

COMPARATIVE ANALYSIS OF ACCESS TO INFORMATION IN V4 COUNTRIES + ESTONIA

THE PURPOSE

Is to provide a comparative overview of the 5 states and to provide further recommendations and conclusions.

METHOD

Comparative analysis of the selected areas

THE COMPARED STATES

Visegrad 4 + Estonia

COMPARED AREAS

LEGAL FRAMEWORK OF THE COMPARED STATES - BASE FOR COMPARISON OF RIGHT TO INFORMATION

This section will address the legislation regarding the right to information in the 5 examined countries.

In the Czech Republic the basic principle of right to information is defined by the Charter of Fundamental Rights and Freedoms in its Article 17 which says that the right to information is guaranteed and may be only limited by law if necessary in a democratic society for the protection of the rights and freedoms of others, the security of the state, public security and protection of public health and ethics.

The institutional right to information is then implemented through Act No. 106/1999 Coll., the Freedom of Information Act 2 (hereinafter: FOIA) and the special Act No. 123/1998 Coll., on the right to information about the environment addressing the institutional right to a friendly environment. However, the Czech analysis emphasizes the FOIA as the primary source of the legislature as the law contains a number of legal institutions that are shared by both acts.

The Hungarian legislature is based on Article VI of the Fundamental Law of Hungary. The basic act on this field is the Law CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (hereinafter: DPA). The DPA determines the legal grounds for restrictions to the right to have access to information held by the public authorities, including issue of internal documents. This law determines the basic terms, such as *“personal data”*, *“data of public interest”* and *“data public on grounds of public interest”* and it defines which of these *“data”* are publicly accessible and under which circumstances.

In Poland the right of access to public information is based on Article 61 paragraph 1 of the 1997 Constitution of the Republic of Poland, which provides that: *A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.* This provision also ensures access to documents and entry to sittings of collective organs of public authority formed by universal elections. More detailed regulations were laid down in the Act of 6 September 2001 on access to public information (hereinafter: UDIP). The Act grants access to public information to everyone and defines public information as ‘any information about public matters’.

As in the Czech Republic also in Slovakia the basic principle of right to information was defined by the Charter of Fundamental Rights and Freedoms, in particular in its Article 17. The Charter of Fundamental Rights and Freedoms was adopted by Czechoslovak Federal Parliament as the Constitutional Act no. 23/1991 Coll. Eventually, in Slovakia the right of access to information is based on Article 26 paragraph 1 of the Constitution of the Slovak Republic which declares: Freedom of expression and the right of access to information are guaranteed. Furthermore, Article 26 paragraph 5 declares the obligation or duty of public authorities to provide information on their activities.

The institutional right to information has been then practically implemented through Act No. 71/1998 Coll., on the right to information about the environment and eventually through Act No. 211/2000 Coll. on Freedom of Information (hereinafter: FOIA), as amended. The Freedom of Information Act states principle of publicity – *what is not secret is public*. Therefore, according to the FOIA any information (data) that a public authority has, which is not characterized as classified, is public information¹.

Similarly to Slovakian situation, access to information in Estonia is also characterized by active and passive releases of information. The oversight body, Estonian Data Protection Inspectorate advocates for all public institutions to actively publish public information. However, due to lack of capacity, skill or will this is not always done and requests for information are a common place occurrence.

The Estonian analysis presents a broad list of laws or legislative provisions, which deal with right to information, limits and rights on information to be provided. However, the main laws and legislative provisions mentioned in the analysis are the Estonian Constitution, Public Information Act, Personal Data Protection Act and Electronic Communications Act.

