the government), a “task sheet” is prepared for every decision of the government. The GO monitors whether these tasks have been completed. If not, it can inform the government and the Prime Minister. However, there is no review of the compliance with government decisions in terms of content, performance or effectiveness.