Research on institutional enforcement mechanisms of conflict of interest, political party financing and access to information

in V4 countries and Estonia.

oživení

RESEARCH ON INSTITUTIONAL ENFORCEMENT MECHANISMS OF CONFLICT OF INTEREST, POLITICAL PARTY FINANCING AND ACCESS TO INFORMATION IN V4 COUNTRIES AND ESTONIA.

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INSTITUTE OF PUBLIC AFFAIRS (IPA) / FUNDACJA INSTYTUT SPRAW PUBLICZNYCH (ISP)

IPA is a leading Polish think tank and an independent centre for policy research and analysis established in 1995. Its mission is to contribute to informed public debate on key Polish, European and global policy issues. Main areas of study include European policy, social policy, civil society, migration and development policy as well as law and democratic institutions.

OŽIVENÍ o. s.

Civic association Oživení is a non-profi t non-governmental organization founded in 1997. Oživení endeavours to increase the transparency of decision-making processes and financial management at public institutions in the Czech Republic, as well as the personal liability of public offi cials, and thereby boost the active participation of citizens. The main areas of interest include the right to information, public procurement and management of public property. Last but not least, Oživení is involved in spreading anti-corruption know-how and educating and networking anti-corruption and civic activists.

THE EÖTVÖS KÁROLY INSTITUTE / EÖTVÖS KÁROLY INTÉZET

The Eötvös Károly Institute was created in January 2003 by the Soros Foundation in order to establish a novel, unconventional institutional framework for shaping democratic public aff airs in Hungary. Acting hand in hand with other entities, including advocacy groups, watchdog organizations and other institutions, the Eötvös Károly Institute wishes to contribute to raising professional and general public awareness and to shaping the political agenda in issues with an impact on the quality of relations between citizens and public power.

TRANSPARENCY INTERNATIONAL SLOVAKIA / TRANSPARENCY INTERNATIONAL SLOVENSKO (TIS)

TIS belongs to the global movement which leads the fi ght against corruption and brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. The mission of TIS is to create change towards a world free of corruption. TIS works together with other national branches and exchanges experiences associated with fi nding system solutions on how to curb corruption and increase transparency.

TRANSPARENCY INTERNATIONAL ESTONIA / TRANSPARENCY INTERNATIONAL KORRUPTSIOONIVABA EESTI (TI)

Transparency International Estonia is a leading civil society organization in the fi ght against corruption in Estonia. TI Estonia is an accredited national chapter of Transparency International. TI Estonia's main fields of activity are analysing and highlighting the risks of corruption, awareness raising and strengthening cooperation between public institutions and private persons in the fight against corruption.

CONTENTS

FOREWORD

This paper was prepared under the "Promoting eff ective anti-corruption framework in the CEE countries" project; a joint project of 5 countries (Visegrad 4 and Estonia).

The project's overall objective is to enhance institutional anticorruption (AC) frameworks in CEE countries for more eff ective AC measures enforcement. The project sets a broad approach to so-called soft corruption areas, often regarded as preventive areas for hard corruption. This approach consists of researches, comparative analyses, best practice studies and recommendations for the specifi c situations of post-communist EU countries.

Results from researches and best practice studies are complemented by a set of general recommendations for CEE countries on specifi c AC measures to be enforced, including the possibility of establishing or improving a national ACA, according to international commitments.

The most favourable factor in this project is the multiplication of experience and expertise thanks to the cooperation of 5 national anticorruption NGOs: Oživeni Czech Republic, Institute of Public Aff airs Poland, EKINT Hungary, Transparency International Slovakia and Transparency International Estonia.

The scope of the proposed research is limited to institutional enforcement mechanisms in 3 areas: Confl ict-of-Interest, Political Party Financing and Access to Information. The basic assumption is that each country (V4 and Estonia) does have some legislative provisions on the 3 areas mentioned, and thus institutional enforcement mechanisms exist to some level in each country.

The methodology chosen for this paper is a standardised content analysis of relevant documents. This qualitative analysis is based on relevant sources focusing on the issues as well as national and international comparative studies of confl ict of interest. The paper also employs a secondary analysis of data/results of research done in the field so far. Other sources were comparative studies and assessments of national systems made by international organisations, principally the OECD, the Council of Europe's Group of States against Corruption (GRECO) and The World Bank. International online resources, as well as the legal texts of particular countries, were also examined.

Conflict of Interest

SOUHRNNÁ ANALÝZA ZEMÍ EU

I. FRAMEWORK / OVERVIEW

TERMINOLOGY AND METHODOLOGY

Most of the EU member states do not use the concept of conflict of interest literally, and the legislation usually does not provide a legal definition on conflict of interest[1]. In general, the concept of conflict of interest as a legal term is relatively new. In most countries it has been introduced in the legislation as an issue of the fight against corruption. As a result, the types of conflict of interest recognized in the CEE legislation primarily include holding a public office simultaneously with other private or public jobs or positions, or an economic conflict of interest. With the increased contacts between the private and the public sectors due to the increasing trend towards private-public partnerships, conflicts of interest situations are becoming more frequent.

This paper uses as a conceptual reference the OECD´s generic definition of conflict of interest:
"A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of their official duties and responsibilities[2]."

For the purpose of this paper the term "*public office holder*" is being used generically to refer to public servants, civil servants, public employees, elected officials, or any other kind of official who performs public functions or duties on behalf of the State, a government, or a government organization, where the exercise of lawful power is involved. This choice reflects that the main sources of conflicts of interest in OECD countries are: (1) secondary employment in the private sector; (2) private-public partnerships, and (3) shareholdings in an entity with a contractual or regulatory relationship with the government[3].

The methodology chosen for this paper is a standardised content analysis of relevant documents. This qualitative analysis is based on relevant sources focusing on the issues as well as national and international comparative studies of conflict of interest. The paper also employs a secondary analysis of data/results of research done in the field so far[4]. Other sources were comparative studies and assessments of national systems made by international organisations, principally the OECD, the Council of Europe's Group of States against Corruption (GRECO) and The World Bank. International online resources, as well as the legal texts of particular countries, were also examined.

[1] Compare with conflict of interest definitions in USA, eg. Utah: § 76-8-109. Failure of member of Legislature to disclose interest in measure or bill. (a) *"Conflict of interest" means an action that is taken by a regulated officeholder that the officeholder reasonably believes may cause direct financial benefit or detriment to the officeholder, a member of the officeholder's immediate family, or an entity that the officeholder is required to disclose under the provisions of this section, and that benefit or detriment is distinguishable from the effects of that action on the public or on the officeholder's profession, occupation, or association generally.*
Available at: http://www.ncsl.org/research/ethics/50-state-table-conflict-of-interest-definitions.aspx
[2] BERTÓK, János. *Managing conflict of interest in the public service: OECD guidelines and overview*.
Paris, France: Organisation for Economic Co-operation and Development, c2003, p 59. ISBN 92-641-0489-5.
[3] Transparency International, Global Corruption Report 2003, p. 320. Available at: http://archive.transparency.org/publications/gcr/gcr_2003
[4] DISMAN, Miroslav. Jak se vyrábí sociologická znalost: Příručka pro uživatele. 3.vyd. Praha: Karolinum, 2000, 374 s. ISBN 80-246-0139-7, s. 166.

INTRODUCTION

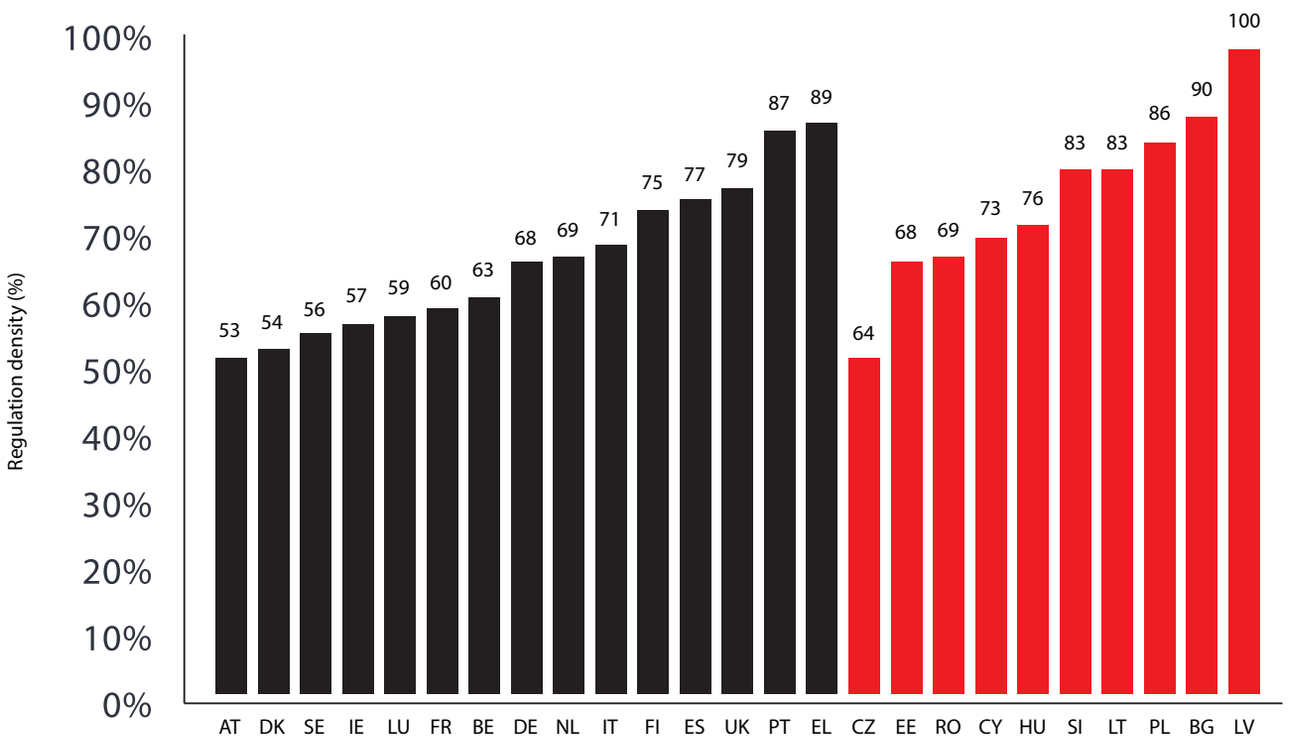
The essence of conflict of interest is violating the socially acceptable balance between the public office holders´ personal interest and the public interest. Conflict of interest situations that are not properly managed may lead to corruption – they can distort competition and the allocation of public resources. It is visualized as a threat to national development. Identifying and resolving conflict of interest situations, is also crucial to good governance, maintaining trust in public institutions and democracy in general.

In practice, conflict of interest systems in EU member states are far from being standardized internationally and may differ even within a state. Generally speaking, conflicts of interests can be approached in one of two ways: restrictions (1) or disclosure (2)[5].

Nowadays the common EU member states standards in the field of conflicts of interests are comprised of[6]:

1. A set of rules, codes, standards and principles. Mostly these instruments enumerate a number of prohibitions, restrictions and obligations. Here, important differences exist as to the number of prohibitions, restrictions and obligations. Restrictions on conduct, incompatibilities or engagements aim to prevent situations that frequently give rise to conflicts of interest.

The results of recent relevant studies of conflict of interest have tended to become more numerous and stricter during the last decades. We can see an increase in the number of rules and standards which show the conflict of interest regulation density by EU member states[8].



Source: Regulating conflict of interest for Holders of Public Office in the European Union

[5] World Bank. Available at: https://agidata.org/Pam/Documents/COI%20Primer_30Sep2013.pdf
[6] DEMMKE, Christoph a kol.: Regulating Conflict of Interest for Holders of Public Office in the European Union Maastricht: European Institute of Public Administration, 2008. ISBN 978-929-2030-063. http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf
[7] Effectiveness of good governance and ethics in central administration: evaluating reform outcomes in the context of the financial crisis, http://www.dgaep.gov.pt/upload/RI_estudos%20Presid%C3%AAncias/ETHICS_REPORT_FINAL.pdf
[8] Ch DEMMKE, Christoph a kol.: Regulating Conflict of Interest for Holders of Public Office in the European Union Maastricht: European Institute of Public Administration, 2008. ISBN 978-929-2030-063. http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf

The strictest system is used in Latvia where all monitored conflict of interest categories[9] are regulated for all institutions[10] (100%). The countries with the lowest number of regulated conflict of interest issues are Austria, Denmark and Sweden. It appears that regulations do not necessarily lead to less corruption. For example, most Nordic EU member states have much fewer rules and standards in place than other member states but at the same time have relatively low levels of corruption and bribery[11].

2. Disclosure policies and registries of interests that require registering potential conflicts of interests and other interests. Here, differences exist regarding transparency requirements, the level of detail of reporting obligations and specific obligations (e.g. whether a spouse's activities should be registered or not) as well as regarding the monitoring of these obligations.

An integral element of anticorruption frameworks in recent years has become the use of financial disclosure systems. A disclosure system requires public office holders to disclose any interests that may compromise their ability to serve as unbiased agents of the public service. As the potential conflict of interest situations have grown, more countries have begun enacting laws requiring public office holders to submit income and asset declarations, mostly as a part of broader anticorruption strategies.
Income and asset declarations provide the means to monitor potential or existing conflict of interests. In Central and Eastern Europe, the strong motivation of many countries to join the European Union prompted the adoption of various anti-corruption laws. The introduction of asset declarations was the easy way for governments to demonstrate their determination to do something about the problem of corruption. *The task of the candidate countries was eased by the fact that the European Commission never possessed any hard evidence of the effectiveness of any particular solutions regarding public officials' declarations. As a result, almost any demonstrated effort – even if largely a formality – by countries to strengthen their systems usually counted as progress*[12].
Risks or conflicts of interest may be addressed with any combination of restrictions or disclosures; however disclosure systems require a significant capacity for auditing or reviewing disclosure forms and the establishment of a credible threat of consequences through the effective enforcement of sanctions.
Many countries have conflict of interest systems that have evolved from restrictions-based models to a hybrid model that incorporates some form of disclosure.

- Monitoring and enforcement mechanisms. Here important differences exist regarding the power and resources of ethics committees and ethics commissions. Also important differences exist as to (criminal and administrative) sanctions in cases of ethical misconduct.

To be analyzed in details in the following chapters.

- Training, education and guidance.

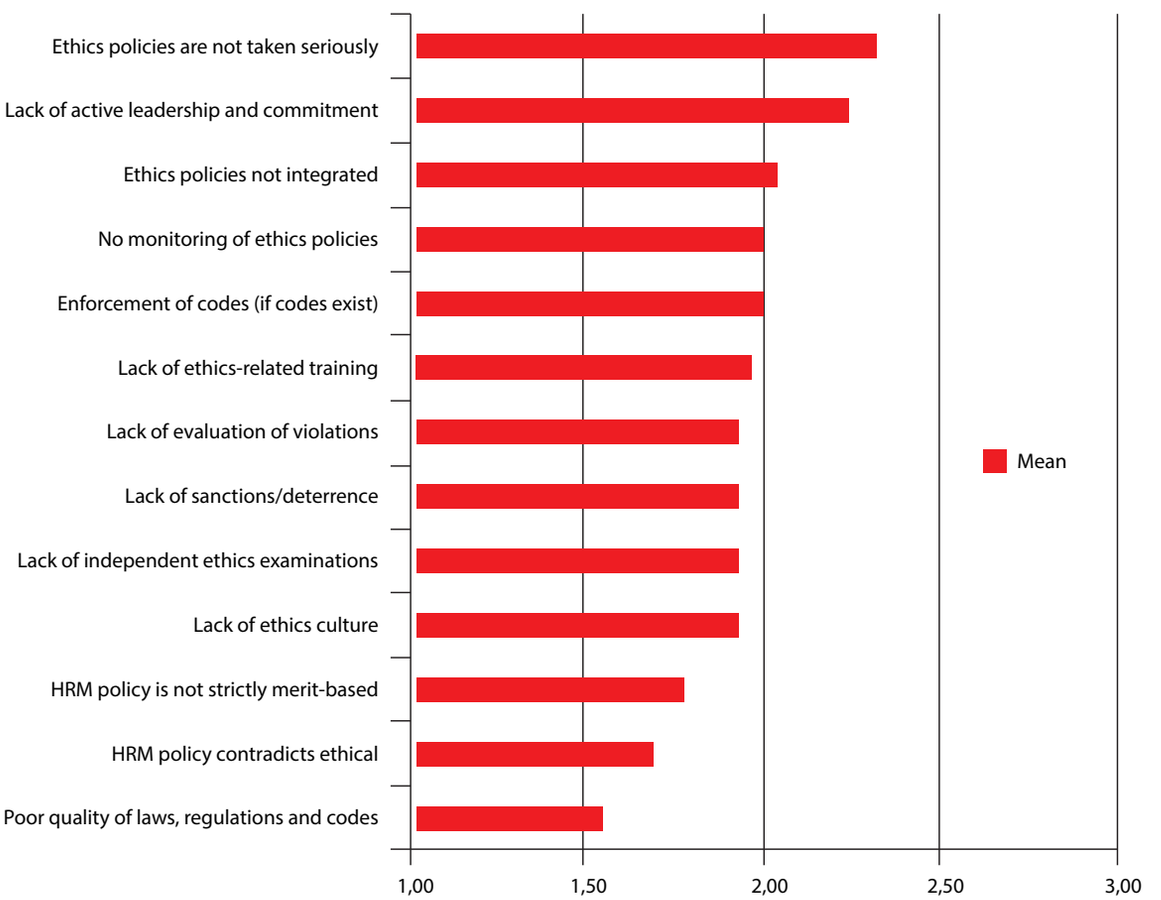
[9] Impartiality and incompatibility of posts, professional activities, outside activities, financial disclosure, gifts and similar issues, post-employment
[10] Government, parliament, supreme court, court of auditors, central bank.
[11] CPI Index 2012, http://www.transparency.org/cpi2012/results
[12] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing. http://dx.doi.org/10.1787/9789264095281-en

II. EU CONFLICT OF INTEREST ENFORCEMENT MECHANISMS OVERVIEW

The major obstacles and difficulties for an effective ethics policy which were identified in the study "Effectiveness of good governance and ethics in central administration: Evaluating reform outcomes in the context of the financial crisis (2011)[13]" are shown in Figure 7.

Major obstacles and difficulties for an effective ethics policy

(1 = noc an obstacle, 2 = minor obstacle, 3 = major obstacle)



Source: Effectiveness of good governance and ethics in central administration: evaluating reform outcomes in the context of the financial crisis. (2011)

The study reveals that there is low level of the monitoring of ethics policies as well as the enforcement of codes. This conclusion was confirmed by Demmke[14], namely there are problems when it comes to the implementation and effectiveness of the ethics rules.

[13] Effectiveness of good governance and ethics in central administration: evaluating reform outcomes in the context of the financial crisis, http://www.dgaep.gov.pt/upload/RI_estudos%20Presid%C3%AAncias/ETHICS_REPORT_FINAL.pdf

[14] http://soc.kuleuven.be/io/ethics/paper/Paper%20WS2_pdf/Christoph%20Demmke.pdf

Rules and instruments	Implementation	Effectiveness
Integrity policy	Almost all Member States	Ethics is gaining political importance
Disciplinary legislation	All Member States	Few dismissals per year, trend towards stronger enforcement
Codes of ethics	Almost all Member States, different implementation with regard to govermental levels and the private sector	Mostly perceived as purely theoretical, next step is better implementation
Conflicts of interest I	All Member States	Different in detail, difficulties in implementation and monitoring
Contlicts of interest II - Register of Interests	Gaining acceptance in more Member States	The management of register of interests is crucial. Danger of new bureaucracy, effective per case

Source: Ethics in the civil services of the Member States of the EU – Many Paradoxes but no need to be pessimistic. (2007) (data selection)

To select an exemplary or best practice EU member state in conflict of interest enforcement mechanisms is rather difficult. To recommend best practices depends highly on administrative traditions, structures, and culture which vary significantly. There is only little evidence which indicate progress in the anti-corruption policies of some EU member states which should be mentioned.
According to Transparency International the biggest Corruption Perceptions Index[15] improvers in 2013 are Estonia, Greece and Latvia[16].
According to SIGMA[17], in the area of conflict of interest detection and investigation system, the Latvian example could serve as a solution for analysis; the Spanish anticorruption prosecution office could also be inspiring. Another reason to look further at these examples is they each represent a different model of enforcement institution. In GRECO's final, fourth round evaluation, the area of conflict of interest was evaluated rather positively in both Latvia and Slovenia.
Another contribution highlighting countries that can serve as good examples is the report by a European Commission from February 2014 which provides an analysis of corruption within the EU's member states and of the steps taken to prevent and fight it[18]. In this report there are good practices concerning 5 anti-corruption agencies mentioned - The Slovenian Commission for Prevention of Corruption (CPC), The Romanian National Anti-Corruption Directorate (DNA), The Latvian Bureau for Prevention and Combating of Corruption (KNAB), The Croatian Bureau for Combating Corruption and Organized Crime attached to the State Attorney General's Office (USKOK) and Spanish specialised anti-corruption prosecution office.
In the light of the above, two good practice representatives were selected – Latvia and Slovenia.