As presumed, all 5 countries have legislative provisions on right to information and thus some forms of institutional enforcement mechanisms. The national analyses presented in the study focus on the enforcement mechanisms more than the legislation itself. The quality of the legislative provisions is not the only aspect to be considered. This analysis therefore – in line with the national – analyses focuses on the problematic of implementation of legislative provisions and their enforcement mechanisms. It will compare the following enforcement mechanisms mentioned in the national analyses:

- 1) **THE POSITION OF ADDRESSEES OF LEGISLATION – THEIR ROLE IN LAW ENFORCEMENT**
- 2) **INSTITUTIONAL OVERSIGHT, MONITORING AND AUDITING**
- 3) **SANCTIONS**
- 4) **GUIDANCE**
- 5) **TRANSPARENCY AND PUBLIC INVOLVEMENT**

¹ On February 20, 2015 the Minister of Justice entered a legislative proposal amending the existing FOIA No. 211/2000 Coll. into the Interdepartmental Comments Procedure. Among other proposed changes, the legislative amendment should clearly define term *information*.

THE POSITION OF ADDRESSEES OF LEGISLATION – THEIR ROLE IN LAW ENFORCEMENT

In the Czech Republic it is the applicant (citizen, company, newspaper etc.) who has to carry the burden of exercising the right to information. In other words it is the applicant who has to submit a request for information and apply additional measures, such as appeal to superior office or another relevant authority, if the obliged body for some reason refuses to provide information.

There is a major issue that often prolongs the process of releasing the information. A superior authority may only cancel an invalid decision and order an obliged body to reopen the application. It may not order the obliged body to actually publish the requested information. This limitation enables the obliged bodies to repeatedly refuse to provide the requested information, albeit following their legal obligation to the superior authority. The obliged body may always provide new reasoning for their refusal based on a legal or pseudo-legal clause and the applicant has to appeal again. The Czech analysis describes this situation as an “administrative table-tennis,” where the superior authority may constantly cancel all decisions made by the obliged bodies, but without any actual result for the applicant of the information.

Another issue is the lack of “public interest test,” where the FOIA in certain cases does not make it possible to verify whether public interest in publishing this information is stronger than the reason to protect it. There are therefore no clear rules for the applicant as the test is currently only used in court practice, which only takes place if the superior authority agrees with the obliged body in the reasoning of the refusal and the applicant seeks legal action. The reasons for not publishing certain information are often protection of personal data and trade secrets.

The obliged bodies also often use unreasonable costs of providing information to discourage applicant from pursuing the information. Finally, the obliged often use inaction. The period for providing information passes, the obliged body doesn't issue any decision and the applicant has to file a complaint. If the superior authority fails to remedy the complaint, the applicant has to defend his right in court. After a court decision, it is possible for the obliged body to deny providing information, thus finally issuing a decision. That decision then has to be yet again defended by the applicant. These delays mean that the process may take several years and the requested information might lose some or all of its value.

The situation in Hungary is a bit different, since the obliged bodies have to according to the law on the Right of Informational Self-Determination and on Freedom of Information (DPA) promote and provide general public with accurate information. That is done mainly via their websites, where a specified set of data has to be published on a standard disclosure list and regularly updated. The DPA also specifies special disclosure lists, if some information must be published based on a legal act and ad-hoc disclosure lists, which are based on obliged body's own initiative.

The 2012 annual report made by the National Authority for Data Protection and Freedom of Information (Data Protection Authority) however states, that many obliged bodies (especially local self-governmental organs) still have not complied with their obligation to disclose all the necessary data.

Obliged bodies also have to provide information based on any request made by an applicant and the rules are in favor of the applicant. The applicant for example doesn't have to give reasons for the request. On the other hand the obliged body has to provide reasons of refusal within a short period of 8 days.

a) if, as regards the refusal of any request for access to data of public interest, the data controller is granted discretionary authority by law, refusal shall be exercised within narrow limits, and the request

for access to data of public interest may be refused only if the underlying public interest outweighs the public interest for allowing access to the public information in question (existence of some kind of, limited, overriding public interest test).

There is a form of a limited overriding public interest test.

In case of non-compliance or refusal from the obliged body, the applicant may choose between the judicial remedy procedure and the application to the Data Protection Authority. The Data Protection Authority may even intervene on the behalf of the applicant, if the applicant chooses the judicial remedy.