[15] The CPI, measures the perceptions of public sector corruption. It uses data from international surveys that look at factors such as accountability of national and local governments, effective enforcement of anti-corruption laws, access to government information, and abuse of government ethics and conflict of interest rules.
[16] TI Index.
[17] SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the European Union and the OECD.
[18] http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-38-EN-F1-1.Pdf.

1. INSTITUTIONAL OVERSIGHT, MONITORING AND AUDITING

Institutional framework for compliance with the legislation is, as already mentioned, the key issue of the conflict of interest area. Such a framework should ideally provide both the implementation of the rules and their enforcement. While the EU member states have been active in recent years in implementing new rules and regulations, institutional arrangements for their enforcement has been rather neglected[19].
On the European scale, institutional structures at the national level are very different. We can find highly specialized institutions that have broad supervisory and investigative powers, or rather fragmented bodies which cover only a partial agenda concerning conflict of interest.

Types of conflict of interest enforcement bodies:

Country	Type of institution	Title/s
Bulgaria	- National audit office (for all branches of authority)	- Public registry department unit in the National Audit Office
Croatia	- **Specialised (semi-parliamentary) conflict of interest control body** - Special arrangements for state attorneys and judges	- Commission for the prevention of conflict of interest (for public officials) - State Attorney´s office and Ministry of justice for state attorneys - Ministry of Justice for judges
Czech Republic	- Administrative authority	- Administrative authority
Estonia	- Parliamentary body (for all branches of authority) and dedicated officials/ units within public institutions	- Parliamentary committee - Depositary of declarations is appointed by the head of an agency or authorised body (e. g. Local government body)
France	- Constitutional Court	- The Ethics Commission & The Conseil Consittutionnel
Germany	- President of the Bundestag and the Presidium	- President of the Bundestag and the Presidium
Italy	- The Competition Authority and the Communications Regulatory Authority - Civil servants and judiciary through hierarchy - Also high commissioner for employment, entrepreneurial and private interest	- The Competition Authority and the Communications Regulatory Authority - High commissioner for employment, entrepreneurial and private interest
Latvia	- Tax authorities and a **specialised anti-corruption body** (for all branches of authority)	- Department in the State revenue service - Corruption prevention and combating bureau
Lithuania	- Tax authorities, specialised ethics institution (for all branches of authority) and dedicated officials/units within public institutions	- The state tax inspection - Chief Official Ethics Commission - Specialised public officials or units in each state body

[19] Regulating conflicts of interest for holders of public office (HPO) in the European Union: a comparative study of the rules and standards of professional ethics for the holders of public office in the EU-27 and EU institutions (2008).

Norway	- The Quarantine Committee	- The Quarantine Committee
Poland	- None	- None
Romania	- **Specialised anti-corruption body** (for all branches of authority)	- The national integrity agency - The Permanent Bureau of the MPs Chamber of Parliament
Slovak Republic	- Committee of the National Council	- Committee of the National Council
Slovenia	- **Specialised anti-corruption body** (for all branches of authority)	- Commission for the prevention of corruption
United Kingdom	- The Committee on Standards and Privileges & the independent Advisory Committee on Business Appointment	- The Committee on Standards and Privileges & the independent Advisory Committee on Business Appointment

Source: World Bank, the Public Accountability Mechanisms Initiative (2012)

LATVIA

Corruption prevention and combating bureau:

The Latvian Corruption prevention and combating bureau/Korupcijas novēršanas un apkarošanas birojs (KNAB) is a multi-purpose anti-corruption agency with law enforcement bodies set up in 2002.

KNAB plays a leading role in controlling the implementation of what is considered to be a central piece of legislation in preventing corruption in Latvia, i.e. the Law on Prevention of Conflict of Interest in Activities of Public Officials (hereinafter Conflict of Interest Law). This law applies to all categories of public office holders, including members of Parliament (MPs), judges and prosecutors; it lays out a very comprehensive asset disclosure system which is monitored by both the KNAB and the State Revenue Service (SRS)

Besides KNAB, there are other institutions involved - the Committee of Mandate and Ethics which deals namely in supervision of misconduct, and the State Revenue Service in the veracity of declarations.

KNAB has broad powers of investigation and prosecution. The professionalism and commitment of KNAB to conflicts of interest enforcement appears to be beyond any doubt[20], but as described in GRECO's Third Round Evaluation Report, there are still several institutional flaws in the system: (i) KNAB sits under the direct supervision of the Prime Minister; (ii) the appointment and dismissal procedure for the Director of KNAB is made by Parliament upon the recommendation of the Cabinet of Ministers; (iii) the budget of KNAB is proposed and decided by Parliament, the same people that KNAB might potentially investigate.

Control over the activities of public office holders and the prevention of conflict of interest is one of main fields of KNAB.

The prevention branch is in charge of the control of public office holders (conflict of interest), the control of the financing of political parties, the development of analysis and countermeasures to corruption and education of public office holders and the public about corruption.

KNAB has the power to examine whether public office holders follow provisions of the law "On Prevention of Conflict of Interest in Activities of Public Officials" (the Law) and to enact administrative charges in cases when breaches of the Law are detected. The work is based on reports and complaints received by KNAB on possible breaches of the Law and the declarations of public office holders that are submitted to the State Revenues Service, but can also be requested by the KNAB.

[20] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%293_Latvia_EN.pdf

KNAB plays a central role in the system and in its ten years of existence has acquired broad recognition both at domestic and international levels. It is said to be one of the most trusted pillars of the State apparatus. Steps are currently being taken by KNAB to ensure that public officials better understand not just the applicable rules but, more importantly, the rationale behind those rules in order to promote greater self-governance and compliance. Notably, KNAB is working to ensure that more responsibility for the law rests with the relevant senior management structures.
The general recommendation to Latvia stated by GRECO's Fourth Evaluation Round is that measures be taken to strengthen the independence of KNAB, thus ensuring that it can exercise its functions in an independent andimpartial manner.

SLOVENIA

Commission for the Prevention of Corruption:
In 2002 the Government's Office for the Prevention of Corruption was established, followed by the creation of an independent Commission for the Prevention of Corruption in 2004 (CPC). The current CPC has been established following the adoption of the Integrity and Prevention of Corruption Act of 2010 which expanded the mandate, jurisdiction, power as well as independency of the previous commission. It applies to all public office holders in Slovenia. It contains detailed rules on conflicts of interest, incompatibilities, accessory activities, gifts, lobbying and asset declarations. The IPCA confers a central role to the CPC, an independent body, in supervising the implementation of these rules, developing awareness on integrity issues and preventing corruption.
The CPC in Slovenia is a preventive anti-corruption body, and apart from the CPC there are only law enforcement bodies dealing with the suppression of corruption, and there is no institutionalized coordination between them.

In the area of conflict of interest, the CPC's Investigation and Oversight Bureau is responsible for investigating cases of conflict of interest, collecting and monitoring the declaration of assets of high ranking public office holders, and enforcing the conflict of interest rules.
The CPC's Center for Prevention and Integrity of the Public is responsible for coordinating the implementation of the National Anti-Corruption Action Plan, assisting in the development of integrity plans (methodology to identify and limit corruption risks) and monitoring their implementation, developing and implementing different anti-corruption preventive measures, anti-corruption screening of legislative drafts, and cooperating with civil society, academic and research institutions.

The CPC has legal power to:
- access and subpoena financial and other documents (notwithstanding the confidentiality level) from any state authority or private entity,
- question public servants and officials,
- conduct administrative investigations and proceedings;
- request different law enforcement authorities (e.g. Anti-Money Laundering Office, Tax Administration,…) to gather additional information and evidence within the limits of their authority;
- fine natural and legal persons in public and private sector for different violations under its jurisdiction.

The CPC is not subordinate to any other state institution or ministry, and does not receive direct instructions from the executive or the legislature. To strengthen its independence, the IPCA provides a special procedure for the appointment and dismissal of the leadership of the CPC. Chief Commissioner and two deputies are appointed by the President of the Republic. The Chief Commissioners' term of office is six years; the deputy's is five. They can serve up to two terms in office.

2. SANCTIONS

Different legal systems may provide varying types of legal responsibility. Sanctions provide an important tool to promote disciplined compliance with the requirements of declaration systems, especially when such systems cover a large range of public office holders.

Overview of sanctions to be applied in case of a breach following **conflict of interest restrictions**[21]:

Country	Fines	Maximum Fine	Administrative Sanctions	Penal Sanctions
Bulgaria	All	Not specified	All	None
Croatia	All	5 000 - 50 000 HRK	All	None
Czech Republic	M, MP, CS	50,000 CZK	None	None
Estonia	All	300 fine units	None	None
France	M, MP, CS	Not specified	CS	M, MP, CS
Germany	MP, CS	Not specified	None	None
Italy	CS	Not specified	All	MP, CS
Latvia	All	Not specified	All	All
Lithuania	M, MP, CS	500 to 2,000 LTL	M, MP, CS	None
Norway	M, CS	equivalent to up to six months' salary	CS	None
Poland	None	Not specified	MP, CS	None
Romania	None	Not Applicable	All	M, CS
Slovak Republic	All	six to twelve months of wages	All	None
Slovenia	All	Not specified	H, M, CS	All
United Kingdom	M, MP, CS	Not specified	MP, CS	M, MP, CS

(M: Ministers, MP: MPs, CS: civil servants, H: Head of state)

Source: World Bank, The Public Accountability Mechanisms Initiative (2012)

[21] Accepting gifts, private firm ownership and/or stock holdings, ownership of state-owned enterprises (SOE), holding government contracts, board member, advisor, or company officer of private firm, NGO or labour union membership, outside employment, post-employment.

Overview of sanctions to be applied in case of a **breach of financial disclosure requirements**:

Country	Sanctions are applied for late filing	Sanctions are applied for non-filing	Sanctions are applied for false information	Maximum Fine	Administrative Sanctions	Maximum Length of Penal Sanction
Bulgaria	All	All	All	5000 BGN	None	3 years imprisonment
Croatia	All	All	All	HRK 40,000	Public Official doesn't receive salary	Not Specified
Czech Republic	M,MP,CS	M,MP,CS	M,MP,CS	CZK 50,000	None	None
Estonia		All	All	200 fine units	None	None
France	H,MP	H,MP		None	Presidential candidate application will be nullified	None
Germany	MP,CS	MP,CS	MP	Non payment of a half of salary	MPs may be subject to administrative sanctions, including publication of their violation and prohibition to attend sessions	None
Italy	M,MP,CS	M,MP,CS		2 million lire	Removal or disqualification from office, the suspension of the public or private employment relationship, the suspension of registration in professional rolls and registers	2 years imprisonment
Latvia	All	All	All	Not Specified	Dismissal and forfeiture of right to hold office	Not Specified
Lithuania	M,MP,CS	M,MP,CS	M,MP,CS	5000 LTL	may not be given incentives or promoted for a year following the day the violation has come to light, and in case of expiration of official duties on any grounds may not be accepted to the civil service for three years following the day the violation has come to light	Not Specified
Norway	M,CS	M,CS		Not Specified	Prohibition to work in specific field	None

Poland		MP	H,MP,CS	None	Not paid salary	5 years imprisonment
Romania			All	Not Specified	None	3 years imprisonment
Slovak Republic	All	All	All	A fine equal to 3 month's wage may be levied for filing violation	Removal from office	None
Slovenia	All	All	All	EUR 1200	None	None
United Kingdom	MP,CS	MP,CS	M,MP,CS	None	Not Specified	Life imprisonment

(M: ministři, P: poslanci, SU: státní úředníci, H: hlava státu)

Zdroj: World Bank, iniciativa Public Accountability Mechanisms (2012)

Declaration rules for public office holders are mostly perceived as a prevention tool, so offences related to the completion and submission of declarations are often not punishable under criminal law.
However, accordingly, criminal liability for violations related to the officials' declarations is also implemented in a few European countries. In Italy members of government can be criminally liable for non-submission of a declaration of interests and for providing false information. In the Poland and the United Kingdom as well, criminal sanctions can be applied to some categories of public office holders.
It appears that the countries of Central and Eastern Europe usually do not criminalise specific offences related to duties to fill in and submit public office holders' declarations.

Administrative sanctions are the most common in the form of a fine. Disciplinary sanctions are typical for public office holders who serve in the civil service. Available sanctions can include a reprimand, reduction in pay, dismissal, etc. Non-submission of a declaration is the most common breach. For example in France, in the event of non-submission of the personal declaration of assets, the elected official becomes ineligible to exercise duties for one year and the appointment of the public office holder is rendered void. In Lithuania public office holders who have been found in violation of the provisions of the law "On the Adjustment of Public and Private Interests in the Public Service" cannot receive bonuses or be appointed to a higher position in a year's time from detection of the violation.
In a few countries, there are no legal sanctions and no strictly defined legal consequences for violations, but rather soft measures to achieve compliance[22].

In some countries, the running of public office holders' declaration systems is accompanied by a vast application of sanctions. In 2007, 30,245 Estonian public office holders submitted declarations. In the same period, 454 persons were sanctioned for non-submission, 1,209 for late submission, and 1,022 for other violations of declaration requirements[23].

[22] For example, in Sweden it is announced at the plenary meeting if a member of parliament has failed to submit information to the register. In the UK House of Commons, if the duty to declare interests has not been fulfilled, an apology to the House by means of a point of order is required. In case of a breach of the Rules of Conduct, a member of the German Bundestag can face a warning (in case of minor violation or negligence, e.g. a missed deadline for disclosure), publication of a notice about the violation, or an administrative fine.
[23] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing. http://dx.doi.org/10.1787/9789264095281-en

LATVIA

Corruption prevention and combating bureau:

KNAB has the power to impose administrative sanctions for violations of provisions on conflicts of interest and the funding of political parties. In a more specific context, section 39 of the State Civil Service Law provides for the suspension from the performance of duties where detention has been applied as a security measure or criminal prosecution has been initiated against the public office holder. The procedure for exercising disciplinary powers is stipulated by the Law on Disciplinary Liability of Civil Servants.

In 2012, for failure to observe restrictions of the Law, KNAB reviewed 88 cases during the first six months and 19 persons were fined, whereas 63 public office holders were verbally reproached. In most of the cases KNAB detected that public office holders have taken decisions in conflict of interest situations and failed to observe restrictions concerning additional employment and commercial activities. Officials of local governments did not observe the rule that they cannot award a public procurement contract to companies where they have shares unless the contract is awarded in open competition[24].

SLOVENIA

Commission for the Prevention of Corruption:

Sanctions are foreseen for failure to comply with the provisions on gifts, incompatibilities, conflicts of interest and asset declarations contained in the IPCA. In particular, a fine of between 400 and 1,200 EUR applies, inter alia, for:

- failure to submit information or submission of false data concerning assets;
- failure to submit lobbying records or failure to refuse contact with a lobbyist who is not registered or contact where a conflict of interest would arise;
- failure to furnish details on the entities in which the MP or a family member has a relationship;
- accepting a gift (other than a permissible gift) or any other benefit in connection with the discharge of duties;
- failure to enter details of the accepted gift and its value on the list of gifts kept by the National Assembly/ National Council;
- within two years of the termination of the mandate, acting as representative of a private entity which enters into contract with the former employer, i.e. National Assembly/National Council.

Failure to submit asset declarations following the reminder and within the deadline provided by the CPC is punished with a reduction of 10 % in salary each month after the expiry of the deadline. Likewise, disproportionate increases in assets, which are not adequately justified, could lead to the adoption of precautionary measures (e.g. temporary measures to freeze/seize and secure assets). In the case of public office holders, the CPC can alert the body in which the official is employed, in order for that body to initiate sanctions entailing possible termination of office. This provision is not applicable to MPs, who are elected officials.

Cases in which dissuasive sanctions were applied are few and findings of a violation of asset disclosure laws or cases of unjustified difference in wealth triggered political consequences for the holder of a public office on rare occasions.

[24] http://www.knab.gov.lv/uploads/eng/periodic_update_september_2012.pdf

3. GUIDANCE

Especially in the early stages of implementing declaration systems, a major difficulty is making public office holders aware of new requirements and achieving due respect for the need to meet them properly. Part of this problem can be a lack of or insufficient training and guidance.
In the field of ethics, most member states do not provide for institutionalised policies and there is no central coordination body on ethical issues in public administration. This may create a gap because of the lack of an entity responsible for following up this issue both at internal and external levels.

Guidance in area of conflict of interest restrictions:

Country	Individual or agency specified for providing guidance
Bulgaria	Not Applicable
Croatia	Not Applicable
Czech Republic	Not Applicable
Estonia	Not Applicable
France	Not Applicable
Germany	Not Applicable
Italy	Not Applicable
Latvia	Not Applicable
Lithuania	Not Applicable
Norway	Not Applicable
Poland	Not Applicable
Romania	Not Applicable
Slovak Republic	Not Applicable
Slovenia	Superior of public official or the Commission
United Kingdom	The Committee on Standards and Privileges

Source: World Bank, The Public Accountability Mechanisms Initiative (2012)

LATVIA

Corruption prevention and combating bureau:
Although according to the methodology of the World Bank Latvia is not ranked among the states with an individual or agency specified for providing guidance, we can find the related functions within the competences KNAB. Information about corruption prevention issues and descriptions of the different provisions in relation to conflicts of interest are available on KNAB's website. Information and guidelines about filing declarations are available on the website of the State Revenue Service (SRS). KNAB runs workshops and provides training to explain the provisions relating to ethics, conflicts of interest and the restrictions applicable to different public office holders. The SRS also provides consultations about completing declarations.

SLOVENIA

Commission for the Prevention of Corruption:
The Investigation and Oversight Bureau of the CPC is responsible for providing guidance on incompatibilities between the public sector and private interests. The CPC may be requested to provide guidance on specific issues by officials, specifically local officials, concerning the intersection between private and public interests.

The Secretary General of the National Assembly, who is responsible for notifying MPs about applicable rules, distributes at the start of every legislature a handbook with information concerning their conduct, work and status. It contains all relevant provisions as regards incompatibility of offices, conflicts of interest, lobbying, the handling of classified information, etc. The CPC also distributes information material, publishes its opinions and answers questions from MPs on their concrete obligations and the conduct to adopt in practical cases. In May 2012, it organised for the first time, in cooperation with the President of the Parliament, a session for MPs on their obligations under the IPCA. The CPC intends to organise such sessions on a yearly basis, and it welcomes this initiative[25].

Trainings arranged jointly with the Academy of Administration under the Ministry of Public Administration are conducted for public office holders. These seminars are tailored specifically to the audience members, with vignettes and case studies targeting certain fields.

4. TRANSPARENCY AND PUBLIC INVOLVEMENT

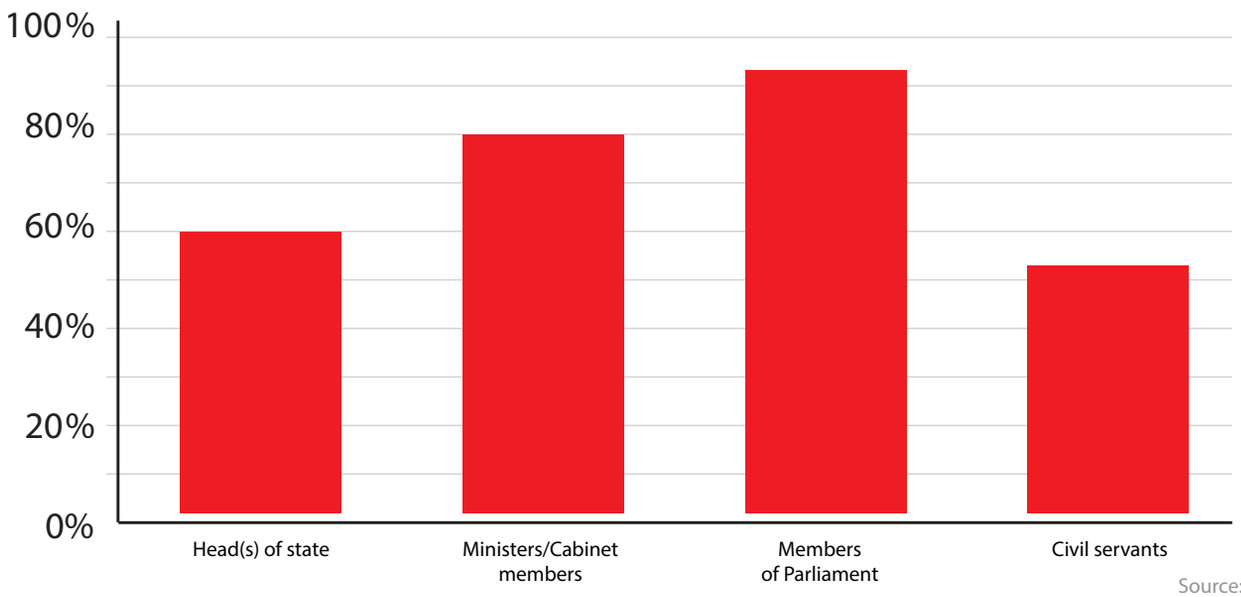
Transparency and public involvement can work as an added deterrent to the abuse of office, given the additional scrutiny it can afford. Credible threat of detection should be established through close review, targeted verification, public access to declarations, or a combination of these. Putting information in the public domain allows citizens to make informed decisions at the ballot box and to pressure their elected representatives to address any concerns raised by that information.

On the other hand the public oversight/control of declarations cannot free the enforcement bodies from their duty to carry out a thorough scrutiny of those declarations. It´s important to avoid the "outsourcing" of this important controlling function to civil society and the media, as it is somewhat unrealistic to think that the media can always be a non-partisan watchdog. The issue of transparency and disclosure is closely connected with debate about balancing privacy and the public´s right to know, but regarding the scope of this paper, there will be no further attention paid to this issue.

[25] Greco, Fourth Evaluation Round.

Public access to financial declaration:

Public availibility:

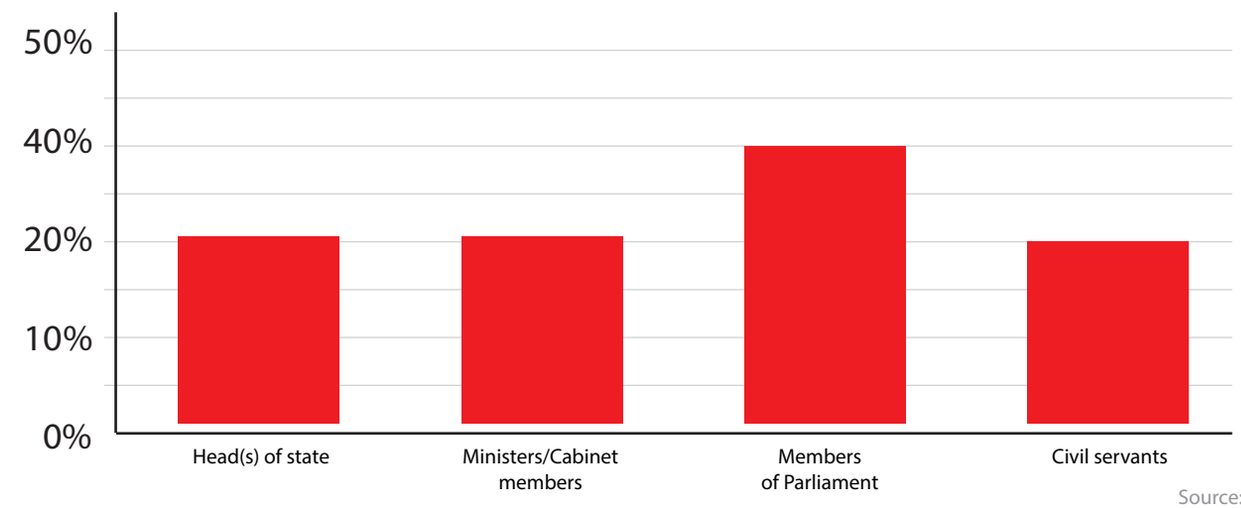


Source: World Bank

Year: 2012; Countries: Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Italy, Latvia, Lithuania, Norway, Poland, Romania, Slovak Republic, Slovenia, United Kingdom

Fees for access to financial declaration:

Fees for access:



Source: World Bank

Year: 2012; Countries: Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Italy, Latvia, Lithuania, Norway, Poland, Romania, Slovak Republic, Slovenia, United Kingdom

Overall:

Country	Public Availability	Location from which to access declaration data				Cost of accessing declaration data			
		Head of State	Ministers	MPs	Civil servants	Head of State	Ministers	MPs	Civil servants
Bulgaria	H, M, MP, CS, spouses and children	Fixed location, Online	Fixed location, Online	Fixed location, Online	Online	Not specified, Online	Not specified, Online	Not specified, Online	Online
Croatia	H, M, MP, CS, spouses and children	Online	Online	Online	Online	Online	Online	Online	Online
Czech Republic	M, MP, CS, spouses and children	Not applicable	Fixed location, Online	Fixed location, Online	Fixed location, Online	Not applicable	Online Free hard copies	Online Free hard copies	Online Free hard copies
Estonia	H, M, MP	Fixed location	Fixed location	Fixed location	Not applicable	Not specified	Not specified	Not specified	Not applicable
France	H	Official gazette	Not publicly available	Not publicly available	Not publicly available	Online Free hard copies	Not publicly available	Not publicly available	Not publicly available
Germany	MP	Not applicable	Not specified	Online	Not specified	Not applicable	Not specified	Online	Not specified
Italy	M, MPs, spouses and children	Not applicable	Parliamentary committee/office	Parliamentary committee/office	Not specified	Not applicable	Free hard copies	Free hard copies	Not specified
Latvia	H, M, MP, CS	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified
Lithuania	H, M, MP, CS, spouses and children	Official gazette, Online	Official gazette, Online	Official gazette, Online	Official gazette, Online	Online Free hard copies	Online Free hard copies	Online Free hard copies	Online Free hard copies
Norway	MP	Not applicable	Not specified	Not specified	Not specified	Not applicable	Not specified	Not specified	Not specified
Poland	M, MP, spouses and children	Not publicly available	Not specified	Not specified	Not specified	Not publicly available	Not specified	Not specified	6-10 years
Romania	H, M, MP, CS	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified
Slovak Republic	H, M, MP, CS, spouses and children	Agency website	Agency website	Agency website	Agency website	Not specified	Not specified	Not specified	Not specified
Slovenia	H, M, MP, CS,	Agency website	Agency website	Agency website	Agency website	Online	Online	Online	Online
United Kingdom	M, PM, spouses and children	Not applicable	Not specified	Internet	Not specified	Not applicable	Not specified	free hard copies and onlines	Not specified

Source: World Bank

We can find a full public disclosure system in the case of registration of employment and economic interests of members of parliament and ministers in Denmark. Also in the UK parliament, the Register of Members' Financial Interests (as well as the Interests of Members' Secretaries and Research Assistants) and the Register of Lords'

Interests (as well as the Interests of Lords Members' Staff) are available to the public. In many cases declared information which is **proactively** disclosed to the public, it is increasingly published on the Internet. In some countries such information is available on demand only.
For example in France, declarations of assets, after verification by the Supreme authority for transparency in public life within a 3-month deadline, remain semi-confidential and can be consulted in situations with specified authorities, exclusively by voters from the elected representative's constituency, whereby disclosure of the relevant information is subject to a €45,000 fine. Declarations of interests and professional activities are consultable by the public immediately after their submission, on the website of the parliamentary chambers[26].

LATVIA

Corruption Prevention and Combating Bureau:
Declarations are publicly accessible but with some restrictions. The non-public part of the declaration includes the residence and personal data details of the public office holder, his or her relatives and any other persons mentioned in the declaration, as well as information on counterparties (parties with whom there is contract), including debtors and creditors.
Regular declarations are stored and maintained by the SRS and the non-confidential part of the declaration is publicly available on the SRS website which is searchable by name. Family members of MPs are not obliged to submit declarations unless they are public office holders. From March 2012, however, all natural persons (in addition to public office holders) have to declare their assets according to established criteria and thresholds. Similar information (as set out above) has to be submitted to the Central Election Commission (CEC) by parliamentary candidates once a political party (organisation) has registered its list of candidates at the CEC. This information is available on the CEC website.

SLOVENIA

Commission for the Prevention of Corruption:
Data on the income and assets of MPs, obtained during the period of holding office and within one year of termination of the mandate, is made publicly available on the website of the CPC. All information referred to above is publicly available, with the exception of information on taxable income. In order to protect the privacy of the person concerned, address and location details are not published, and information on assets and liabilities only includes the total value of each kind of asset/liability referred to above. Changes in assets were to be published yearly as from 2013.

A new online system of asset declarations has recently[27] been introduced and seems to offer guarantees for improved compliance in the future.

The 2010 law also incorporated the role of non-governmental organizations (NGOs) into the anti-corruption efforts, allowing the CPC to finance NGO work in this area. The Integrity division assists public and private sector entities in preparing risk assessments of corruption through trainings, monitoring and evaluation.

In terms of public awareness, the CPC hired a Communications Officer in 2009 to assist with public relations and the dissemination of information. Brochures, pamphlets, and posters have been designed to instruct the public of the functions of the CPC and the means by which corruption can be identified. There are also weekly media reports on cases involving corruption, a radio show on integrity, and public debates by members of the CPC on matters of corruption.

[26] Regarding this procedure in France, GRECO recommends that declarations of assets by Members of the National Assembly and Senators be made easily accessible to the public at large.
[27] An online declaration system was introduced and all officials were required to re-submit their declarations in the new system, a process which was finalised in February 2012. (GRECO, the 4th evaluation)

CONCLUSION

The adoption of more rules and standards require that more concentration should be given to implementation and enforcement issues. The more rules exist, the more management capacity is required to enforce these rules and standards. Whereas individual requirements in fulfilling new obligations (mainly in the field of disclosure policies) are increasing, in many cases control and monitoring bodies are still weak and lack capacities.

Overall, the whole field of enforcement of conflict of interest policies is hugely fragmented; there are almost no commonalities, except in the difficulties in establishing a real independent body. Moreover, differences exist as to centralized or decentralized bodies, finances, composition and powers of the different institutions. This does not mean that the member states are not willing to establish any form of control. Despite current practice, the development seems to be towards the establishment of more independent external bodies.

There are main differences between types of enforcement bodies. One of them is whether they are independent or the control is made in self regulation form.

Self-regulation or independent forms of ethics committees - main differences:

Self-regulation committees	Independent ethics committees
Members are internal experts, officials or elected/ nominated HPO	Members are independent experts
Internal oversight. Committee Members oversee their peer´s compliance with ethics	External oversight. Commission oversees HPO´ compliance with ethics rules
Can be an office, Parliamentary Committee, presidential office within own organisation	Independent with own budget, mostly controlled by Parliament
Duties can include: Advising colleagues on CoI Creating awareness for violations of rules of ethics	Duties can include: providing ethics training, investigating ethics complaints own inquiry determining penalties issuing advisory opinions receiving financial disclosure and monitoring reporting statements
Exist in most EU countries and in EU institutions	Pure models do not exist: US, Canada, Australia, to a lesser extent IRL and UK

Source: Regulating conflicts of interest for holders of public office (HPO) in the European Union: a comparative study of the rules and standards of professional ethics for the holders of public office in the EU-27 and EU institutions. (2008)

A study on public office holders in the EU concludes that stronger emphasis should be placed on the credibility and accountability of monitoring bodies, no matter if the oversight instruments work internally (through self-regulation) or externally (through independent bodies). Very little is known as to their operation – relatively non-transparent ethics committees, commissions, etc. Also little evidence exists as to their internal operations, budgets, rules of procedure and working styles.

Regarding the requirement of high standards for monitoring bodies, it is observed that the prevailing system of internal self-control in most member states is not necessarily sufficient. An independent body, with an independent budget, may provide more objective opinions on the state of conflict of interest enforcement. Such independent and outside control of public office holders is rare. It is more common that public bodies control themselves via internal reporting obligations and monitoring mechanisms.

Still, there are more questions than answers, in part thanks to the fact that member states do not evaluate whether the existing institutional structures are efficient and effective.

The data presented above show that an effective enforcement system in the area of conflict of interest depends not only on one single instrument such as an effective disciplinary legislation, setting-up of efficient control and monitoring bodies, but more widely on the existence of an overall national integrity system (Transparency International), or multipronged anti-corruption strategy (World Bank, GRECO), or a multidimensional ethics infrastructure (OECD)[28].

Prevention and enforcement are equally important aspects of promoting good governance and reducing vulnerability to corruption. Asset and interest disclosure regimes, and public education and awareness campaigns should be accompanied by sanctions and effective enforcement mechanisms. Beyond establishing appropriate legislative and administrative frameworks, managing conflict of interest requires targeted implementation and enforcement tools.

[28] Effectiveness of good governance and ethics in central administration: evaluating reform outcomes in the context of the financial crisis, http://www.dgaep.gov.pt/upload/RI_estudos%20Presid%C3%AAncias/ETHICS_REPORT_FINAL.pdf

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COMPARATIVE ANALYSIS OF CONFLICT OF INTEREST IN V4 COUNTRIES + ESTONIA

MAIN FINDINGS

- There is no universal definition of conflict of interest (COI) among the examined states. Each state approaches the issue differently.

- The legal provisions concerning COI tend to be fragmented. It is not uncommon that the COI has no legal definition or unified basis in the laws like in Estonia and Poland. Instead there are various laws (up to 30 in Hungary) that operate with issues closely related to COI. It is the various different public functions that are regulated separately by different laws rather than one encompassing law that would include all.

- Given the fact that COI regulation is not unified, there is usually no singular oversight body that would deal with COI in the respective country. Institutional oversight is unfortunately poor in the majority of the examined countries. There is a general lack of internal audits, control mechanisms tend to be ineffective, and mandatory declarations of assets are often not published correctly.

- Sanctions do exist in the examined states, but the lack of centralized oversight bodies prevents effective control. Sanctions, if utilized at all, tend to be very mild and present no real threat in case the public official does not comply with the COI regulations.

- There are some efforts to guide and train public officials about issues related to COI, but besides Estonia's Council of Ethics of Officials, which provides substantial support to public officials regarding COI, there is little effort to actually do so. Estonia also has two functioning portals for education on COI related issues and laws. The situation in other countries is grim, as there are no systematic efforts to educate and guide neither public officials, nor the general public.

- Transparency and public oversight is an issue as well. Estonia is currently adopting a new transparent system for the publication of online asset declarations, however the situation in other countries is not favourable. The Czech example is apparent, as there is a lack of a central register and the publication of relevant information is unnecessarily complicated. Published info is often unsatisfactory, as is the case in Poland and Slovakia. Despite direct involvement of some media outlets or NGOs in Hungary, there are very few examples of public officials where a case would be started against their misconduct.

MAIN FINDINGS

How can one understand the conflict of interest? Is there one universally accepted definition among the examined states? The state analyses suggest that there is no unified view on conflict of interest (COI). There are many different approaches to the problem and many different opinions that stem from the different moral standards of the examined countries. Differences can be found throughout the EU, where an overwhelming majority of states has its own definitions, sets of regulations and potential sanctions. There are however general recommendations and rules made by international organizations. OECD for example defines three levels:

1. Actual conflict of interest: Current duties and responsibilities of a public official are in direct conflict with his or her private interests;
2. Apparent conflict of interest: It seems that the private interests of a public official could improperly influence the performance of his or her official duties and responsibilities, but this is not the case;
3. Potential conflict of interest: Private interests of a public official represent a potential influence if the duties of the public official concerned the interests in question.

The conflict of interests therefore happens when a public official acts in his personal interest, even though he is supposed to primarily defend the public interest. Since there is a regular connection between the public and private sector, the conflicts of interest might and do happen on a regular basis. Regulations, which ensure impartiality of the public official and his or her actions in public interest, are therefore necessary. Effectively enforced regulations may prevent biased actions and decisions by public officials, nepotism and abuse of power. It can further help to prevent misuse of public finances and confidential information for private gains.

This part of the analysis will thus focus on the definition of conflict of interest in different states, on the laws regulating conflict of interest and the public officials regulated by those laws.

The Czech analysis recognizes the definition of conflict of interest according to the Czech law on COI (159/2006 Col.) and the law on municipalities and regions. Those two definitions are however not fully compatible. Other legal provisions usually mention impartiality and bias, which are terms closely connected to the problem of COI. The Czech analysis therefore defines COI as a "*risk threatening the impartiality of decision-making*".

Czech law 159/2006 on COI regulates the conflict of public and private interests of various public officials such as members of parliament, senators, members of government, mayors, deputy mayors, full-time members of regional local administration as well as heads of organisational units of the state and members of statutory, monitoring or controlling bodies of legal persons founded by law, etc. Special norms can be also found for judges, public prosecutors, representatives on the municipality level, and employees of the state.

There is no single law that would regulate all the abovementioned officials and representatives. Instead there are partial provisions in several different laws that apply to various groups of persons. The legal regulations are therefore fragmented and even though the various laws do present a clear effort to define conflict of interest for individual groups of public officials, there is no single definition of COI in the Czech legal system. In general, public officials are by definition responsible for acting and deciding without prejudice and for defending and promoting public interest. Specific duties are then different for each category of public officials. However, it is not uncommon that more than one law regulates the duties of public officials in regard to COI.

There are some standard measures such as disclosing private interest (withdrawing due to partiality), a ban on certain combinations of public functions (MP cannot be a member of senate, or a judge, etc.) and forbidding any gainful activities other than scientific, literary or educational activities, etc. Czech law does define some limitations for people leaving public functions. However only few groups of public officials, in particular elected

representatives (MPs, full-time regional and local politicians), are obliged to submit declarations of personal assets. Monitoring mechanisms are unfortunately very limited and so are the potential sanctions. The only group with relatively thorough process mechanisms are judges and public prosecutors under specific legislative regulation.

The lack of solid process mechanisms is very apparent in the case of civil servants in central state administration, particularly those with executive or financial powers. Only top public servants fall under the Conflict of Interest Act. Currently, new legislation, the Public Service Act, has been adopted, which applies to the public servants at state administration level. The lack of conflict of interest management was expressed by the European Commission in May 2014, nevertheless, no changes in the draft were made. The public servants are obliged to fulfil their duties in an impartial manner, to avoid conflict of interest, not to accept gifts and to follow the rules of public servant ethics. A violation falls under disciplinary proceedings. The legislation comes into effect in January 2015, and therefore no relevant data on its implementation are available.

COI in Hungary is generally understood as incompatibility. Incompatibility should ensure that the relevant public official acts: "*independently, free from any unlawful or unacceptable political, economic or other influence. Official incompatibility also serves the functioning of the separation of powers by excluding the concentration of authorities. Further, incompatibility is to ensure the transparency of the income and property status of the state officials.*"
The Hungarian analysis recognizes more than 30 laws regulating issues related to the conflicts of interest of various public officials. There is no general overarching law that would specify the general understanding of COI in Hungary, but instead there are specific laws for each and every position, similarly to the Czech situation. There is a difference in the degree of elaboration on COI in these laws, and there is a lack of cross-reference in some cases. Despite this complexity, one usually has to consider only the legal acts regulating the public official's current position and the position that person seeks. According to the analysis, the public officials can be divided in several groups such as constitutional actors, heads of government offices and district offices, civil servants (judges, prosecutors, attorney-at-laws, members of law enforcement, servicemen, etc.), members of local self-governing bodies, mayors, etc.
The different laws then recognize different types of COI such as: incompatibility of the position held by the public official with other official positions, abuse of position to get unlawful advantages, incompatibility with holding economic positions, restrictions on possession of shares and other assets, obligation to declare them, demerit and other various forms of incompatibility.
It is important to mention that the degree to which specific laws regulate COI varies. Some official positions therefore are more specifically regulated then others. This creates a complex system that is difficult to assess properly. The Hungarian analysis lists several examples, where the complexity and lack of clarity in the definition and understanding of COI create potential issues.
For example, there is an exhaustive list of incompatible positions, but that means the positions not mentioned are by definition compatible, which leads to public officials who hold positions from different branches of power. A member of the National Assembly could thus be: a minister, parliament member mayor, member of local government and head of capital or county governmental office. This unfortunately created a logical incompatibility: one person can take part in both the drafting of regulation, and the enactment and implementation of the law.
A recent amendment of the conflict of interest regulation was past. Since May, 2014, the members of the National Assembly cannot be a mayor, member of local government and the head of capital or county governmental office. The new regulation also declares the general incompatibility with any other state or local government office. As an exemption, an MP can be a minister.
The analysis mentions that the softening of incompatibility seems to be taking place in the current legislative cycle, i.e. there are more opportunities for COI.

The Polish law does not refer to the concept of COI in any way; there is no definition of this term in any Polish act of law. There are however regulations referring to various manifestations of this phenomenon, but they are

dispersed and inconsistent. These regulations include the incompatibility of posts (positions), the incompatibility of financial interests, and the obligation to declare assets.

The incompatibility of posts is set forth in the Constitution (Dz.U. 1997 No 78 pos. 483) and in other legal acts referring to specific public officials. For example, deputies and senators are regulated by laws concerning the exercise of their duty (Law on exercising of the Parliament Members and Senators mandate, Dz.U. 1996 No. 73 pos. 350) and by the election code (Dz.U. 2011 No. 21 pos. 112). Furthermore, the lower house Sejm has an ethical code in regard to the legislative process, whereas the Senate has no such code. There is also no revolving door mechanism.