The Hungarian analysis though points out an unfavorable development in the access to information. It mentions a fact that since 2010 (when the new constitution was adopted), it has been more difficult to get information from the obliged bodies. It is reportedly quite frequent that the information is only provided after an appeal to a court. The analysis also mentions recent amendment to the DPA that might lead to arbitrary refusals. However, the full impact of the new amendment is yet to be observed and analyzed.

Similarly to Hungarian legislation, the polish Act of 6 September 2001 on access to public information (UDIP) obliges relevant bodies to publish information in two ways. The first one is publication of data in the Public Information Bulletin (BIP). BIP is an electronic publication where a given institution should regularly upload information on its activities. If the data sought by an applicant are not available through BIP, the applicant can approach the institution directly and submit an application. The obliged body than has 14 days to provide information or issue a negative decision. If the decision is negative, the applicant has a right to lodge an appeal to a superior office or authority, or to submit an application for re-examination of the request. If the decision is upheld, the applicant has a right to lodge a complaint to the administrative court and finally, if the request is unanswered, the applicant has the right to lodge a complaint for failure to act. Since there is no central body that would inspect whether the provision of UDIP are adhered to, administrative courts are the only entities which can actually exercise control. The problem is that the courts' decisions may be regarded as guidelines by the obliged bodies, but they are in no way binding to them.

In Poland, the applicant who is interested in obtaining information has the initiative, both in regard to obtaining the information and appealing against the decision refusing access to the requested information. It is also the applicant who has to prove that the (negative) decision of an obliged body contravenes the provisions of UDIP. A similar principle applies in the case of complaints declaring failure to act. There are however no official guidelines concerning access to information and even though UDIP is not a complicated piece of legislation, it may be difficult to understand for an ordinary citizen. Furthermore, since no guidelines are on display in public offices, citizens are often unaware of their right to information.

In Slovakia, analysis recognizes active and passive release of information. The obliged bodies should publish information regularly. However, their inaction is common. Therefore, a passive release of information based on a request by an applicant needs to be applied. However, the principle of overriding public interest is applied in cases of protection of personal data, trade secret, information on decision-making activity of courts and criminal investigators, information on conciliation and arbitrage procedures, information on control or supervision carried out by public authorities and information handed to the obligated person by another person in the absence of a legal obligation.

While the request for access to information has to meet certain criteria, the obliged bodies also have to provide information based on any request made by an applicant. Furthermore, the rules are in favor of the applicant since all information should be disclosed if the law does not state otherwise (if the information is not classified). The obliged body has to reply on the request for information within a period of 8 working days. This time period can be upon request of obliged institution prolong two times by additional 8 working days. The obliged institution must inform the application that it requests additional time for its reply².

² The legislative amendment introduces a fee in cases of excessive requests to access information. If the provision of information by obliged body exceeds the length of 200 pages, the obliged body will have the right to charge a fee of 5 cents per A4 page. For villages the quota is set to 100 pages.

The applicant has to request the information from the relevant obliged body and apply additional measures if the request is denied, such as an appeal or court action. If the obliged body denies request for information, the entitled person can appeal to the superior office. This office can then change or cancel the original decision. The obliged body is then bound by that decision. The superior office can also disapprove the appeal and approve the original decision. If the appeal to the superior office doesn't provide the information, the applicant can take legal action against the obliged body under specific provisions of the Civil Procedure Code. There are however no official guidelines for the implementation of the right to information and even though the legislation is not overly complicated there are some aspects that are difficult to comprehend for the applicant.

The Estonian analysis recognizes active and passive release of information, where the obliged bodies should publish information regularly, but the passive release of information based on a request by an applicant is much more common. Similar to all other legislations, anyone can request information and it is not necessary to state reasons for the request. Reasons have to be provided only if the document has particular restrictions on access. The request for information has to be answered in a short period of 5 working days with possible extension. If the obliged body has not responded for the request or it has released a declining statement, the applicant may file an appeal to the Estonian Data Protection Inspectorate. If the applicant is not satisfied with the decision of the Inspectorate, he/she might lodge an appeal to the court. It is also possible to skip the Inspectorate entirely and turn directly to court.