The so-called Anti-Corruption Act (Dz.U. 1997 No. 106 pos. 679) regulates the general rules for conflict of interest among persons holding managerial positions in state administration and among other high-ranking officials. Provisions of this act apply to constitutional actors such as the President, the Prime Minister, speakers of both chambers of parliament, heads of key government agencies and other senior officials on managerial positions in state and local government institutions (ministers, heads of offices, heads of communes, mayors, members of boards of state-owned companies, etc.).

The Anti-Corruption Act further regulates persons heading local government authorities and members of local councils. There are then separate provisions, such as more rigorous regulations concerning asset declarations, which apply to these officials. Finally, laws concerning the functions of the Polish courts (Law on Common Courts Organization, Dz.U. 2001 No. 98 pos. 1070) regulate judges and prosecutors.

Despite the various forms of position-specific regulations, the Polish analysis is very sceptical about the enforceability of these measures.

The basic provisions on COI in Slovakia are – similarly to other countries – based in the Constitution. Constitutional Act No. 357/2004 then lays out more specific provisions. It defines COI as follows: "*for the purpose of this act, conflict of interest shall mean a situation where a public official in the performance of his office prefers personal interest to public interest.*" This act further defines the broad list of the public officials (MPs, ministers, judges of the Constitutional Court, ombudsman, mayors, etc.) who are regulated. It also specifies the list of duties (declaration of assets, impartiality, etc.), restrictions (incompatibility of posts and incompatibility of financial interests, restrictions following departure from public office – revolving door mechanism) and potential sanctions.

Despite the broad scope of the Constitutional Act, which encompasses the whole issue of COI in Slovakia, the compliance with COI rules is implemented in different legislations in relation to personal scope of the respective act. Rules in these different acts are fragmented, not complex, and rules are declared without necessary explanation and applicable tools. This legal approach has a strong negative impact on the effectiveness of COI rules in respective acts.

Similar to Poland, the Estonian laws or regulations have no specific legal definition for COI. However, various law provisions address different manifestations of conflict of interest. The Anti-Corruption Act regulates potential cases of COI concerning elected, politically appointed, and other higher officials. Civil servants and local government officials then also have their specific legal provisions. Types of COI described in these laws are then very similar to other countries mentioned in this analysis and measures include: incompatibility of posts, declarations of assets, incompatibility of financial situation; restrictions on usage of government property, confidential information, self-dealing, and other typical COI issues.

INSTITUTIONAL OVERSIGHT

The basic legal provisions on COI in the analysed countries show that overarching definitions of COI usually don't exist, and if they do, enforcement of compliance with rules concerning COI is fragmented among various laws and institutions. The institutional oversight is unfortunately generally low in the examined countries. There is a lack of internal audits, assets are often declared inadequately, and the control mechanisms often lack effectiveness.

In the Czech Republic, there is no single institution monitoring conflict of interest, even though there are several thousand recordkeeping bodies. Their role is to archive declarations of public officials, verify their completeness, provide access to them and act upon suspicion of violation of the law by a public official. There are regulatory mechanisms for the MPs and full-time local representatives, but there is no institutional system to control COI among part-time local representatives.
The Czech analysis is very critical of the current state of the affairs and is particularly concerned about the utter lack of investigations by the record-keeping bodies upon their own initiative, despite their responsibility to do so. Oživení has analysed several hundred public official's declarations of assets and it unfortunately had to conclude that institutional monitoring of the Conflict of Interest Act fails completely and is essentially non-existent.
Furthermore, a declaration of assets does not have to be presented when the public official enters office. It is therefore impossible to compare assets amassed while in office with publicly available information on the official's income. The Czech analysis mentions that the institutional oversight on judges and public prosecutors is satisfactory, albeit not perfect.

In Hungary, the institutional oversight is usually conducted by the body/person that elects or appoints the public official suspected of COI. The public official is bond by law to withdraw from his or her position due to partiality, however, if that is not the case, any person may institute a procedure to investigate general incompatibility by notifying the respective organization. Similarly, anyone may institute a procedure of the declaration of assets.
According to the analysis, there are very few, if any incompatibility procedures at the level of high-ranking officials including the members of the National Assembly. Media outlets and various public officials have raised questions regarding some declaration of assets. However, a formal procedure to investigate the questionable declarations has not yet been launched.

The Polish institutional oversight on COI is divided among the respective institutions and laws. In the parliament, there is no separate body responsible for monitoring and resolving situations of COI. There are some control mechanisms, such as the Sejm Deputies' Ethics Committee, tax office and the central Anti-Corruption Bureau that control declarations of assets. Those declarations are available online, but they are often insufficiently filled-in and are not published in machine-readable format.
Deputies are also obliged to disclose information on all sources of income, donations and gifts into the Register of Interests. There is however no sanction if the deputies ignore the obligation. Because of this, the register does not contribute to transparency regarding COI.
The standards concerning COI in the legislative process, which are regulated by the code of ethics, are insufficient. The Deputies' Ethics Committee has not produces a single resolution in cases related to the violation of the principles of impartiality or transparency. Finally the Anti-Corruption Act has also failed to institute an effective oversight over public officials and local government representatives. The Central Anti-Corruption Bureau has conducted several hundreds audits based on the provisions of the act, but there is no information on the results of these audits.

The Slovakian institutional oversight mechanisms are designed separately for national politics, local politics and the public administration. It is therefore the respective body and corresponding law that regulate the specific public official. Similarly, the judges and civil servants are obliged to follow the rules set by their respective legal regulations.

The Committee of the National Council of the Slovak Republic is the oversight body of the Slovakian MPs. However, the scope of this committee is limited as it is under direct political influence. Capabilities are insufficient and the committee has not yet produced significant results. Furthermore, there is no external auditing of assets declaration. Those declarations are not sufficiently clear and specific. Public oversight is therefore very limited.

It is the special commissions; local government commissions, relevant ministers and public legal persons' council that control adherence to COI related laws in Estonia. Those control bodies have the right to require explanation if the public official in question fails to declare assets. They can furthermore make inquiries and have to report these to the prosecutor's office or to the police authorities. For example, The Estonian analysis unfortunately does not mention any specific cases, which would demonstrate the effectiveness of these oversight mechanisms since its establishment in 2013, the Council of Ethics of Officials has received several complaints. Some of those have been redirected to the appropriate institution; others have received replies or have needed an official decision by the Council. Adherence to the Anti-Corruption Act, according to analysis, is dependent on self-regulation, i.e. it is the public official's responsibility to report about possibly corrupt income. The system thus relies on the honesty and high morals of officials. Again, no specific data is available.

SANCTIONS

The only sanction defined by the Czech Conflict of Interest Act is for breaching duties in submitting declarations, particularly if they are incomplete, inaccurate or false. There is also a limited sanction if the public official does not disclose personal interest. There is no single register of COI and because all recordkeeping bodies may impose sanctions, the total number of actual imposed sanctions is difficult to calculate. Nevertheless, based on the available evidence gathered, there have been only 26 known penalties. 6 cases ended with reprimand and 18 with very insignificant financial penalties. The Czech analysis emphasizes the need for an investigation to determine the number of lacking sanctions and the lack of severity of the sanctions. The respective laws define sanctions for judges, constitutional judges and public prosecutors. However, there were very few cases based on threats on the impartiality of the judges and prosecutors. It is therefore difficult to make conclusive remarks.

The Hungarian analysis mentions the termination of the position of the public officer in question as the legal consequence for the violation of the incompatibility rules (i.e. COI has been proven). It is a general rule that the public official under investigation may not exercise his or her office and cannot participate in the decision-making process of the respective body. This person is not entitled to remuneration or other benefits until having fulfilled his or her obligation.

Sanctions in Poland are to a certain extent similar to the Czech ones. They are few in place and have solid legal basis, but they are rarely, if ever, used. Sanctions concerning the declaration of assets and incompatibility of financial interest have not been used in the last parliamentary cycle. Furthermore, there were only two cases of sentencing in 2010 under the provision of the Anti-Corruption Act concerning public officials.

The Slovakian sanctions have an exhaustive list of strict penalties, if the public official should breach his or her duties, impartiality, postemployment restrictions, incomplete or incorrect data in his or her declaration of assets, etc. Effectiveness of these sanctions is nevertheless limited by lengthy and complicated procedures. The political power still has influence on these procedures. The Committee of the National Council of the Slovak Republic on the Incompatibility of Functions, which controls the COI of MPs, consists of MPs in whose interest is to support "non-aggression" oversight policy, since they are controlling also themselves. The most imposed penalty is then for failing to submit a declaration in time. The analysis though, mentions several cases where public officials were fined one year's salary because of a COI. Sanctions concerning public servants and local government representatives are very rarely implemented. While 133 mayors broke COI law, only four of the offenders were punished by the competent municipal parliaments.

Estonia has a complex system of sanctions regulated by the laws relevant for the public official in question. The penalty is usually in the form of a fine, rarely imprisonment (only in repeated cases of embezzlement, etc.). The analysis mentions that, in some cases, the fines are not high enough considering the responsibilities of the public officials.

GUIDANCE

There is no institution providing consultations for issues related to COI and related laws in the Czech Republic. There is no mandatory education in this field and no institution regularly provides it. There is no methodological guidance, nor official consultation bodies. Public officials therefore have to seek knowledge from their colleagues and other sources that might not provide the correct information. The Conflict of Interest Act does not define a duty to provide consultations for any of the record keeping bodies or the Supreme Administrative Court. It is also debatable if the public officials seek education on COI at all. There is one course offered by an educational body of the Ministry of Interior. Apparently, the interest in this course is not very high. There are codes of ethics, but they are more commonly relevant for civil servants and less often for elected representatives.

The Hungarian situation is far from ideal. Besides guidance issued by the Ministry of Interior provided to members of local self-government assemblies and mayors, including presidents and members of minority self-governments, no other organization issued any kind of guidance in this field.

There is some form of educational activity concerning COI in Poland. The Central Anti-Corruption Bureau conducts training primarily for local self-government assemblies. There is also some training provided by the National School of Public Administration. However, there is no well-developed system that would provide systematic education and guidance on issues related to COI. Specialized units or officers are still rare. There was a pilot program in 2006, but there has not yet been any significant follow-up.

The Slovakian analysis mentions only initial training for new MPs at the beginning of their term. This training focuses on compliance with declaration obligations. No other assistance or guidance is provided.

Guidance and educational support in Estonia is far more developed than in the four remaining countries. The new Public Service Act of 2013 created the Council of Ethics of Officials. One of its primary tasks is to provide guidance to officials who are unsure about their work ethic or who need advice on how to make an ethically sound decision. It also explains the implications of the Code of Ethics of Officials, provides an opinion about the compliance of an official's actions, and participates in drafting development plans for COI related legislation and for determining strategic development directions of the public official's ethics. The council has considerable powers, which enables it to involve experts and gather necessary information to provide a settlement on issues and form working groups.
The Ministry of Justice then runs a separate website, which provides a further in-depth description of the most common issues related to COI. Civil Service has its own similar website operated by the Ministry of Finance. It is the Ministry of Finance which is responsible for the coordination of ethics management in Estonia. The ministry also provides ethics trainings for public officials, which include topics related to COI. There are also guidelines written by Transparency International Estonia. Despite the objectively better situation in Estonia, the analysis suggests some partial improvements such as clearer division of responsibilities among the various institutions involved.

TRANSPARENCY AND PUBLIC INVOLVEMENT

The availability of information on the personal interest of public officials is a key condition for functional public oversight. The Czech situation however, is unfavourable. The practical experience outlined by the Czech analysis has shown that the recordkeeping bodies are unable to provide access to requested information quickly and efficiently. The bodies often provide information reluctantly and in such a manner that it is difficult to assess it properly. Furthermore, the access to the declarations of assets is needlessly complicated and limits the options of public monitoring. Information regarding COI is typically published in non-machine readable format and

there is generally a low level of user-friendliness of the individual registries. This combined with the fact that there is no central registry that gathers all the published information, creates a complicated and non-transparent environment.

The Hungarian analysis mentions scarce methods of public oversight. Essentially anyone may notify the National Assembly about the existence of potential COI, but it is a member of the National Assembly who has to initiate in writing the establishment of incompatibility (COI). Incompatibility is otherwise established by standing committees or two thirds of the National Assembly. The other bodies adjudicate incompatibility according to their own rules of procedures. Similar rules then apply for the declaration of assets. As mentioned before, there is very little, if any, public oversight on COI of the high-ranking public officials. The analysis does not mention public involvement other than comments by the media outlets, which raise questions regarding the publicly available declarations of assets. There have been a dozen cases in the press in the recent years, but a formal procedure has not yet been launched. It is therefore apparent that public involvement and transparency are not ideal.

In Poland, declarations of MP's assets have to be made available in an electronic form on the websites of the Sejm and the Senate. They are fairly easily available, but they are not sufficiently accessible, as they are usually scanned copies of hand-filled documents. There is also a centralized Register of Interests which gathers information about sources of income and gifts received by the deputies, senators, minister, heads of local government or local government officials. This register is placed on the website of the State Election Commission and is again easily available to the public. This measure however does not contribute to the improvement of transparency, since there is no sanction for not publishing the data. It is not uncommon that the data include blank documents.

The Slovakian analysis comes to similar conclusions. Even though the declarations of assets and public property declarations are published online, the real value for public control and transparency is limited. The provided information is often insufficient for actually evaluating the financial gain of the public official during an electoral term. Public property declarations need to be more detailed in order to achieve better transparency. Furthermore, while citizens are furthermore entitled to file a motion to start COI proceedings and sessions of the committee on incompatibility, most of the proceedings are stopped without the breach of COI being properly analysed or punished..

There is a transition period in Estonia at the moment as the new regulations are taking effect this year. From 2014 and onwards the public officials will have the opportunity to declare their assets in a new online register. This way the public officials who are obliged to submit a declaration can do it together with submitting their declarations of income tax. The system, however, is not fully operational and needs improvements and the previous form for publication on paper will still likely be used. It is important to mention that not all declarations of assets and interest will be made public. The current provisions of the Anti-Corruption Act states that only council chairmen of local self-governing units, mayors, members of the council, members of local rural municipality governments and rural municipality secretaries are bound to declare their assets. Assets of other public officials are declared internally. The system thus relies on mutual trust and shared moral values.

GENERAL RECOMMENDATIONS FOR STRENGTHENING THE ENFORCEABILITY OF CONFLICT OF INTEREST

1) BASIC TERMINOLOGY OF CONFLICT OF INTEREST AND THE CONSISTENCY OF INDIVIDUAL LAWS

To increase enforceability of the rules for preventing conflict of interest, the individual countries need to provide a clear definition of the term itself. We recommend following the definition given by the European Council in the Model Code of Conduct for Public Officials, namely that conflict of interest arises in a situation in which a public official has a private or personal interest the character of which influences or may influence impartial and objective performance of the official's duties. The definition should be codified in both legal and sub-legal standards governing conflict of interest, and particularly in areas where the scope of individual acts overlaps.

Rationale:

Most European countries[29] do not use the term conflict of interest in their laws and their legal systems usually do not provide any binding definition[30]. There is no universal definition of conflict of interest in the monitored countries. Each of them approaches the issue from a different direction. The laws governing conflict of interest are usually unclear and fragmented, overlapping and sometimes even contradicting each other. The exceptions are Estonia and Poland which both have a unified legal and terminological framework. The opposite is true for Hungary which has about 30 laws for various official public functions, each of them involving conflict of interest in some way. The introduction of more rules and standards requires a greater focus on the issues of implementation and enforcement. The more rules there are, the more difficult it is to monitor compliance. Without oversight, compliance with the laws is often debatable.

2) INSTITUTIONAL MECHANISMS OF THE ENFORCEABILITY OF CONFLICT OF INTEREST

Regardless of whether the countries choose the option of having a single central body overseeing conflict of interest or several different institutions (hereinafter a "body") providing the functions described below, such body or bodies must be provided with the basic conditions for their operation. The core requirement is guaranteeing functional independence, in particular in terms of staffing and funding. Funds allocated for the activities of the body should not be subject to ad hoc political decisions. The basic condition for the functioning of the body is its political and functional independence. For this reason, professional, qualification and other requirements for the heads of the body, their selection and appointment are some of the most necessary conditions for preventing potential political influence. The selection should be primarily motivated by clear qualification requirements for the candidates and by high requirements for their personal qualities and moral integrity.

a) Monitoring function

One of the main activities of the body should be monitoring compliance with all the standards and regulations for the behaviour of public officials and prevention of conflict of interest. These activities should also include performing analyses and implementing anti-corruption measures as well as educating both public officials and the general public. The body should also be collecting information (records) and verifying declarations of personal wealth of public officials.

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[29] For more information, see the analysis EU Summary Research on Current Institutional Enforcement Mechanisms of Conflict of Interest (Oživení, 2014). Available at: http://www.bezkorupce.cz/wp-content/uploads/2014/08/oziveni_analyza_stret_zajmuEU_en_02.pdf

[30] For example in the Czech Republic, the definition of conflict of interest used to be provided in Act No. 238/1992 Coll., on conflict of interest, in Section 1 (2) according to which "The conflict of public interest with personal interest is an action or inaction of a public official that threatens public trust in the official's impartiality, or an action in which the public official misuses his or her position to gain unjustified benefits for him- or herself or for another natural or legal person." This act, however, is no longer valid and the current legislative does not use the term any more.

b) Investigation and sanctioning
The body should have the right to launch investigations, both on its own initiative and following a submitted report, on whether public officials comply with the law, as well as the power to implement corrective measures when violations are found. In cases when the law was violated, the body should have the right to impose sanctions. Appeals against this decision should be in the hands of courts.

c) Methodology support, education and raising awareness
The methodological function of the body is crucial for enforceability. It should include methodological activities for interpreting and implementing the law. Based on the performance of the functions listed above, methodology also includes submitting proposals for improving or unifying the wording or interpretation of current laws. As part of this function, the body should at the same time also provide information to the public, offering consultations and publishing independent opinion statements. These activities should also include submitting recommendations to applicable and draft laws, coordinating the activities of other bodies to ensure a unified approach and collaborating on the international level.

Rationale:
The institutional framework ensuring compliance with the set rules is a crucial part of enforcing conflict of interest provisions. In most analysed countries, however, institutional oversight is insufficient. In general, they are lacking a system of internal control and control mechanisms are usually inefficient. There is no central institution overseeing conflict of interest in the Czech Republic; in Hungary, institutional oversight is typically performed by the body or person who elects or appoints the official who is suspected of having a conflict of interest. In Poland, institutional oversight of conflict of interest is divided between several institutions and laws. There is no independent body in the parliament responsible for monitoring and resolving cases of conflict of interest. Specific public officials need to report to different bodies and follow different laws.
The oversight body for Slovak MPs is the Committee of the National Council of the Slovak Republic. But the powers of the Committee are limited, because it is subject to direct political influence. Its capacities are insufficient and its work has not led to any significant results so far. In Estonia, oversight is in the hands of special commissions, committees of local administration authorities, relevant ministries and the Council of Public Legal Persons.

There are various efforts to provide consultancy and educational services focusing on conflict of interest, but with the exception of the Estonian Council of Ethics of Officials, which provides relatively significant methodological support, these efforts are very insufficient.

3) MAKING SANCTIONS MORE EFFECTIVE

Sanctions should have different levels corresponding to the severity of the violation and their intensity should be high enough to serve as a motivation to comply.

Rationale:
Sanctions are an important instrument for enforcing compliance with the requirements of systems for submitting declarations, particularly in countries where such systems apply to many public officials. While all of the analysed countries do have sanctions, the lack of a centralised monitoring body is preventing efficient control. When sanctions for violations of conflict of interest regulations in public office are imposed, they are usually very mild with no deterrent effect.

There is only one possible sanction in the Czech Republic, applicable for violations of the duty to submit declarations of personal wealth. There is also a limited possibility of sanctioning public officials who have failed to declare a personal interest. Because there is no central authority monitoring conflict of interest and because sanctions can be imposed by any of the many registers, their total number is very difficult to determine. The situation in Poland is similar, with few possible sanctions that are used only rarely.

In Hungary, proven conflict of interest is penalised by dismissing the public official in question. A public official who is being investigated may not perform his or her function or take part in the decision-making process in the respective body. The official also loses entitlement to any remuneration or other benefits until the required duty is fulfilled. While Slovakia has a wide array of possible penalties for violations of duties, its investigative procedures are inefficient and subject to political influences. In Estonia, some sanctions do not have a sufficient deterrent function and therefore lack efficiency.

4) STRENGTHENING TRANSPARENCY AND PUBLIC OVERSIGHT

The real threat that all violations of the rules will be detected should be based on thorough monitoring, targeted verification of information and public access to submitted declarations, or a combination of all three. We recommend introducing a system in which all declarations in all states are submitted electronically and also managed by the corresponding body in an electronic format. This format should allow the general public to search for and categorise information. The information should then be proactively published.

Rationale:
Transparency and involvement of the public may be another instrument supporting the objective performance of public duties and preventing abuse of power by increasing control. When information is made available to the public, citizens are able to make a qualified decision about their voting preferences and force their elected representatives to comment on questions raised by this information.

Transparency and public control remain a problem in the analysed countries. While Estonia is currently implementing a new transparent system for online declarations, the situation in the other countries is considerably worse. For example the Czech Republic is lacking a central register for submitted declarations and the system of publishing relevant information is complicated and confusing. The content of published information is also often insufficient, as is the case for example in Poland and Slovakia.

THE FREE ACCESS TO INFORMATION

ANALYSIS OF FREE ACCESS TO INFORMATION IN COUNTRIES OF THE EUROPEAN UNION – SLOVENIA, THE UNITED KINGDOM, ESTONIA AND CROATIA

1) INTRODUCTION AND EXECUTIVE SUMMARY

Information means power. If we do not have enough information on the activity of public institutions, it is difficult to call them to account. The space for bad management of public funds, neglecting legal obligations or corruption opens.

The law on free access to information is one of the main tools for the public to check responsible entities. However, the public in countries, in which laws guarantee wide access to information, often face defiant institutions that ignore or deny their obligation to provide information. The only possibility of gaining the right to information is often a lengthy or costly trial in many countries. In many countries, however, the court has no right to order the release of information; responsible institutions for misconduct often poses no sanctions. The control of public authorities also complicates the lack of awareness of the right to access information. The answer for a heavily enforceable law is a supervisory body with the power to assess whether requested information shall be released or not by law, in case of misconduct to order the remedy or to punish those who have failed. The institution responsible for improving information access can also help educate the public and public institutions about the right to information.

The Information Commissioner as an independent supervisory body actively increases law enforcement, technical support of officials as well as their training. Citizens do not have to wait for the decision of the court for years and to submit suggestions and complaints to various state authorities. The length of judicial proceedings providing the required information is out of date. The regime for making information available needs a quicker and more unifying approach for both offices and citizens. The institution of the Information Commissioner enables this and relieves the work of other institutions at the same time.

The Information Commissioner is also responsible for the collection of information on the functioning of the right of access to information. The knowledge of the number of applications, of information provided or refusals, of the observation of time deadlines or problems are an important part of law reflection, of its shortcomings and potential improvements. The statistical data on the utilisation of the law on access to information collected by the Information Commissioner are an inevitable part of the law itself as they ensure its protection against abuse.

This study introduces the supervisory bodies (Information Commissioners and Data Protection Inspectorate) of four European Union countries that belong to the strongest ones: Slovenian, British, Estonian and Croatian. The objective is to briefly present the institutional set-up, competences and costs of the operating supervisory bodies.

1.2 **Overview of the supervisory bodies in the EU countries, sanctions, and support measures**

When selecting countries for our research, we were inspired by the position of the countries global rating list evaluating access to information in 97 countries of the world, in which the organisations, such as the Center for Law and Democracy or Access Info participate. The rating list is regularly updated on the basis of six groups of indicators, evaluating, especially, the legislative framework laws on access to information. The indicators connected with appeal processes, sanctions and support mechanisms were of great importance to us. The intention was to show case studies , especially, with reference to the adequate competences of an

independent supervisory body. In summary, 14 countries from a total number of 25 EU countries (the rating does not include Cyprus and Luxembourg) have these bodies and 4 partially have these bodies. For example, an independent supervisory body regarding access to information is represented by an ombudsman in Scandinavian countries, in Greece, Lithuania and Bulgaria, and by various commissions in France, Belgium and Portugal. In other countries, this role is played by inspectors and commissioners either for data protection, access to information or for both. The countries that do not have such a body include the Czech Republic, the Netherlands, Latvia, Poland, Austria, Romania and the Slovak Republic.

Overview of independent supervisory bodies in the area of access to information in the EU countries

Independent supervisory body /appeal body	The applicants are entitled to file an (external) appeal to an independent supervisory body	Supervisory body
Belgium	partially	Commission d'accès aux documents administratifs
Bulgaria	partially	Ombudsman
Czech Republic	no	
Denmark	yes	Ombudsman
Estonia	yes	Data protection Inspectorate
Finland	yes	Ombudsman
France	yes	Commission d'accès aux documents administratifs
Greece	partially	The Office of the Greek Ombudsman
The Netherlands	no	
Croatia*	yes	Information Commissioner
Ireland	yes	Office of the Information Commissioner
Lithuania	yes	Ombudsman
Latvia	no	
Hungary	yes	Parliamentary Commissioner for Data Protection and Freedom of Information
Malta	yes	Information and Data Protection Commissioner
Germany	yes	Federal Commissioner for Data Protection and Freedom of Information
Poland	no	
Portugal	yes	Commission for Access to Administrative Documemts
Austria	no	
Romania	no	
Slovak Republic	no	
Slovenia	yes	Information Commissioner of the Republic of Slovenia
Sweden	yes	Parliamentary Ombudsmen
Italy	partially	Commissione per l'accesso ai documenti amministrativi
The United Kingdom	yes	Information Commissioner

Our research includes the key independent supervisory bodies and mechanisms to meet the 3 most significant criterias: binding regulations, the possibility to punish petty offences and supporting measures related to raising public awareness as well as the education of employees from public institutions about the right of access to information. The first criterion was met, in principle, by 6 countries. In addition to our selected countries, Ireland and Hungary were included as well. However, taking into account other criteria we decided for Slovenia, the United Kingdom, Estonia, and, on the basis of the most recent Information Act establishing the institute of Information Commissioner, Croatia.

Overview powers of supervisory bodies (or courts) in the area of appeal processes

(according to RTI ratings, * Croatia evaluated by TIS) (0=yes, X=no, •=partially)

	Procedure for appointing the head of the supervisory body does not allow political interference or arbitary dismissal	The independent supervisory body shall submit reports, and its budget is approved by parliament or any other effective mechanisms protecting its financial independence	Preventing conflict of interests or conditions for the appointment of the head of the independent supervisory body	The independent supervisory body has the necessary mandate and power to perform its functions, including the review of classified documents and viewing premises of public authorities (inspection)	Decisions of the independent supervisory body are binding	The independent supervisory body has the power to order remedial measures and disclosure of information	The claimants have the right to appeal to the court	The appeal to the independent supervisory body (or to the court) is free of charge and does not require legal assistance	The appeal is possible not only against dismissal, but also against the required form answers, "no answer", breach of deadline, charges, etc.	Clear procedures, including deadlines (independent supervisory body / court) are enshrined in law	An external appeal body has the right to order structural measures (e. g. to order trainings, greater focussing on results, etc.)
Belgium	X	X	X	X	X	X	0	X	0	•	•
Bulgaria	X	X	X	X	X	X	0	X	X	X	X
Czech Republic	X	X	X	X	X	X	0	0	0	0	X
Dane-mark	0	0	0	0	X	•	X	0	0	•	•
Estonia	X	•	X	0	0	•	0	X	0	X	X
Finland	•	0	0	X	X	0	0	0	0	0	•
France	0	X	X	X	X	X	0	0	0	0	X
Greece	0	0	•	0	X	X	X	0	0	•	•
The Neth-erlands	X	X	X	X	X	X	0	0	0	0	X
Croatia*	0	0	0	0	0	0	0	0	0	0	•
Ireland	0	0	•	0	0	0	0	•	0	0	X
Lithuania	X	X	X	X	X	X	X	X	X	X	X
Latvia	X	X	X	X	X	X	0	X	X	X	X
Hungary	X	X	X	0	0	•	0	0	0	0	•
Malta	X	0	0	X	•	•	X	X	X	X	0

Germany	0	•	X	X	X	X	0	0	0	X	X
Poland	X	X	X	X	X	X	0	•	X	X	X
Portugal	0	0	X	X	X	X	0	X	0	0	X
Austria	X	X	X	X	X	X	X	0	X	X	X
Romania	X	X	X	X	X	X	0	X	X	X	X
Slovak Republic	X	X	X	X	X	X	0	X	X	X	X
Slovenia	0	0	0	0	0	0	0	0	0	0	X
Sweden	X	X	X	0	X	•	•	X	0	0	X
Italy	0	0	0	X	X	0	0	X	X	X	0
The United Kingdom	•	•	X	0	0	0	0	0	•	•	0

Overview of possibilities to sanction misdemeanours

(according to RTI ratings, * Croatia evaluated by TIS) (0=yes, X=no, •=partially)

	Sanctions may be imposed on those who knowinly violate the right to information, including destruction of information	A system of redress of public bodies that systematically fail to disclose information (including incomplete information) is available, namely by imposing sanctions or asking for remedial measure
Belgium	X	X
Bulgaria	0	0
Czech Republic	X	X
Danemark	X	X
Estonia	•	X
Finland	0	•
France	X	X
Greece	X	X
The Netherlands	0	X
Croatia*	•	•
Ireland	•	X
Lithuania	X	X
Latvia	0	X
Hungary	X	X
Malta	0	X
Germany	X	X
Poland	•	X
Portugal	X	X
Austria	X	X
Romania	0	X
Slovak Republic	0	X
Slovenia	0	0
Sweden	0	X
Italy	0	X
The United Kingdom	0	0

Overview of support measures for the education of employees in public institutions and raising public awareness

(according to RTI ratings, * Croatia evaluated by TIS) (0=yes, X=no, •=partially)

	Liable persons appoint specialised employees (information commissioners) or establish a department with the responsibility and agenda for the disclosure of information	The central body, such as the Information Commissioner or the Ministry, is responsible for the promotion of the right of access to information	The central body, such as the Information Commissioner or the Ministry, is responsible for raising awareness of the right of access to information	Minimum standards for keeping records	Liable persons compile and update the lists or registers of documents in their possession and make them public	Training programmes for employees of the liable persons	The obligation to publish annual reports on the activities of the liable person, including statistics on received appeals and decisions	The obligation to submit a summary report to parliament or any other legislative body on implementing the right of access to information
Belgium	X	X	X	X	X	X	X	X
Bulgaria	0	X	X	X	0	0	0	X
Czech Republic	X	X	X	X	0	X	0	X
Dane-mark	X	X	X	X	X	X	X	X
Estonia	0	•	X	•	X	X	X	0
Finland	0	X	0	0	0	0	X	X
France	0	X	X	X	X	X	X	X
Greece	X	X	X	0	X	X	X	•
The Neth-erlands	X	X	X	0	X	X	X	X
Croatia*	0	0	0	0	0	•	0	0
Ireland	0	0	0	X	0	0	0	0
Lithuania	X	X	X	X	X	X	X	X
Latvia	X	X	X	X	X	X	X	X
Hungary	X	0	0	X	0	X	•	0
Malta	0	0	X	0	0	0	0	0
Germany	X	X	X	X	X	X	X	X
Poland	0	X	X	X	X	X	X	X
Portugal	0	X	X	X	X	X	X	0
Austria	X	X	X	X	X	X	X	X
Romania	0	0	•	X	0	X	0	X
Slovak Republic	X	X	X	X	0	X	X	X
Slovenia	0	0	•	0	0	X	0	0
Sweden	X	X	X	0	0	0	0	X
Italy	0	•	X	X	X	X	0	0
The United Kingdom	X	0	0	0	0	X	X	0

2) SLOVENIA

Slovenia belongs to countries that have a strong independent supervisory body in the field of access to information. Within EU countries it is currently in first place and third place[31] worldwide within the global rating evaluating the access to information RTI[32], namely thanks to the supervisory body that ensures a sufficiently high enforceability of law[33]. The Slovenian supervisory body, the Information Commissioner[34], is an autonomous and independent institution dealing not only with the agenda of the right to access to information, but also with the agenda of data protection.

2.1 **Independence of the Supervisory Body**

1.1.1. Appointment and Dismissal of the Commissioner

The Information Commissioner is elected by Parliament on a proposal from the President for a period of 5 years. He/she may be re-elected once, and must meet the following criteria:

- Slovenian citizenship
- university level degree
- 5 years of relevant experience
- has not been sentenced to any unconditional imprisonment

The Information Commissioner may be dismissed on a proposal from the President, namely if he/she:

- resigns of his/her own will
- no longer fulfils the above mentioned conditions
- becomes unable to perform his/her functions for a long period
- or neglects his/her obligations pursuant to the law and constitution

1.1.2. Financial Independence

The office of the Information Commissioner is financed from the state budget that is approved by Parliament on a proposal from the Information Commissioner.

Every year, the Information Commissioner produces and submits a report on his/her activities[35] to Parliament and publishes it on a website. The report contains activities from the previous year as well as estimates and recommendations in the field of access to information.

[31] Serbia is in the first place, India is in the second place.
[32] Global Right of Information Rating: http://www.rti-rating.org/country_data.php
[33] Available from: https://www.ip-rs.si/index.php?id=324
[34] Available from: https://www.ip-rs.si/?id=195
[35] Available from: https://www.ip-rs.si/index.php?id=388

2.2 **Competences of the Commissioner**

The Information Commissioner performs the function[36] of the body of appeal under Slovenian law on the access to information. The claimant is entitled to appeal against the inactivity of the office or against the dismissal of the request, but even if that information provided to him/her is not in the reqired form. The law allows an appeal without charge. The Commissioner decides on the process of appeal within 20 days. Decisions of the Commissioner are binding. The Commissioner has the right to order a remedial measure, including disclosure of information.

If the Information Commissioner suspects that the person liable withholds requested information, he/she is entitled to perform an inspection of the person liable. He/she is entitled to confiscate documents or enter the information system, if he/she is not allowed to enter the premises, he/she may contact the police, he/she is also entitled to invite an eyewitness.

2.2.1 *Sanctions*

The Information Commissioner may not only require the correction of failures, but also impose sanctions. The objective is a better functioning of the institutions that systematically fail in providing information. The sanctions constitute the revenue side of the state budget.

The Commissioner may impose penalties:

Misdemeanour	Person (e. g. a clerk)	Responsible person (e. g. a head)	Manager	Natural person	Legal person
Jeopardising access to information, damaging the information	EUR 420 - 1,050				
Deliberate destruction of documents	from EUR 1,050	from EUR 1,470			
Exceeding deadline or non-disclosure of information			EUR 630 - 1,250		
Unauthorised use of information				EUR 630 - 1,250	EUR 1,250 - 12,520

In 2012, one sanction was imposed in one case, namely to the amount of EUR 800 for jeopardising the right to information.

2.2.2 *Appeal Against the Information Commissioner*

In case of dissatisfaction the claimant may appeal against the Information Commissioner decision by opening an administrative dispute. The Administrative Court must issue a decision within 2 months of receipt of the appeal. No charges are paid for the appeal to the Administrative Court.

2.3 **Budget**

In the fiscal year 2012, according to the annual report the Slovenian Commissioner had a budget to the amount of EUR 1.67 million[37]. According to an unofficial estimate of the Commissioner the area of access to information amounts to about one third of the expenditures, the remaining two thirds involve the area of data protection. In 2012, the Commissioner`s Office had 33 employees, of which three were temporary staff.

[36] Competences of the Information Commissioner available from: https://www.ip-rs.si/fileadmin/user_upload/Pdf/brosure/zlozenka_pristojnosti_ang2.pdf

[37] Available from: https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Annual_Report_2012.pdf

The office recorded 519 application requests representing approximately 25 complaints per 100,000 inhabitants. A decision was made in 256 cases, of which 161 were allowed and 95 were rejected.

2.4 **Consultancy, Education, Raising Awareness**

Support and development measures in the field of providing public information is performed by the Ministry of Interior in Slovenia, namely, especially, providing information to the public about the means and conditions for the access to public information, providing advice on the application of this law and other support and development activities, The Information Commissioner offers guides and instructions on the access to information and data protection on his/her website.

The website contains the publications of the Slovenian Commissioner, e.g. presenting competences of the Information Commissioner as well as links to publications of other Information Commissioners in various areas of the right to information. Through FAQ and other tools on the website the Commissioner provides guidelines explaining appeal processes, fees, deadlines, etc. as well as information on the rights of citizens, repeated use of information, access to EU documents, specification of public information, Information Commissioner office statistics[38], references to legislation as well as a summary of the most important cases[39] (precedents). The Slovenian Commissioner also publishes articles[40] describing current events in the field of the access to information.

The Slovenian Information Commissioner participates in the organisation of workshops in order to raise awareness of the obligations of persons liable not only in public institutions, but also with suppliers of public services, public authorities or in other public institutions.

[38] Available from: https://www.ip-rs.si/index.php?id=323

[39] Available from: https://www.ip-rs.si/index.php?id=384

[40] Illustrative examples of the articles published by the Slovenian Commissioner:

- Where are the boundaries of the right to access public information?
- Transparency of public administration in the Republic of Slovenia
- System of access to classified information in the Republic of Slovenia
- The Guantanimisation of Data, Dnevnik - Saturday Edition Objektiv, 2008
- The Information Commissioner`s competencies in decision procedure under FOIA
- Access to court records and FOIA as a legal basis - experience of Slovenia
- New Principles of the Amended Act on Access to Public Information in Slovenia Commissioner or Ombudsman
- Weighing tests with emphasis on public interest test in accessing information of public character
- New Principles of the Amended Act on Access to Public Information

3) THE UNITED KINGDOM

The United Kingdom is not among the most open countries with regard to the extent of information provided. However, it is an excellent example of a strong independent supervisory body[41]. As in Slovenia, the Information Commissioner is the supervisory body. Together his/her office is responsible for the agenda of access to information and for the agenda of personal data protection.

3.1 **Independence of the Supervisory Body**

3.1.1 *Appointment and Removal of the Commissioner*

The Commissioner is selected by a classic selection process covered by the Ministry of Justice. The successful candidate appears before a Parliamentary committee that formulates recommendations and decides on his/her nomination. Then he/she is appointed by the Queen for a period of 5 years and should not stay in his/her post for more than 15 years, that is more than 3 consecutive terms. Both chambers of Parliament together with the Queen can remove the Commissioner from his/her post in case of serious misconduct.

3.1.2 *Financial Independence*

The Commissioner negotiates the budget with the Ministry of Justice. The Commissioner and his/her office are financed from the state budget that is approved by Parliament. He/she submits annual reports[42] on his/her activities to Parliament each year, or any other reports, if appropriate.

3.2 **Competences of the Commissioner**

Unlike Slovenia, first instance appeals for non-disclosure of information or dissatisfaction with published information are directed against the person liable from which the information was requested. After the conclusion of the first instance appeal it is possible to appeal externally to the office of the Information Commissioner. It is possible to appeal against the inactivity of the person liable, decision on non-disclosure of information as well as against the delay, charges, unclear justification or in case of failure in providing assistance or consultancy. The deadlines for the settlement of requests by the Commissioner are, however, not officially determined in the United Kingdom. Decisions of the Commissioner are binding. He/she may, for example, order persons liable to correct decisions on disclosure of information and to determine the deadline within which they must remove discrepancies. He/she may ask the persons liable for completion of information.

If the Commissioner thinks the activities of the person liable as inconsistent with the Code of Good Practice[43], he/she may recommend to the person liable, how they can achieve good practices.

He/she may also order other specific steps for compliance with the Information Act, e.g. compliance with a so-called publication scheme[44].

If the Commissioner suspects failure or non-compliance with regulations, he/she can order an inspection after authorisation by a judge, i.e. he/she may enter premises, inspect, seize documents or other records in order to examine them.

[41]

[42] Freedom of information act 2000 available from: http://www.legislation.gov.uk/ukpga/2000/36/contents

[43] Available from: http://ico.org.uk/about_us/performance/annual_reports

The Code of Good Practice consists of recommendations of the Commissioner for implementation of the law for particular fields within the access to information and data protection. The task of the persons liable is to behave pursuant to the Code.

[44] The publication scheme specifies the rules for information classification and the method of its disclosure, or charges for the access to information. If needed, the Commissioner issues it in order to guide the activity of the persons liable within providing of information, and they are obliged to follow it.

3.2.1 *Sanctions*

The British Information Commissioner may not impose sanctions, the sanctions are imposed by the court. The Information Commissioner collects evidence that he/she then submits to the crime prosecution service, that initiate the judicial proceedings. The crime prosecution service is not obliged to commence the judicial proceedings in a given case.

Misdemeanour	Responsible person
Non-provision of information or limited provision of information	up to EUR 6,000

If the person liable does not act in accordance with the law, it is understood as a contempt of court. This issue is then returned to the tribunal or the court and may result in a fine for the person liable. To date, the Commissioner has not formally commenced such proceedings, as the implementation level is high.

3.2.2 *Appeal Against the Information Commissioner*

It is possible to file an appeal free of charge against the decision of the Information Commissioner to the Information Tribunal[45]. An appeal to the tribunal of the first instance must be made within 28 days. If the tribunal accepts the failure, it may reverse the decision of the Commissioner and will issue a new decision. The case is, mostly, passed over to a higher tribunal in the case of more comprehensive appeals. The Court of Appeal deals with appeals against the higher tribunal. Deadlines are not specified, they depend on the complexity of a case. Appeals to the tribunal are free of charge, court fees are paid at the Court of Appeal, unless the parties agree otherwise.