According to the analysis the Estonian legislation is relatively confusing. But they do praise the Inspectorate, which has shown initiative in opposing the law's obscurity by publishing numerous guidelines for both the obliged bodies and the general public. Despite these efforts the general knowledge about the right to information is low. Finally, the Estonian legislation recognizes no such rule, as "in case of overriding public or private interest, information shall be provided." There are also no examples of this being discussed in court.

INSTITUTIONAL OVERSIGHT, MONITORING AND AUDITING

There are no oversight bodies that would promote, enforce and conceptualize the right of access to information in 3 of the compared countries – The Czech Republic, Poland and Slovakia. Estonia and Hungary have centralized bodies but they often don't function ideally.

In the Czech Republic the lack of an oversight and auditing body is further complicated by the fact that the applicant has to first appeal to a superior authority after receiving a declining answer from the obliged body. If the superior authority confirms the declining decision, the applicant must turn to administrative court. This combined with lack of action from the municipal bodies leads to very protracted processes that essentially render the requested information useless. The Czech analysis adds an example where it took 5 years from the original information request through several appeals and court decisions to the final answer.

The lack of systematic oversight is also evident on the Polish case. Even though obliged bodies are not entitled to inquire about applicant's interest in obtaining the requested information, the practice is often different and the receiving institutions often made the handling of the request conditional on obtaining additional information, such as detailed information about the applicant. It had to be confirmed by a provisional administrative court that such demands are illegal.

Another typical issue is attempting to avoid disclosure by arguing that they do not constitute public information. One of the examples mentioned by the Polish analysis presents a case where the Polish president signed an important law on pension funds based upon an expertise to which public access has been denied. Even though the Supreme Administrative Court did acknowledge the expertise should be in principle regarded as public information, the Court denied access based on concerns about copyright.

Similarly to the Czech situation, inactivity or ignoring requests is a popular strategy of the obliged bodies. Finally much public information is not disclosed because of trade secrets. Inconsistencies in the declining answers suggest that the trade secrets might be used as a deliberate tool to deny access to some public information.

In Slovakia there is no oversight body, which would cover the whole agenda of access to information. However, the Constitutional Court can rule in favor of extended interpretation of access to information. The rulings of the Constitutional Court are binding for the courts of lower levels. Some form of institutional oversight is provided by administrative court and superior offices, but only after active appeals made by the applicant.

As observed these 3 countries share similar issues. The lack of central oversight body often means inconsistency in granting access to public information. Subsequently, there are many ways for the obliged bodies to delay or deny access to public information. Since there are no specific guidelines and the administrative courts often cannot bind the obliged bodies to actually provide the requested information, process of acquiring information tend to get very protracted. The delay can be so extensive that the requested information is no longer valuable or relevant.

Estonia and Hungary both have centralized oversight bodies, which deal with the issue of access information. Even though they share certain similarities, their legal status and responsibilities vary.

The Hungarian National Authority for Data Protection and Freedom of Information exists since 2012, when it replaced the Parliamentary Commissioner responsible for the same fields. As the name suggest, main agenda

of the Authority is control of classified data. Only about 15% of total cases in 2012 dealt with the access to information. However, the Authority may conduct investigations upon notification or upon its own initiative. It may turn to court in connection with any infringement regarding public information and it also may intervene in court actions brought in by others. The Authority may make recommendations for new legislation concerning access to information and it may give recommendations in general or to specific obliged bodies.

Law guarantees the independence of the Authority. It may not be instructed in its official capacity and operates independently without interference or bias. It is only the parliament that can reduce Authority's budget and prescribe tasks. It is the President of Hungary, who based on a proposal by the Prime Minister appoints the President of the Authority for a period of 9 years. This person has to fulfill strict incompatibility rules and there are certain positions that he/she could not occupy even before the nomination. However, the European Commission has recently criticized Hungary, because one President of the authority has already been removed from the office before his tenure ended. This raises questions about the true independency of this office. There are also worrying indications that the Authority is severely underfunded compared to other offices of similar size.