3.3 **Budget**

The Commissioner is financed from the state budget approved by Parliament. According to the annual report, the subsidies for the Commissioner amounted to cca. 5 M EUR[46]. He/she received more than 4,600 complaints last year, representing about 10 complaints per 100,000 citizens. The Commissioner upheld 1,126 (24%) complaints, rejected 939 (20%) complaints, and 751 (16%) complaints were solved informally. The remaining ones were filed either before they ended the first instance process, or the claimant lost his/her interest.

3.4 **Consultancy, Education, Raising Awareness**

The publication scheme and the Code of Practice of the Commissioner serve to educate clerks and other responsible staff pursuant to this law. For example (in so-called Good Practice Reports) the Commissioner recommends how the public bodies should behave during assistance, consultancy or in relation to other bodies. The Commissioner`s website contains a large number of publications not only for employees, but also for the general public.

The guides on the website for persons liable are very detailed and cover many areas from the codes of practice through fees, sanctions, exceptions, decisions up to more complicated issues such as the tests of public interest or awkward or repetitive requests (complainers). The British Information Commissioner also offers a special portal for consultancy and assistance for experts in the field of access to information[47] under individual politics, and deals with individual questions from cases that occurred during appeal processes to the tribunal (ICO knowledge base). The general public can search for instructions according to particular topics or clearly arranged schemes answering the questions how and against which it is possible to appeal, etc. This year the Commissioner`s Office finished "Advisory Visit Programme" aimed at assisting and educating organisations, charities and non-profit sector services. In the field of data protection the Information Commissar prepared video tutorials and cards on the principles of data protection. The area of information freedom is explained in detail in the guide on a free access to information that is on the website of the Information Commissioner.

[45] The Information Tribunal is a quasi judicial body that is responsible for the field of the access to information within the administrative courts of first instance in the United Kingdom.

[46] Available from: http://ico.org.uk/about_us/performance/~/media/documents/library/Corporate/Research_and_reports/ico-annual-report-201213.ashx

[47] Available from: http://ico.org.uk/foikb/index.htm

4) ESTONIA

The supervision of implementing the legislation on information freedom in Estonia is performed by the Data Protection Inspectorate[48]. Any person who has been denied access to the requested information may submit a complaint to the Data Protection Inspectorate or to the Administrative Court. Both bodies may order disclosure of information without more significant differences. It is up to the claimant to choose one of these alternatives (he/she may omit the Inspectorate and appeal directly to the Court).

4.1 **Independence of the Supervisory Body**

4.1.1 *Appointment and Dismissal of the Inspectorate`s Director General*

The appointment and the dismissal of the Director General of the Personal Data Protection Inspectorate is performed by the government on a proposal from the Minister of Justice after hearing the opinion of the Constitutional Committee of the Estonian Parliament. He/she is appointed for a period of 5 years and may not be appointed twice consecutively.

Requirements for the Inspectorate`s Director General:

- university level degree, including sufficient education in the field of law, management and IT administration
- experience in audit
- he/she can not be convicted of a crime
- he/she may not be dismissed from a previous working position for inadequacy for given working position
- he/she may not occupy any other paid position except for teaching or research

The Director General of the Data Protection Inspectorate may be dismissed from his/her function only:

- at his/her own request
- due to the expiration of term of office
- for a disciplinary offence[19]
- due to a long-lasting inability to work
- in case of a criminal prosecution
- if he/she does not meet the requirements established by law for performing this function

4.1.2 *Financial Independence*

The budget of the Estonian Inspectorate is not directly approved by Parliament as in Slovenia or the United Kingdom. The Inspectorate negotiates the budget with the Ministry of Justice that approves it[50]. It is financed from the state budget. Every year, the Inspectorate submits a report[51] on compliance with the law on access to information to the Constitutional Committee and the Chancellor of Justice (a government official supervising the legitimacy of state activities). The report must be published on the website of the Inspector. He/she may submit any other reports as well regarding important issues.

[48] Available from: http://www.aki.ee/en

[49] According to the Public Service Act, §84, it is a non-fulfillment of obligations, intoxication in the workplace, unlawful handling the property of the office, violation of moral, ethical standards.

[50] Statutes and Composition of Data Protection Inspectorate 2012

[51] Available from: https://www.huntonprivacyblog.com/wp-content/files/2013/05/2012_aastaettekanne_eng.pdf

4.2 **Competences of the Inspectorate**

The claimant for information who has been denied access to information or dissatisfied with the information provided may appeal to the Administrative Court or to the Data Protection Inspectorate. It is possible to appeal free of charge within 30 working days after receipt of the application is rejected. The Inspectorate handles appeals and may, from its own initiative, supervise persons liable. It examines whether:

- request for information is registered pursuant to law
- request for information is provided within the term and in the manner prescribed by law
- refusal or limitation of access to given information is in accordance with law
- the person liable publishes information, keeps the website pursuant to law

If the Inspectorate determines a failure, it will order a remedy. The person liable must adopt the remedial measures within 5 working days from receipt of the order. The results of the supervision are published by the Inspectorate on its website.

4.2.1 *Sanctions*

The Inspectorate imposes fines on representatives of the persons liable. The sanctions constitute the revenue side of the state budget.

Misdemeanour	Responsible person
Deliberate issue of wrong information, conscious disclosure or publishing information intended for internal use, failure to act pursuant to the regulations of the Inspectorate	up to EUR 1,200

4.2.2 *Appeal Against the Inspectorate*

It is possible to file an appeal against the decision of the Inspectorate to the court which will decide within 30 days. The appeal to the court requires a fee of 15 EUR.

4.3 **Budget**

In 2012, Estonia with a population of 1.3 million financed the Commissioner with a budget of EUR 595,403. The Commissioner`s Office presently has 18 employees.

In 2012, it received 877 requests and proposals which is about 67 complaints per 100,000 inhabitants. Complaints and appeals amounted to 404, initiated inspections amounted to 414, of which 61 were initiated by the office. The Commissioner issued 48 orders and more than 190 recommendations. The Commissioner performed 56 verbal consultations and imposed 39 penalties for misdemeanours.

4.4 **Consultancy, Education, Raising Awareness**

The Inspectorate deals with raising awareness in the field of access to information. The websites of the Inspectorate contain many guides and instructions on how to gain access to information. Each public institution itself is responsible for the education of employees in the field of access to information.

5) CROATIA

Within EU countries, Croatia with its Information Act since 2003 was in second place in the global rating evaluating the access to information[52] after Slovenia. Recently, it adopted a new law in the context of accessing the EU. It introduces a new supervisory body - an Information Commissioner.

5.2 **Independence of the Supervisory Body**

5.2.1 *Appointment and Dismissal of the Commissioner*

The Commissioner is elected by Parliament for a period of 5 years with the possibility of re-election. Pursuant to law, the Commissioner must be independent in his/her work and be responsible to Parliament and must meet the following requirements:

- Croatian citizenship and permanent residence in the Republic of Croatia
- university level degree and Master`degree or integrated university degree and a postgraduate university programme in law or social sciences
- at least 10 years of relevant experience
- he/she should be a respected expert with a good reputation and experience in the field of human rights protection, media freedom and democracy development
- without prior criminal activity or criminal activity for which proceedings is initiated ex officio
- without membership to a political party

The Commissioner is dismissed by Parliament, if he/she:

- requests it
- does not meet requirements
- was not able to perform his/her obligations for more than 6 months
- does not fulfill his/her obligations pursuant to the Information Act

5.2.2 *Finančná nezávislosť*

Komisár má nárok na odmenu vo výške odmien prijatých podpredsedami parlamentných výborov. Fungovanie inštitúcie Informačného komisára je financované zo štátneho rozpočtu, ktorý schvaľuje parlament.

5.2 **Financial Independence**

The Commissioner is entitled to a renumeration to the amount of the renumeration received by the Vice-Presidents of the Parliamentary Committees. The institution of the Information Commissioner is financed from the state budget that is approved by Parliament.

[52] RTI rating available from: http://www.rti-rating.org/home.php

The Croatian Information Commissioner has significant responsibilities in the areas of inspection. He/she supervises on the basis of complaints, whether the person liable:

- appoints a person responsible for the agenda of provision or disclosure of information, and whether this person performs his/her obligations pursuant to law
- maintains a register of requests, procedures and decisions on law implementation
- publishes the amount of fees for the access to information
- publishes information pursuant to law, issues an annual report and performs his/her activities pursuant to law

On the basis of inspection the Inspector provides suggestions and recommendations for improving performance or removal of shortcomings. He/she may forbid performing activities that are inconsistent with law. The persons liable may appeal against the decisions of the inspection. The person liable must inform the Inspector of the implementation. If he/she fails in the implementation, the Commissioner is required to inform the government or other central bodies supervising the person liable of this fact.
The Commissioner also proposes measures for professional education and development of the Information Commissioners (persons responsible for providing information at individual offices and organisations). He/she may propose new legislation or its amendment for better access to information. He/she also submits a report on the implementation of this law to Parliament.

5.2.1 *Sanctions*

The Croatian Commissioner, like a Slovakian one, imposes sanctions on institutions that have made a mistake as well as their responsible representatives. Failure to disclose information is subject to a fine as well as non-performance on the basis of the decision of the Commissioner. The Commissioner imposes sanctions on representatives of up to EUR 650 and to institutions of up to EUR 1,300. Higher fines are for damage, destruction or concealing information. The Commissioner imposes them on the institutions, responsible employees as well as individual persons.

In the case of more serious misconduct, the court may intervene as well and it may impose fines on individuals of up to EUR 2,600 and to institutions of up to EUR 13,000.

The Commissioner may also punish individual and legal persons for unauthorised use of received information. The sanctions constitute the revenue side of the state budget.

Misdemeanour	Responsible person	Person liable	Natural person	Legal person
Non-disclosure of information, non-appointment of a responsible person	EUR 130 - 260	EUR 260 - 520		
Failure in acting on the basis of the decision of the Commissioner, obstructing inspections, failure in correction of faults	EUR 390-650	EUR 650 - 1,300		
Limited access to information or repeated use of information*	EUR 650 - 2,600	EUR 2,600 - 13,000		
Damage, destruction or concealing information.	EUR 2,600 - 6,500	EUR 2,600 - 6,500	EUR 2,600 - 6,500	
Unauthorised use of information			up to EUR 6,500	up to EUR 13,000

*it is imposed by the court

As the Commissioner`s Office in Croatia has only been working for a few months, only one case is known, in which a state company was sanctioned by the court on a proposal from the Commissioner, namely twice in succession to the amount of EUR 2,600, and the responsible person EUR 650.

5.2.2 *Appeal Against the Information Commissioner*

It is not possible to appeal against the decision of the Commissioner, however, it is possible to commence an administrative dispute before the Supreme Administrative Court of the Republic of Croatia that must issue a decision on a complaint within 90 days. The administrative dispute may also be initiated by a public body that issued the decision in the first instance. The appeal is free of charge.

5.3 **Budget**

The Croatians have had their Information Commissioner since October 2013. Currently, the Commissioner`s Office is working with an annual budget of less than 240 T EUR, it has five employees including the Commissioner. Over the coming months, an increase in the number of employees is planned.

5.4 **Consultancy, Education, Raising Awareness**

The Commissioner proposes measures for professional education and development of the Information Commissioners (persons responsible for providing information at individual offices). Raising public awareness of the right to access to information is the task of the Protection Data Office; this agenda, especially in the field of access to information, shall be adopted by the Information Commissioner in the near future.

6) MAIN FINDINGS

The Information Commissioner is, generally, an independent institution that is responsible for personal data protection in addition to the agenda of access to information. The Slovenian and British Commissioner as well as the Estonian Data Protection Inspectorate protect personal data in addition to ensuring access to information.

Independence of the Commissioner

The Commissioner is regularly selected by the government or Parliament. His/her independence is supported by clearly defined conditions under which he/she may be dismissed. **In Slovenia, Croatia and Estonia the Commissioner may be dismissed only if he/she does not fulfill the conditions of the appointment, he/she can no longer perform his/her function or makes a significant misjudgement.** The independence of the Commissioners in these countries is strengthened by the length of their term of office. While the Commissioners are appointed for five years, governments have power for 4 years. **The financial independence of the Commissioners in all four countries is supported by the fact** that they are financed from the state budget that is approved by Parliament.

Competences

The task of all Commissioners is to act as an appeal body for claimants for information who received a negative or non-complete answer from persons liable, or did not receive any answer. In Britain, there is the possibility to appeal also in cases of delay of information or unjustified charges. The Commissioners are entitled to order that any information is accessible. Their decisions are binding.

	Slovenia	Great Britain	Estonia	Croatia
Decision	Binding	Binding	Binding	Binding
Deadline for decision	20 days	Are not determined	Are not determined	30, 60 or 90 days according to the nature of the appeal
Inspection Right	Yes	Yes, after the decision of the court	Yes	Yes

The British and Croatian Commissioner may recommend to the persons liable how to move towards an example of good practice, or prescribe specific actions. The Croatian Commissioner is responsible for the education and development of employees who are responsible for the access to information. All Commissioners impose fines for violations of law.

Requests and Budget[53]

The number of received requests per 100,000 inhabitants in 2012 in the area of access to information amounted to 25 in Slovenia and 10 in the United Kingdom. However, although it appears that this number is much more higher in Estonia, this number involves the requests in the area of data protection as well access to information. The budget of the Estonian and Slovenian Commissioner includes the data protection agenda as well. The budget of the Croatian Commissioner and the subsidy of the British Commissioner from the Ministry of Justice relates only to access of information.

	Slovenia	Great Britain	Estonia	Croatia
Complaints in total	519	4,600	877	181*
Complaints/100 thousand inhabitants	25	10	67	4
Decisions	256[54]	4693	43	179
Rejected or denied	96***	1,866**	25	N/A
Annual budget in EUR	1,670,000	5,380,000	595,403	240,000

*The office has only operated since October 2013. In 2013 the Office of Info Commissioner received 172 requests for information, 9 requests were transferred from the previous year. ** it involves 40% from the total number of complaints that the Commissioner did not solve due to non-conclusion of the first instance process. *** 1 case was rejected and 95 cases were not admitted[55]

The individual Commissioners have different statistics. For example, the Information Commissioner in Slovenia recorded since 2003 when he/she issued 6 decisions a significant increase, In 2006 it was 110, and in 2012, he/she decided in 256 cases. in 2012, almost 40% concerned central bodies of the public administrative, and 36% was related to the decisions of public funds, institutions, agencies and other public authorities and providers of public services, 17% of the decisions related to municipalities. The rest were courtscases, prosecution services, etc. Appeal against the Information Commissioner was used in 10.5% of the decisions. For example, the British Commissioner is currently drawing attention to speeding-up decision processes. The statistics from last year show that the requests settled within 30 days amounted to 22%, within 90 days 68%, within 6 months 88%, and only a 1% was not settled within one year. He/she also has the statistics of the most complaints within the persons liable. 45% of requests concerned the local government, 24% central government bodies, 9% health services, 8% police and criminal court with education and 1% state authorities.

[53] On the basis of information from annual reports.
[54] Available from: https://www.ip-rs.si/index.php?id=384
[55] Available from the annual report 2012 of he Slovenian Commissioner from: https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Annual_Report_2012.pdf

Education of the Public and Public Institutions

The support and development measures in the field of providing public information is performed by the Ministry of the Interior in Slovenia; in Estonia, the public institution itself is responsible for the education of the staff.. In *Britain, these obligations belong to the Information Commissioner or to the Data Protection Inspectorate. In Croatia, there is now a transition of these competences from the Data Protection Agency to the Information Commissioner in the near future.

The Information Commissioners (except for the Croatian Commissioner who is preparing the website now) publish various guides and publications on the access to information and data protection, including detailed procedures and recommendations on their websites. They also have so-called "hot lines" providing information and consultancy.

Sanctions

There are not a lot of the cases imposing sanctions, on the contrary, they are rare. The Slovenian Commissioner said that they serve as an effective prevention, if they are established in law. The sanctions constitute the revenue side of the state budget.

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COMPARATIVE ANALYSIS OF ACCESS TO INFORMATION IN V4 COUNTRIES + ESTONIA

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 information[56].

[56] 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*.

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.

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 refus 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 than 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 classifies). 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 reply[57].

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 particural 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.

[57] 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.

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 and 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 atlatszo.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. Obliged 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 atlatszo.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 governments[58]. There are also noticeable differences between institutions. While some choose to disclose information properly in a machine-readable format, some obliged bodies tend not 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 accesible websites. This would provide 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 unified format and it will be thus machine readable, easily accessible and comparable.

[58] 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.

GENERAL RECOMMENDATIONS FOR STRENGTHENING THE ENFORCEABILITY OF THE RIGHT TO INFORMATION

K elementárnímu právu na informace patří v současné době i právo na určitý komfort přístupu k informacím, zahrnující rychlost, cenu nepřevyšující náklady spojené s jejich poskytnutím, příp. bezplatnost, procesní pomoc, dálkový přístup, volbu formy a celkový způsob provedení vůči žadateli.
Žadatelé musí mít vždy rychlý a levný přístup k informacím, jakož i k přezkumnému řízení[59].

INFORMATION ORDER

In order to speed up the process of providing information and prevent obstructions, we recommend giving the appellate body the option to decide on providing the information by issuing an **information order** that is binding for obligated bodies. The same mechanism can also prevent obstructions from the side of obligated bodies. The information order allows bodies standing hierarchically above the obligated body to issue a direct order to provide the sought information after remedy proceedings are concluded. If the appellate body is unable to give such an order, the case returns to the obligated body at the end of the investigation, after which the obligated body may once again refuse to provide the information and force the appellate body to reopen the case. Such situations also waste money of the requesting party, the obligated body, the appellate body as well as the court.

The Estonian model can serve as an inspiring example that could be adapted to the specific situations and institutional frameworks of the individual countries in the form of a system of optional remedies, such as turning to the Information Commissioner or an administrative court who may order the body in question to provide the information. Such solution of course does not mean that it would be the only possible way of enforcing the right to information[60].

Rationale:
Three of the five analysed countries (Slovakia, the Czech Republic and Poland) share similar problems – inconsistent approach to providing information and the remedy process (see e.g. the Czech "administrative table tennis" in which a rejected application keeps returning from the supervisory to the obligated bodies to be reopened, or the fact that the decisions of Polish courts only serve as recommendations) which at the very least introduce unnecessary delays in the whole process and thus discriminate against the requesting party. The process becomes very lengthy and the information is therefore not being provided for unjustified reasons. With the exception of Estonia and Hungary, the supervisory bodies in the individual countries do not have the option of issuing an order to provide the information, even though Estonian (as well as for example Slovak or British) experience shows that this instrument is effective.

INSTITUTION FOR METHODOLOGY AND ENFORCEMENT

A good instrument is the establishment of an **institution for methodology and enforcement** with full appellate, intermediary and methodological powers that systematically carries out activities enforcing the right to information on the state level.

The powers of such an institution should apply both to the publishing of information and to the process of handling information requests, partially in terms of methodology, education, intermediary communication and possibly acceptance of the role of the supervisory body.

[59] C.f. Council of Europe Convention on Access to Official Documents, http://www.conventions.coe.int/Treaty/EN/Treaties/Html/205.htm
[60] Other options include e.g. sanction mechanisms or extension of the scope of actively published data.

First and foremost, the aim is to create a more flexible and faster option for accessing information, as the body would have the option to resolve appeals with a binding final decision on the application in the form of an order to provide specific information. In terms of intermediary competence, the body should be monitoring and supporting the implementation of legislative measures, monitoring active publishing of information, providing education and methodological guidance, supporting public awareness and formulating recommendations to currently applicable and draft legislation.

This recommendation is in line with the current European trend; example models include Germany or the United Kingdom as well as new democracies such as Serbia and Slovenia. For example Estonia, Germany and Switzerland have combined the protection of personal data with the function of an Information Commissioner. The obvious risk lies in the conflict of the insitution's roles, where the access to public information is sacrificed to the protection of personal data. Personal data protection is becoming ever stricter and may become a serious threat to dissemination and accessing public information. At the same time, the Estonian Data Protection Inspectorate obligates the institutions to publish as much data as possible by crossing over the sensitive areas of the document. Also, the opposing roles may actually increase the institution's competences and more balanced decision-making. Similarly in the USA, the corresponding office is responsible for monitoring compliance with the Freedom of Information Act as well as personal data protection. Combining these individual areas does not necessarily lead to positive results; the situation largely depends on the conditions under which the body operates in terms of its independence and capacity (including management). For example in Hungary the New Information Act introduced a new organizational model replacing the Data Protection Commissioner with the National Authority for Data Protection and Freedom of Information, which is defined as an independent agency. In contrast with the status of the Data Protection Commissioner who was responsible only to the Parliament, the Authority, as an administrative body is part of the executive branch. This model is absolutely alien from the ethos of protecting fundamental rights, so the change in the institutional system of protecting information rights in Hungary can be identified as a very relevant risk factor because of the lack of true independence.