In Estonia, there is a single body responsible for carrying out surveillance on the implementation of the Estonian Public Information Act and that is the Estonian Data Protection Inspectorate (the Inspectorate). Similarly to the Hungarian office, the Inspectorate is responsible for the state supervision regarding the areas of data protection and access to information. It has the right to monitor the implementation of the Public Information Act and it may, if deemed necessary, apply state coercion. The Inspectorate also participates in development of legislation, concerning its area of activity. It further develops policies, strategies and development plans as well as it prepares and implements international projects in its field.

The Inspectorate is acting as the defender of all information rights (both privacy and transparency related). To fulfill its purpose of protecting these rights, the Inspectorate can conduct investigations, issue coercive measures such as fines and enforce proceedings without court decision. The Inspectorate is with courts the only institution that can actually force the obliged body in question to release the requested public information. That is a major difference from the other countries, where the courts usually can only force the obliged body to issue a decision, not to release the information.

Even though the Inspectorate is an independent public institution, it acts under the jurisdiction of the Ministry which may act as a source of influence.

SANCTIONS

The Czech analysis mentions the lack of sanctions as one of the main reasons why the right to information is being violated on such a large scale in the Czech Republic. Even though there have been several proposals to introduce legal sanctions defining clerical errors and violation of duties as offences, the FOIA does not define any direct penalty for violation the set duties neither by the office or a specific clerk. It was primarily the public administrative bodies that rejected these specific sanctions and even the Ministry of Interior finally concluded that these proposed sanctions are not necessary. No legal form of sanctions against the particular offices and persons means that they can essentially deny right to information illegally without major consequences.

The Polish law UDIP does specifies penal liability for the failure of obliged to provide access to information. The law specifies several sanctions such as fine, restriction of liberty or even imprisonment. However, the Polish analysis raises doubts regarding the implementation of these sanctions. It is for example very difficult to resolve who should be personally held liable for the failure. Internal penal provisions of the obliged bodies do not rule these cases and they are examined by criminal courts. However, prosecution of these cases is very low. Out of the 27 cases of litigation until 2012, only one case lead to indictment. The remaining proceedings were discontinued. The Polish analysis finally mentions a worrying fact: provision of false information, if it is not done in the form of a public document, is not prosecuted and presents a potential legal loophole, that might be exploited.

The Hungarian analysis suggests that the sanctions for not disclosing public information are weak. Similar rules apply for the Hungarian applicants as they do for the rest of the countries. Unless the applicant turns to the administrative court or to the Data Protection Authority, the non-compliance with the law on right to information remains without any consequences. The Authority does not have the authority to order the obliged body to disclose the data requested by the applicant. The Authority can only advise to do so. The court may order the obliged body to disclose data, but no legal consequences arise in a case of non-compliance with the judgment. This situation is therefore similar to the one of the Czech Republic.

There is however an ongoing case, where the webpage atlazso.hu was declined access to data from the Media Service Support and Asset Management Fund. The Fund continued to decline the right to information even after the first and second instance courts ordered the Fund to provide the requested information. The police had to launch a criminal investigation, which finally led to compliance. The investigation is still ongoing as it tries to determine the person responsible for the hiding of the data of public interest from the requesting party.

In Slovakia, cases, which might result in monetary and other sanctions, are resolved according to the Civil Procedure Code and the general Act on Offences. The applicant requesting information has to go through the usual round of appeals to the superior office and then the appeal to an administrative court. Sanctions then might be imposed by relevant district authorities on those respective civil servants who intentionally provide false or partial information, or issues a ruling or order, which causes the breach of right to information. A fine up to 1650EUR or a ban on activity of up to 2 years may be imposed. It is important to mention that no internal disciplinary sanctions against concrete employee of the obliged body are specified in legislation.

The sanction system of Estonia is far more powerful than in the other observed countries. There are sanctions in place for violating the time limit to disclose the information, making decisions in conflict with the law and quite importantly for intentional provision of false information. The Inspectorate has the right to address the breaches regarding the time limit, all other breaches as handled according to the Code of Misdemeanor Procedure. Obligated bodies can be fined of up to 1200EUR. As mentioned before, the Inspectorate may issue a percept to force the institution in question to release the requested data. If the institution does not comply a fine may be issued for the person responsible for access to information in that given institution

and the refusal will be handled as a misdemeanor. However, as mentioned before the Inspectorate primary purpose is not restrictive. It is rather advocating corrective actions and presenting recommendations, as the resources for carrying out proceedings for every breach are limited.