An independent institution providing methodology and enforcement must have the powers, authorisation and capacity to carry out all of these functions. It should be established as an independent central public authority with its own chapter in the budget. This position meets the minimum necessary requirements for functional and financial independence, because allocated funds are not dependent on ad hoc political decisions. The basic condition for the functioning of the monitoring body is its political independence.
For this reason, qualification requirements for the heads of the body, their selection and appointment are necessary conditions for preventing potential political influence. The selection should be primarily motivated by qualifications of the candidates and by high requirements for their personal qualities and moral integrity.

In addition, it is also necessary to identify the body responsible for the right to information (for example, the Czech Competency Act does not explicitly assign the issues of the right to information to any of the state bodies, even though in practice, it is partially handled by the Ministry of Interior).

Rationale:
All countries except for Estonia and partially Hungary lack a body that would systematically deal with the current needs of access to information, meaning monitoring transparency, providing intermediary and methodological support in information disputes, education and methodological assistance or raising public awareness about rights and obligations. Crucial elements of the operation of such bodies are independence and sufficient capacity, as for example Hungary struggles with a lack of funding for its institution and in Estonia there is a certain degree of subordination to the Ministry of Justice that monitors the body's activities. What seems to be a bit more problematic is the possible role conflict of the inspectorate (protection of personal data and the right of access to public information).

CONSULTING, METHODOLOGICAL SUPPORT AND PUBLIC INVOLVEMENT

A key tool in enforceability is providing methodological support to obligated bodies and consultations to those who request information. This recommendation is also based on the Council of Europe Convention on Access to Official Documents[61] which among others mandates taking appropriate measures to educate the public about its rights, such as publishing documents electronically or establishing documentation centres.
Public administration bodies may among other things establish points of contact for individual administration departments that could provide information to the general public, providing access to documents that these departments are responsible for[62]. Countries should also establish a suitable mechanism for providing consultations and trainings to representatives of public administration focusing on their duties and responsibilities.

Informing the public about its rights and supporting the culture of openness are necessary components of enforcement of the right to information; adopted measures should also be complemented by public education campaigns implemented in collaboration with the media.

Public administration is in a period of transition from discretion to publicity. This means a change in public access to information, as now essentially everyone has the legal right to access all information except that which is by necessity not shared with the general public. In the past, citizens were only entitled to information if the law or an administrative body said so. This situation has created new roles for both parties, requiring an individual approach in specific situations. Enforceability of the right to information and its success depend on this change of culture, as it is virtually impossible to ensure openness only through laws, no matter how good. It is also necessary to keep monitoring the efficiency of introduced measures and carry out regular evaluations. A good solution is the establishment of an institution (see recommendation number 2) that would be doing these activities.

Rationale:
All countries except Estonia report that members of the public often fail to understand the law and are not aware of their rights. This was in fact the most commonly mentioned issue in all participating countries. Estonia compensates for its rather fragmented legal framework with the activities of its Inspectorate that provides consultations, publishes guidelines on its website and offers training and monitoring services to public institutions. Sufficiently extensive, simple and quick public access to information has a positive impact on public trust in democratic institutions and the willingness of citizens to take part in public life, which is an often discussed issue today (the "democratic deficit" and related loss of legitimacy of elected representatives).

PROACTIVE PUBLISHING

To enforce the right to quick and remote access to information at acceptable costs, it would also be advisable to ensure that there is a corresponding attitude from obligated bodies, encompassing individual support of those who request information as well as raising awareness about issues of public interest.
Obligated bodies should, on their own initiative and where appropriate, adopt necessary measures to support transparency and efficiency of public administration in the publishing of official documents held by these bodies, and measures supporting awareness of the general public about issues of public interest.

The amount of published information should keep gradually increasing, in part due to the existence of new technologies that make publishing and disseminating information easier. The scope of proactive publishing to a certain extent depends on the available resources of the obligated body, but should undoubtedly be expanding over time. Furthermore, standardized formats for publishing of information should be introduced and applied by obliged bodies.

[61] Available at: http://bit.ly/17Se0oc
[62] The Convention was ratified by only seven Member States so far, and from the analysed countries only by Hungary: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=1&DF=&CL=ENG

Rationale:

The lack of a proactive information publishing policy may be considered a key issue in the entire topic. In Hungary and the Czech Republic, many obligated bodies still fail to publish[63] even information that is required by law. In Poland, the active publishing system is fragmented, as each institution works on its own website separately. There is no monitoring and no tool that would force the individual bodies to publish all mandatory information. There is a good practice of mandatory publishing of contracts, invoices and court decisions in Slovakia since 2011. However, there are great differences between individual institutions in what is being published and in what format. On the contrary in Estonia, there is a single central database, but publishing information in this database is not as yet mandatory.

Informed citizens are a source of feedback, an important qualitative factor as well as a safeguard against misuse. A situation in which essentially anyone can easily obtain information about the activities of public administration bodies leads to an increase in their responsibility for using their administrative powers and improved transparency, acting as a tool preventing violations of the law. The same mechanism can also ultimately reduce the administrative burden of handling individual applications.

SANCTIONS

While sanctions are a necessary part of any legal regulation, state bodies are generally reluctant to apply them. There should be a system of sanctions for significant illegal violations of the right to information in handling individual cases as well as for violations of the duties of obligated bodies to publish information in the scope, manner and time frame required by law. Failure to publish information that is not justified by law represents the same violation of the public subjective rights of those who request the information as an illegal refusal to provide information after a valid request. Sanctions should apply not only to obligated bodies as such, but also to specific persons[64]. Sanctions should very specifically target the responsible person and apply to:

a. not processing a request within a set time limit;
b. issuing a decision that is against the law;
c. deliberately providing false information;
d. destroying the information without justification in order to make it impossible to be published.

Rationale:

The Czech Republic is the only one from the analysed countries that quite unusually does not define any sanctions for violations of the Freedom of Information Act. Violations of the right to information do not have any consequences besides the activities of the requesting party in appealing against the decision of the obligated body. Even though the laws of the remaining countries do define sanctions, there are some issues with their scope and application. For example in Poland, there is no penalty for providing incorrect information (even though not providing the information can lead to imprisonment); in Hungary, the sanctions for not publishing information are very weak. The Polish system also often fails in identifying responsible persons and internal sanctions are used only rarely. This means that the introduction of sanctions itself is not enough; an effective sanction mechanism is required.

In Slovakia, the enforcement of the access to information right primarily fails because of the difference in the interpretation of the Fredom of Information Act. The gaps in law, unclear definition of the obliged bodies and their obligations, as well as the lack of independent supervisory institution, result sometimes in the denial of requests to access information. In Slovakia, sanctions are resolved according to the Civil Procedure Code and the general Act on Offences and it can take years for administrative court to issue a decision. Therefore, the introduction of effective sanction mechanism as well as the establishment of independent supervisory institution, information commissioner, is necessary.

[63] Inspections of the Department of Public Administration, Monitoring and Oversight of the Ministry of Interior of the Czech Republic in 2014, p. 4: http://bit.ly/1LakoTM

[64] For example Polish law introduces as sanctions fines as well as potential imprisonment for up to one year.

POLITICAL PARTY FINANCING

EU SUMMARY RESEARCH OF POLITICAL PARTY FINANCING ENFORCEMENT MECHANISM

1) INTRODUCTION

From GRECO (Group of States against Corruption) reports it appears that legislation-wise, most of the European countries have sufficient provisions regarding regulating (controlling and sanctioning) party finance (both public and private). However, enforcement mechanisms are in most cases not effective: the enforcement authorities suffer from lack of independence, resources, and lack legal leverage. This document describes what are generally considered to be good practices for enforcing party financing rules.

For enforcement the underlying principle is that the most efficient and effective approach is to adopt one single law which regulates money in politics. This law should lay down disclosure and reporting rules and should authorise one single agency to enforce the law. (van Biezen, 2003: 54) If there is one law regulating party financing there should also be one body responsible for the enforcement of party financing rules.

THE ENFORCEMENT BODY

All better rated countries (Germany, Ireland and the UK) according to GRECO reports have one single body regulating party registration, party funding and election campaign funding. Furthermore, for the enforcement body it is also important that its members are politically independent. This is so in all the three mentioned countries (Germany, the UK and Ireland) where party representatives are not in the enforcement body. This is to ensure independence and credibility of the enforcement authority. (GRECO UK Report, 2008: 19)

Conditions to avoid bias should be put in place. Safeguards against partisan influence, especially from governing parties, are:

- Public expectations or a long tradition of independence of similar bodies;
- The status of a judge of the supreme court, auditor or ombudsman;
- Bipartisan or multiparty membership of the commission, where members have to include the minority or the opposition (when the authority is political);
- No reappointment of commissioners (lifetime or one-term appointments only);
- Absence of budgetary strings (on an agency which has become awkward for the government); and
- Absence of political pressure or government or party intervention on staff appointments.

(Austin & Tjernström 2003: 145)

Full disclosure, regular reporting, independent monitoring and effective enforcement are essential for a transparent system of political finance. Disclosure requires systematic reporting, auditing, public access to records and publicity. **Monitoring requires an enforcing agency backed by legal sanctions, and enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings.** (ibid.) All these elements are needed to encourage a proper process of party finance.

The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media. (Walecki 2007: 84) Therefore cooperation among these organisations should be encouraged.

Generally, it is **considered favourable that political parties are publicly financed**, and that allocations consider the size of the party, representation in the parliament, and/ or share of votes. The system should also support smaller parties not present in the parliament to ensure equality and representation of various interests of the society. However, private financing is a part of democratic culture but to ensure that no party can buy the elections or that no one group can buy policies, regulations should be in place for private financing. Consequently, **both public and private funding spending should be reported, and declarations should follow concrete rules.**

Therefore the general best practices are:

- Public party financing
- Regulated private financing
- One law regulating political party funding, spending limits
- One enforcement body with rights to monitor, analyse, investigate and sanction
- The members of the enforcement body should be independent (non-political)
- The enforcement body should have clear responsibilities and a legal right to monitor, investigate and refer cases to the police or the courts
- Cooperation between various stakeholders

2) AUDITING

Before discussing existing effective enforcement mechanisms to control party financing, some principles of reporting finances are listed. Disclosure rules vary greatly in what is required to be revealed, by whom and to whom. Generally, it is thought that enforcement bodies have been rather efficient in controlling the transactions done with public funds (Smilov, 2007: 7). Therefore, the focus is on how to more effectively regulate and enforce auditing of finances of private origin.

It is suggested that public legislation on disclosure should adopt the following guidelines:

- Disclosure provisions should distinguish between income and expenditure.
- Donations exceeding a certain minimum threshold should be disclosed.
- Donations should be itemised into standardised categories.
- Disclosure provisions should distinguish between the financing of political parties and the financing of candidates.
- Disclosure provisions should distinguish between routine party finances and electoral finances.
- Disclosure rules should include both national and local party finances (and political foundations).
- Disclosure should be a responsibility of both donors and of parties (and candidates) receiving donations.
- Party reports should be disclosed to an official auditing body and to members of the public.

Disclosure of political donations makes it easier to detect (and thus potentially to avoid) political corruption. (van Biezen, 2003: 56)

Since 1984 Germany has provided a good example of how to shape parties' financial reports. They must include income and expenditure, debts and assets of the entire party organisation at all levels (including local branches, as well as state and federal headquarters). The practice of funnelling money through political foundations or affiliated associations where transparency rules do not apply have been found to pose risks, such as in Hungary, Italy and Slovenia, thus it is important that the reports cover both state, local and party foundations accounts (TI, 2012: 2). In Germany, reports are organised according to a standard format prescribed by law. Both the elements of comprehensive reporting and a standardised format for financial reports provide additional devices for effective monitoring over time and between parties. (van Biezen, 2003: 57) Therefore, it is suggested that the rules of reporting are clear and the reports follow the same structure for each party report. This makes it easier for the enforcement body to control the audits because they know what is expected of them and what constitutes a breach in reporting.

There should also be reasonable thresholds for which donation amounts are published listing the personal details. If the threshold is too low, it means a lot of data processing for the enforcement body, and if the threshold is too high, it means more possibility for acquiring money from inappropriate sources. It is also possible that wealthy donators make several smaller donations that do not need to be registered thus **thresholds need to be reasonable**. Furthermore, for the enforcement body it is easy to control bank transactions, therefore **cash contributions should be limited as they cannot be controlled very effectively** but to a certain extent should be allowed, otherwise the private funders might refrain from contributions and the main principle of supporting political parties in a democracy is undermined. For the enforcement body it is also important to check the identities of who make private donations and whether there are persons from specific companies that make contributions and thus indirectly use corporate money for influence (van Biezen, 2003: 58-59). Only 10[65] countries have opted in favour of making the identity of donors and amounts donated publicly available but this should be enforced in all the countries to avoid anonymous donations. (TI, 2012: 2)

[65] Bulgaria, Czech Republic, Estonia, France, Lithuania, Latvia, Poland, Portugal, Slovakia and Spain (TI, 2012: 4)

Membership fee is another issue that needs addressing. It is very often difficult to find out how much a certain party member has personally allocated to their party as fees ranging from 1 euro to hundreds of euros can be accounted as a membership fee and often there is no limit (Estonia is an example). This could be therefore improved. Distinction between membership fee and donation should be made and setting a limit to the fee would simplify the system. This should be clarified in all the countries (the limit of membership fees and information on how much each party member has allocated)[66].

Walecki adds that it is crucial to have **internal political party controls** in place (internal auditing and presenting the results at party conventions). (Walecki 2007: 79-80) This practice is in use in Germany where internal audits are presented to party members for their review.

The enforcement mechanism for auditing is according to GRECO mostly effective in the UK and Germany. However, in Germany, campaigning costs are not audited which is a flaw in the system. In the UK especially election campaign funding is monitored. In Germany the Political Parties Act contains detailed provisions on the information to be provided in the income/expenditure statement and the assets and liability statement. (GRECO report on Germany, 2009: 12) In the UK the Political Parties, Elections and Referendums Act 2000 (PPERA) sets rules about where political parties and other groups or individuals can receive funds from, how much they can spend on campaigning at certain elections, and transparency in the political system. Both bodies **analyse and publish information on donations** but publishing will be discussed later. In both cases the independent monitoring bodies also check how well these rules are followed, and deal with possible breaches of the rules (referring cases to courts- in Germany, and the UK). **The bodies can impose sanctions when rules are breached (sanctioning is discussed later)**.

In terms of auditing political parties and candidates they **must to report on donations, loans and accounts**, so that the Commission can publish that information. The Commission then makes sure that the donations have been received from permissible sources such as individuals on the electoral register and the Commission also makes sure that the parties and candidates stay within spending limits during election and referendum campaigns. (Electoral Commission 2010: 1)

In Ireland there is an additional requirement. Each party appoints **a 'national agent' who must account for and control all of the party's election expenses**. Every candidate must also have such an agent (they can act as their own agent). These agents are responsible for the proper management of the election campaign and they ensure that declarations and returns of election expenses are properly completed and delivered to the appropriate authority (the Standards Commission). (GRECO Report on Ireland, 2009: 6) This makes it easier for the enforcement body to control the declarations and know who is responsible and who to contact in case of problems. It can also impede shady donations when one specific person has all the responsibility in making sure the accounts add up.

The accounts should be audited by independent bodies (audit agencies) to ensure credibility and transparency. Another suggestion is that the enforcement body could write down regulations on what requirements there are for auditing authorities. This is more difficult to impose on candidates as audits can be costly (GRECO UK Report, 2008: 18). Another idea is for the enforcement body to have funds allocated to appoint independent auditors to control parties, electoral campaigns and candidates.

In order to ensure that the work of the enforcement body is effective, there need to be clear rules or instructions on which accounts and how are declared. The procedural rules of auditing, monitoring; and how the reports should be published (Internal procedures should be in place in the enforcement body). This can be seen in the UK where the Electoral Commission has published the rules of supervision, investigation and sanctioning online. These rules guide the body in making decisions about possible infringements thus the procedure is more transparent.

[66] http://www.erjk.ee/et/aruanded/erakondade-tulud-ja-laekumised

SUPERVISORY ROLE

The Electoral Commission in the UK may

- Need to obtain information (documents) from, and visit premises used by, those it regulates.
- Where the Commission is refused access to documents on premises following a request, it may ask a Justice of the Peace or (in Scotland) a Sheriff to issue an inspection warrant to allow entry to the particular premises where the documents are held (only when significant grounds exist).
- Issue a disclosure notice requiring a supervised organisation or individual to provide it with specific documentation or information (to ascertain compliance within time critical or other public interest issues; or when the organisation has not complied with the rules, or where there has not been voluntary cooperation).
- For failure of compliance the Commission may elect to issue a civil sanction or seek prosecution.

The Commission has also written a disclosure policy to set the rules how assets are to be declared[67].

INVESTIGATORY ROLE

Investigatory activity may be instigated for a number of reasons, for example where a statutory report is not submitted, or where a submitted report indicates a potential breach of the law. Other circumstances which may lead to an investigation include where an allegation is made to the Commission that the law has been broken or where the Commission becomes aware of a potential problem through another route, such as a press report. (EC 2010: 7)

In that case the Commission may:

- Seek documentation, information or an explanation from an individual or organisation on a voluntary basis within a certain timeframe
- The Commission may use its statutory powers and issue an investigatory notice requiring the production for inspection of documentation and/or may require an interview
- In some cases (a threat that information may have been destroyed or removed) the Commission may require cooperation without prior notice (there are rules for how to conduct the interview)
- It is a criminal offence to fail to comply with an investigatory notice without reasonable excuse therefore , in the absence of a reasonable excuse the Commission will usually seek to enforce the notice with a court order
- May seek prosecution (when information is held back) but is more likely to seek to have the disclosure order enforced as contempt of court. (EC 2010: 9)

According to the GRECO report on the UK, the Electoral **Commission should be more pro-active when investigating and referring cases to police** (GRECO UK Report, 2008: 10). There should also be an option for natural persons to draw the attention of the Commission to possible breaches of the law.

SANCTIONING ROLE

Sanctions can be applied to either legal or natural persons. In the UK sanctions that may be imposed upon a person who commits an offence under the Political Parties, Elections and Referendums Act 2000 (PPERA) or contravenes one of the specified statutory provisions are:

- No sanction but advice on good practice for trivial breaches
- Fixed monetary penalty (200£) for first instance breach (e.g. late delivery of report)

[67] http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/79705/Disclosure-Policy-Final.pdf

- Variable monetary penalty (from 250£ to 20,000£) for more serious breaches and these cases are tried in courts
- Compliance notice to set out an action so that breaches do not recur (training staff or changing the reporting system)
- Restoration notice to set out an action to restore the position without the breach (giving up benefits that it has received through the breach)
- Stop notice to prohibit a person or an organisation to continue or begin a specified activity until steps in the notice are met
- Enforcement undertaking actions to bring the individual or the organisation into compliance as far as possible to what it had been without the breach
- Forfeiture (court ordered) of money accepted from an impermissible source (the size of that donation) or when this has been concealed
- Criminal sanctions for summary and indictable offences are fines of up to £5000, unlimited fines or imprisonment (max 12 months). This is decided by the Courts and the Commission needs to refer the case and usually when large amounts of money are involved.

(EC 2010: 10-14)

In the UK the Electoral Commission has enforcement powers to investigate allegations of potential breaches of the rules, as well as breaches it identifies proactively. The Commission has no sanctioning powers in respect of breaches of the rules on candidate expenses and donations, but may refer a suspected breach for criminal investigation or seek prosecution, in the same way that any other interested organisation or individual may do. (EC 2010: 2) They publish summaries of the outcomes of their casework[68].

The Commission decides whether a breach has occurred. It is itself responsible for its decisions. If the breach is confirmed it ensues with sanctioning. The Commission takes into account aggravating and mitigating features of the breach to determine sanctions. (EC 2010: 15-16) **To enforce the sanctions there are also good practices and steps – grounds for calculating fines, time limits, size of fines, responsible personnel, descriptions for making the payment of the fine, explaining the grounds for the fine** - that need to be followed by the Commission and also the individual or organisation that is sanctioned. Therefore it is necessary that there are sanctions for different types of breaches and that no loopholes exist. **The sanctions should be proportional and parties should be well-informed what is classified as a breach**. Therefore parties and candidates should be informed about good practices. In the UK there are trainings, phone lines and information online what constitutes a breach and what the sanctions foresee. The **sanctions should also be timely** to have an effect.