The inspectorate monitors and judges how the different obliged bodies handled access to public information and issues sanctions, if the bodies have not disclosed information properly. Sanctions are then published on inspectorates website. Court's decisions and sanctions regarding the breaches of right to information are then published on the State Gazette's webpage.

GUIDANCE

The guidance for the access to information is necessary and there should exist centralized responsible oversight bodies to provide it. That is a general conclusion in most of the compared countries. The Czech Republic lacks such a body entirely and there is little to none guidance on the area provided by any state institution. The analysis mentions that the Ministry of Interior does provide some guidelines and methodical assistance to regional self-governing bodies, but usually upon individual requests. This however does not address the need to inform the general public about the need for openness in public sector. This role is partly supplemented by non-governmental organizations, which focus on the area of right to information and provide consultations, analyses and legal aid. The Czech analysis stresses the lack of transparency monitoring that would provide statistics of requests and efficiency of providing information. There is also solemn need for methodological assistance and education for both the obliged bodies and general public.

According to the law, the Hungarian obliged bodies are limited to the fair implementation of the DPA. That means that they have to release contact information and all the information required by the standard disclosure list. The institution has to also give guidelines about the ways how request information, internal procedures and potential fees. The analysis though praises the NGOs that are reportedly much more important. The Eötvös Károly Institute stands against the misuse of power and it tries to engage general public about many issues and right to information as well. It creates policy proposals and sparks public debate. The Hungarian Civil Liberty Union has among other activities provided a set of tool for journalists on how to gain access to data of public interest. Other non-governmental bodies such as the web atlatsz.hu, K-Monitor Office and Hungarian Transparency International all aim to reveal corruption, conduct investigative research, or simply raise public awareness about the issue of access to information.

There are no official guidelines in Poland. Ordinary citizens and representatives of obliged bodies alike are usually unaware of their rights and responsibilities and the general knowledge about right to information is thus poor. There are no systematic training efforts that would change this unfavorable situation. In this regard, the analysis emphasizes the NGO Watchdog Polska, which has established the Non-Governmental Centre on Access to Public Information, which emulates the missing oversight and consulting body. Studies and papers about the right to information can be find on webpages such as jawnosc.pl and some civic blogs.

In Slovakia there is likewise no official institution providing guidelines on issues of access to information. The only state driven effort to educate would be educational seminar on access to information legislation by the Educational Center of the Ministry of Labor, Social Affairs and Family. Those are however on commercial basis and not widely accessible. It is the NGO sector that has been providing guidance to public on FIOA, from publications, naming and shaming the inactivity of obliged institutions to public seminars.

Estonia has no institution that would provide systematic education to the general public about their right to access information. The Inspectorate does however provides numerous guidelines and instructions on its website. There are specific instructions on how to compose a proper request for information and what are the specific deadlines. The Inspectorate does not educate public directly, but it does educate public information coordinators, which must be present in all government institutions besides state-owned companies. The training takes place 4 times a year and the Inspectorate suggests creation of a privacy policy document, which explains the nature of public data stored by institutions and the proceedings for releasing public data.

The inspectorate further monitors public institutions. It has conducted 15 inspections thus far. The aim is to recognize best practices and take note of the worst examples. The Inspectorate proclaims that the situation has vastly improved over the last couple of years and all government institutions now for example have

document registry. The Inspectorate even gives prizes to institutions with exceptionally transparent, user friendly and accessible access to public information.

As observed, all V4 countries share the same issue. The guidelines are either vague or non-existent. There is little or none support, guidance and potential legal aid for those seeking information. Official sources are often supplement by NGOs, which however have neither the capacity nor finances to provide sufficient support for the whole general public. Estonia has a much better record. Their Inspectorate provides support to the obliged bodies, it presents guidelines accessible to general public and it does carry out inspections to provide feedback and suggest improvements.

TRANSPARENCY AND PUBLIC INVOLVEMENT

Transparency and public involvement are the key steps to stronger civil society. Free access to information concerns all spheres of public life, citizens, companies and obliged bodies alike. V4 countries besides Hungary have no or very little oversight over the active publication of information and usually very inefficient tools to actually gain access to information. Estonia is far ahead as it already plans to create a centralized information gate that will unify all the necessary public data on one already existing platform.

The Czech analysis perceives the active public participation in the legal framework of access to information as a potential tool for improvement. The citizens have an option to exercise their right in individual cases, where the court decision could mean an important breakthrough and a precedent. The public should also comment on proposed legislature. However, NGOs predominantly carry out the bulk of the public monitoring of access to information in the Czech Republic and individuals do so only in rare cases. Nevertheless, there has been a successful campaign by citizens and civil initiatives that prevented an unfavorable amendment to the FOIA. The amendment, which negatively influenced application of the right to information and violated principles of openness, was then rejected because of public pressure.

The FOIA does define duty of the obliged bodies to publish selected types of information such as organizational structure, filing office, superior office, budget, etc. Unfortunately, there is no penalty in case of failure to provide such information and since there is no monitoring oversight body; it is difficult to summarize how much obliged bodies adhere to legislation. Another pressing issue is the format of the data. The current situation is very inconsistent and specific deficiencies have been pointed out. The so-called “open data” that is easily accessible, processed and ready for evaluation is not prevalent. Different central or local institutions often issue different formats of data, often not in machine-readable form.

As mentioned earlier, the DPA in Hungary obliges relevant public institutions to provide and promote accurate information concerning their duties and matters under their competences. Basic information about the obliged bodies is published through 36-point disclosure list of data at their websites. However, many institutions have not yet fully disclosed all required data. The Hungarian analysis points out that there is a rising tendency of cases, where the request for information is only fulfilled after a court decision. It does not specify if it is individuals or NGOs who drive majority of these cases. NGOs are though mentioned as the driving force in education, promotion and legal aid.

Polish NGOs have emphasized active release of data as a key step to expand access to public information. If the relevant data and documents were regularly and proactively published, there would be less need for public involvement in individual request for information. There is a platform called the Public Information Bulletin (BIP), where the institutions to which UDIP applies are supposed to upload information. BIP was intended as a tool of proactive communication, but the practice is not satisfactory. BIP websites are not maintained centrally, but each institution treats it separately. This leads to inconsistency and confusion and even though the amount of data gradually rises, the proportion is still low. BIP also lacks proper supervision and citizens have no means to force a given obliged body to publish information there.

It is the individual citizens or NGOs exercising their right to information, who carry public oversight in Slovakia out ad-hoc. The public may request information and if they are denied of that right, they have the right to appeal. Slovakian obliged bodies have to publish a vast amount of data such as rules, prices of administrative procedures and in some cases even schedules of individual politicians. Most of the data is published on the Internet. However the Slovakian analysis points out that the format and timeliness of published information varies from central administration to local governments³. There are also noticeable differences between

³ The legislative amendment introduces a fee in cases of excessive requests to access information. If the provision of information by obliged body exceeds the length of 200 pages, the obliged body will have the right to charge a fee of 5 cents per A4 page. For villages the quota is set to 100 pages.

institutions. While some choose to disclose information properly in a machine-readable format, some obliged bodies tend not to disclose anything and provide info in non-machine readable format.

Estonians take public oversight seriously and the Inspectorate is working towards a general unified database for all the relevant public institutions in Estonia. The infrastructure to publish information already exists, but the institutions are not yet obliged to proactively publish to the information gate. The Inspectorate therefore advocates for rules that would force obliged bodies to publish both at their own and commonly accessible websites. This would provide a broader overview from one place, which would significantly simplify access to public information. Even though individual requests are still the main tool to access public information, the notion is to strengthen the proactive release. The advantages are apparent: all the information will have a unified format and it will be thus machine readable, easily accessible and comparable.