Experience from many countries has shown that **effective enforcement more often results from financial penalties** (including denial of public funding) **than from severe criminal sanctions**. (IFES TIDE Manual or the International IDEA Handbook on Funding of Political Parties in Walecki 2007: 87)

Therefore in relation to auditing the best practices that ease enforcement body's work are:

- The right to audit both regular party funding and election campaign funding
- To have donations, loans, and accounts both internally and externally independently audited
- To have prohibitions in the legislation for corporate money, cash contributions, anonymous contributions and to limit the contribution amounts
- Foreign donations should either be limited or banned
- To have one single person responsible for declaring, reporting of finances in a party and for a candidate
- Have clear rules distinguishing between membership fees and donations (limits, and clear reporting)
- To regulate what types of in-kind contributions are allowed and to what extent they should be reported

[68] http://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finances

- Publishing audits
- Making the identity of donors and amounts donated publicly available (there should be reasonable thresholds for which donation amounts are published listing the personal details of the contributors)
- Summaries of casework written by the enforcement body (to analyse funding schemes not only to check if numbers add up)
- The reports should include income and expenditure, debts and assets of the entire party organisation at all levels (state and local headquarters)
- Proportional and flexible sanctions
- The enforcement body having the independence, resources and rights to supervise, investigate and sanction

3) GUIDANCE AND TRAINING

Special efforts (education, training, support services like help by phone and guidelines, moral and material incentives) to encourage compliance with legal requirements are helpful to parties and candidates. Allegedly, this has been promoted in the US, however, in Europe based on GRECO reports such efforts seem to be lacking in most countries. (Austin & Tjernström 2003: 147) OSCE Guidelines on Political Party Financing (2011) aim to provide some guidance to help political parties tackle party financing issues. Also, GRECO writes and publishes country reports on the situation and developments in party financing in different EU countries and provides suggestions for improvement. Such guidelines and training activities are in place in the UK and Ireland. They're discussed below.

In the UK the Electoral Commission has provided **guidelines and factsheets for political parties, candidates, agents and campaigners** when it comes to private donations and declaring them. Also, the Commission provides **a phone line, web page and webinars to train candidates to better declare their finances**, donations, expenses, and loans. For the Electoral Commission there is also an **enforcement policy document that they follow**. It sets the supervisory, investigatory and sanctioning aspects of the regulatory role on reviewing reports (this was discussed previously). (Electoral Commission 2010: 2) These include a simple introduction to the role of registered party and accounting unit treasurers, and guidance on how to manage donations and loans. The Commission has also published explanatory notes about particular aspects of its regulatory role, including how it deals with allegations and how it makes public information about its work. (EC 2010: 2) It aims **to take action only when necessary and in a proportionate way. Monitoring is routine** to ensure compliance. The Commission may use its **investigatory powers** (to require documents, information or to attend an interview) in respect of any person or organisation when it has reasonable grounds to consider that there has been a breach of the law on party and election finance. (EC 2010: 4)

Also, in Ireland the enforcement body (the Standards Commission) has a set of guidelines for parties, candidates, public officials, election campaigns, state financing and donations[69]. It has published several documents for different officials to help them report on finances, and inform them of what constitutes as an illegal contribution. These practices could be followed in other countries to avoid mistakes in reporting and as a result simplify the work of the enforcement body. The enforcement bodies should also follow clear rules (guidelines) and for further transparency those should be published online.

The best practices in relation to guidance and training are:

- Guidelines and factsheets for political parties, candidates, agents and campaigners to help them properly declare income and expenditure
- Trainings organized by the enforcement body to clarify how income, expenditure should be reported
- Publishing helpful material online, having help lines
- Comparative analyses of best practices (for example GRECO reports) circulated among officials

[69] http://www.sipo.gov.ie/en/

4) TRANSPARENCY & PUBLISHING INFORMATION

The basic philosophy behind the reporting of party income and expenditure is to make party accounts a subject of public debate. Public debate is expected to produce a more careful selection of donors and a more responsible use of funds. Effective publicity requires that reports be readily available to the public and the media. For the agency this offers an opportunity to monitor financial activities and to challenge any part of a report. (Austin & Tjernström 2003: 148)

Most of the European countries do not offer sufficient information for public debate, nor is there monitoring by the agencies to support critical use of the information. Nevertheless, Germany, the UK, Lithuania and Estonia have established online systems where finance activities of political parties are published (both quarterly in the UK and Estonian case, annually in Germany and Lithuania; and election campaigns wise - not in Germany though). The online system itself is the most rudimentary in Germany as finances are published as a pdf file for each year and the document includes all parties and different types of income and spending. It is difficult to search for any specific information, however the documents themselves are logically structured and detailed enough in its division of income and spending[70]. The Lithuanian online database resembles the German one, as it publishes pdf files and thus specific items cannot be looked up. The UK system allows to search for information online but is not user-friendly: it takes up a long time to look up a certain party's finances during a certain period or election[71].

The Estonian online database lists both election campaign costs and regular quarterly account statements. It is quite easy to search for a certain party's financial data, and also the names of the donors. However, often the expenses are difficult to understand as the categories allow for 'other smaller expenses'; and it is difficult to distinguish between amounts as membership fees and donations.

Another feature that simplifies looking up information in the UK is that also loans are separately published. Names and addresses of lenders and the details of the terms are published.

However, what the Estonian Electoral Commission lack online, are the procedural rules and guidelines they use for checking the accounts. **Procedural rules are however published** on the UK page, and they are very clear setting clear rights of the commission members. This could serve as an example for publishing procedural rules and rights and obligations of the commission members. In Ireland's case the responsibilities and rights of the enforcement body are also listed but the structure of the web page of the Commission is difficult to follow. The same is true for the President of the German Bundestag office that checks the reports. The web-page is difficult to follow. Therefore the UK with its general set-up of the web page is a good example because it publishes rules for the parties, procedural rules, information about the Commission and its rights, and the financial reports. The Estonian system provides a good way of looking at the reports by categories while in the UK case this is a bit too complicated though it allows searching within certain keywords. In Ireland, the reports and annual analyses are published online, however, they are published as text files and thus searching for specific data is complicated. However, the web page gives a rather detailed overview of the funds relating to parties, candidates and election campaigns.

In Ireland the enforcement body (the Standards Commission) publishes an annual report on the development of party financing regulations, its activities, and complaints that have been investigated within a year. This is a very good practice because it summarises the most relevant cases and gives an overview about party financing during one year. There's a similar analysis done in Lithuania.

[70] http://www.bundestag.de/bundestag/parteienfinanzierung/rechenschaftsberichte/index.html
[71] https://pefonline.electoralcommission.org.uk/search/searchintro.aspx

Besides online reporting, financial reports are published in a parliamentary paper. Some examples are Germany, Austria, France, Italy and Portugal. (Austin & Tjernström 2003: 148)

Best practices concerning transparency and publishing:

- Publishing reports online and in Parliamentary Papers
- Online databases should be logical and easy to follow, they should include an option to search with keywords
- The enforcement agency should also publish their procedural rules
- Publishing both regular (quarterly or annual) party finances and election campaign finances
- The enforcement body should write and publish comparative analyses of party financing (problems that have occurred or desired developments)
- Cooperation between different stakeholders (NGOs, media) to have public debate on party financing issues

5) INDIRECT FUNDING

In addition to direct subventions to support operational activities, electoral campaigns and parliamentary group work, parties may also receive various forms of in-kind subsidies and indirect funding, such as free radio and television broadcasting, a reduced postal rate, or various types of tax exemptions, and sometimes free use of public meeting rooms. Even though not direct, this type of public support assists parties in carrying out their general activities and supports their core functions in a democratic state. (van Biezen, 2003: 39)

FREE BROADCASTING AND MEDIA ACCESS

Free broadcasting and media access is one of the most widespread features of modern electioneering. It is the allocation of time to political parties to allow them, free of charge, to deliver their messages on television and radio. Given the overwhelming importance of television as a medium of political communications, this "free time" is a vital benefit-in-kind, though it is hard to calculate its commercial value. The method and principles of allocation of free broadcasting time are usually similar to those of direct funding: parties are either given an equal amount of time or the time for party political broadcasts is allocated proportionally according to party performance in the previous general election. In order to meet the requirements for such state aid, a party must obtain a minimum of votes and/or must compete in a fixed number of constituencies. (van Biezen, 2003: 40)

TAX PRIVILEGES

A common device used to encourage private donations to parties is to make them tax free or tax deductible. Tax privileges for donations and membership fees constitute a mixed type of funding because they encourage private funding through public means. The public element of this type of funding consists of the public treasury's subsidising such gifts (in total or in part) by foregoing the tax that it would otherwise receive on that amount of money. **In order to ensure that the system does not favour rich donors, tax concessions should be limited to only small or medium-sized donations.** (van Biezen, 2003: 41)

A system of tax concessions by which donations are tax deductible reduces the liability for tax depending on the donor's marginal tax rate. The relative tax benefit is therefore higher for higher income donors. This may pose problems with regard to equality of opportunity for political parties. In this light, in 1958 the German Bundesverfassungsgericht (Constitutional Court) ruled that a tax privilege equally accorded to all parties and donors was unconstitutional since it disproportionally benefited the higher income donors. (van Biezen, 2003: 41)

PARTY TAXES

A more controversial form of indirect financing would be contributions from members of parliament, which are sometimes called party taxes. This is a form of financing by which members of parliament pay a certain amount of their remuneration as a parliamentarian to the party which they represent. Party taxes, and especially contributions from elected representatives, are a widespread practice across European states. They may involve substantial amounts of money and constitute an important source of income for some parties (in Romania and Poland for example). (van Biezen, 2003: 42) While this type of source is sometimes treated as a private donation, it is perhaps best understood as an indirect – or some would argue disguised form of public funding. This is especially true if contributions from parliamentary deputies to their party are mandatory. (van Biezen, 2003: 43)

It may be asked if it violates legal stipulations in some countries, such as those set forth in the Basic Law in Germany, which states that the independence of parliamentary deputies shall be secured through the payment of an adequate remuneration. If parliamentarians are paying significant amounts of money to their party, this might imply that their independence is endangered. Alternatively, it may indicate that their remuneration is significantly higher than absolutely necessary. (van Biezen, 2003: 43) Therefore **setting a limit for membership fees and contributions would be effective to avoid elected politicians being influenced**.

In short, the best practices of regulating indirect party funding are:

- To allow for free but limited media (television, radio) time and billboard space (to all parties) (done in Czech Republic)
- To ensure that the system does not favour rich donors, tax concessions should be limited to only small or medium-sized donations
- There should be a limit for membership fees and contributions to avoid politicians to be influenced

6) POLITICAL CULTURE

It is interesting to note that in the Nordic countries, there is very little regulation and enforcement of party financing rules. For example, in Sweden, public funding is somewhat regulated: funds can be allocated after the party issues an annual financial report. Private funding (donations, membership fees, loans, publications, lotteries, income from property or other business activities) is not regulated, nor is election campaign spending limited. The parties are not required to publish any information on their accounts. (OSCE report on Sweden, 2010: 8) Nordic countries are often considered as having experienced less party-related corruption than Italy, France or Portugal during the last two decades. (Sousa, 2005: 6) This can be explained by a strong liberal tradition where parties should set standards of probity to its members and their behaviour in political society is constrained by commonly accepted rules of the game. Financial matters are also determined by these common rules. (OSCE report on Sweden, 2010: 8-9)

In Sweden the party financing is non-formally regulated meaning that all seven parliamentary parties have subscribed to a voluntary Joint Agreement to make the accounting of parties' income as open as possible. Particularly, the parties agreed that (i) contributions from legal entities should be specified in the accounts by providing the name of the donor and the amount, (ii) the number of private contributions and the total amount should be disclosed (iii) parties' final reports should be publicly available, and (iv) parties' treasurers are to develop common forms of accounting. The Joint Agreement does not envision any sanctions for breaching its provisions. (OSCE report on Sweden, 2010: 8) Therefore **Sweden is a good example how parties regulate themselves and aim for transparency and thus for further public confidence**. Enforcing this type of political culture takes time and is difficult to implement with laws but stems from long-term value education and the general culture of the country. Even in Finland which is generally considered to be un-corrupt suffered a party financing scandal in 2007. During 2007 parliamentary elections, corporate financing was used and not fully reported. (Helsingin Sanomat, 18.05.08) Therefore, even in seemingly well-established party systems, there can be problems with transparency of finances. Self-regulation only works when all parties adhere to same ethical norms. It means that more regulation and enforcement is generally needed and that self-regulation is not always the best option.

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COMPARATIVE ANALYSIS OF POLITICAL PARTY FINANCING IN V4 COUNTRIES + ESTONIA

MAIN FINDINGS

- Even though there are variations in national legislations, all countries allow for mixed funding both from private and public funds. The public funds are usually bound to a certain threshold of votes gained in elections.

- There are issues with political party financing and with financing of election campaigns in all monitored countries. Most notably in Hungary and Poland, where it is a common practice to start campaigning before the official announcement of the elections. Funds used in these pre-campaigns are then not audited. The Czech Republic has no rules on election campaigns with the exception of presidential elections.

- The Czech Republic doesn't have sufficient regulations to prevent large gifts from a single undeclared private donor. Regulations in other countries have various degrees of contribution caps and the rules are more restrictive.

- The auditing and institutional oversight is also very weak in the Czech Republic, because the oversight is performed by the politicians themselves, and auditing is done by private auditors hired directly by the political parties. Other countries have better control mechanisms such as centralized oversight bodies or a controlled choice of auditors.

- The centralized oversight bodies however have various levels of independency. The Polish State Electoral Commission has to be noted as the most independent institution. However, there have been serious attempts aimed at undermining its position taken up by part of the Polish political scene after the last local elections in 2014.

- Given the independency of the State Electoral Commission, Poland is the only country where the parliamentary parties are severely sanctioned if they do not adhere to the law. Other countries have sanctions but they are rarely if ever used such as in the case of the Czech Republic or Hungary, or if they are used, then it's only against non-parliamentary parties such as in the case of Slovakia.

- Estonia has to be noted as the country with the most effective mechanisms for declaration of political parties' assets. The funding and assets have to be declared online, in machine-readable format and on a quarterly basis. Other countries have far less user-friendly and – often deliberately – less transparent systems.

- Guidance on political party financing is unsatisfactory in all countries. All countries should consider the creation of such guidelines and providing consultancy to the political parties and citizens as well.

LEGAL FRAMEWORK

The Czech political parties are governed by Act No. 424/1991 Coll. on Association in Political Parties and Movements. The law defines the requirements for founding political parties and other basic provisions of political party functioning, together with their funding and financial management. There is also a variety of laws on elections that contain rules on the technical aspect of election procedures as well as provisions on contributions paid by the state to cover election expenses. Political rights and freedoms are further guaranteed by the Czech Constitution. It is interesting to mention that none of the regulations mentioned above contain a definition of a political party or movement. Political parties and movements are in principal legal persons (associations).

A basic provision for political parties' establishment and operation is defined by the Hungarian Constitution. Detailed rules for the operation and financial management are then regulated by the cardinal act, i.e. Law XXXIII of 1989.

The financing of political parties and election campaigns in Poland is governed mainly by two pieces of legislation. Party financing is regulated under the Law on Political Parties of July 27, 1997, as amended significantly in 2001. Campaign financing is regulated in the Election Code adopted on January 5, 2011. The Election Code is a comprehensive law covering all types of elections and election campaign formats.

Slovakian political parties are regulated by Law No. 85/2005 Coll., Act No. 180/2014 on the Conditions of the Right to Vote and Act No. 181/2014 on Election Campaigns, which also amends Act No. 85/2005 Coll. Similarly to the laws of the other compared countries, it defines the establishment, operation, financial management and funding. The new legislation unifies the rules for all types of elections and election campaigns. Basic provisions of freedom of association are laid out by the Slovakian Constitution.

In Estonia, three bodies are allowed to campaign for elections: political parties, single candidates and election coalitions. Only parties and single candidates are then allowed to run for office in parliamentary (Riigikogu) elections. Local government elections allow the participation of the election coalitions, which are formed by Estonian or EU citizens entitled to vote in the local elections. The election coalitions are not legal persons. Laws regulating the party financing are the Estonian Political Parties Act, the Riigikogu Election Act and the Local Government Council Election Act.

POLITICAL PARTY FUNDING

The Czech legislation on political parties allows a system of mixed funding, i.e. from public and private sources. The public funding is in the form of direct state financial support such as the *contribution to activities*, which includes fixed and per mandate contributions if the parties and movements receive over a 3 % threshold of votes in the Chamber of Deputies elections. There is also a contribution to election expenses, which is paid to parties and movements that reach a 1.5 % threshold in the same elections. There is also indirect state financial support in the form of free broadcasting time on radio and TV and space for election posters in municipalities for the duration of an election campaign provided for the Chamber of Deputies, the European Parliament or the office of the President. Time and space are allocated to all participants in equal measure.
In recent years, the share of public resources in the funding of political parties and movements in the Czech Republic was between 45–80 % as stated by an official analysis of the Czech ministry of the interior[72].

Private resources include membership fees, which are often conflated with gifts from party members, since the law does not define membership fees as such. Furthermore there are donations and inheritance. The Czech

[72] http://www.mvcr.cz/clanek/transparentni-financovani-politickych-stran-jake-zmeny-jsou-potreba.aspx [quoted on 2015-02-18]

analysis mentions the fact that donors must be identified if they donate more than CZK 50 000 (ca. EUR 1,820), which often leads to the division of gifts, which are then reportedly provided by different persons even though the source of the funding is the same, yet this is often opaque. Non-financial gifts are not regulated. There are also other types of income such as leasing and sales of movable and immovable property, business activities of other legal entities, loans and credit, etc. Generally speaking the rules on the private funding of political parties in the Czech Republic are vague and often lack key definitions of certain types of funding.

Czech law does not impose any limits on an election campaign or a duty to have an election account for use during elections. Political parties and movements have no duties beyond the scope of the general Accounting Act. Parties are not required to have separate accounts for their activities and for election campaigns. There are a different set of regulations that applies for presidential elections, where clear regulations on transparent election accounts and limits for funding are set.

Hungarian political parties may get revenues from both public and private funding. Public funding includes a quarterly allowance from the state budget allocated to the political parties receiving more than one per cent of the votes in the general elections mainly on the basis of the votes they received. It further includes a monthly allowance from the budget of the Office of the National Assembly for the purpose of the operation of the parliamentary group of the political party, which, in addition to a base amount, reflects the size of the parliamentary group. Indirect public funding is similar to the Czech Republic, i.e. all political parties get free air time on public broadcasting. Private financing includes membership fees, contributions from enterprises and other legal persons, contributions from natural persons, income from business activities, and other sources such as bank loans.

Campaign financing in Hungary is cited as very problematic. Political parties were not allowed to spend more than HUF 1 million (ca. EUR 3,260) per candidate with a cap set to HUF 400 million (ca. EUR 1.3 million) in case the party nominates the maximum amount of candidates. In 2014 the limits were increased to HUF 5 million (ca. EUR 16 300) and HUF 600 million (ca. EUR 1.95 million) The analysis mentions that even though political parties report that they keep their election spending within the legal limits, no one believes them. The issue is that the political parties are not obliged to keep record on election promotion spending paid for between the date when the elections are announced (at least 72 days prior to the election) and the date when the candidates are nominated (typically 20-25 days in advance prior to the election). Even though it is clear that the parties spend money on election promotion, there is no legal obligation to keep record on the spending that has happened before the nomination of the candidates.

Polish parties get revenues in a fashion similar to the Czech Republic – i.e. a combination of public and private funding. However, the former source of funding is definately dominate – as public money constitutes more then 80% of Polish political parties' revenue. Public funding is also in the form of contributions to parties that get over a 3% threshold of votes and in form of contributions to a party's election campaign expenses in case the party introduces at least one deputy or senator to the Polish or European parliament. An important source of the private funding is donations. Donations are thoroughly regulated and only natural persons who are Polish nationals and have permanent residence in Poland can provide monetary donations. The law furthermore sets caps on the annual contribution from one person (PLN 25 200 ca. EUR 6,000 in 2014). Political parties may only accumulate funds in bank accounts with the exception of the membership fees, which can be stored in cash if the single contribution does not exceed EUR 375. Apart from the abovementioned sources, parties may hold assets that come from inheritances, legacies and property income, interests, trading in Treasury bonds, etc. Political parties in Poland are allowed to take out loans, but there are limitations in order to reduce the risk of irregularities relating to loan collateral. A loan can thus only be guaranteed by private individuals. However, in fact a legal person (an entrepreneur or a company) can easily unofficially take over the warranty of the loan taken i.e. for campaign purposes or to pay the loan off after the elections, as there is no mechanism for verifying that in the law. Similar to other countries, Polish political parties are not allowed to directly engage in business activities.

Slovakian political party funding is again very similar to the Czech and Polish one. Public funding is in the form of contributions for received votes (3 % threshold of votes). Parties who have a right to this contribution then get a contribution for operations and a contribution for secured mandates. Act No. 181/2014 Coll. imposes limits on political campaigns' expenses in order to provide the same conditions for all candidates or political parties. Expenses of political parties or candidates from 180 days prior to the announcement day of elections are to be included into the funds of the election campaign. A political party will not be allowed to spend more than EUR 3 million on an election campaign for parliamentary elections and elections to the European Parliament. A presidential candidate will not be allowed to spend more than EUR 500 000 on a campaign during both election rounds combined (in present time it is EUR 132 775).

The sources of private funding are similar to other countries, though it is interesting to mention that Slovakian political parties are obliged to publish their donors annually on the party's website. Parties or candidates are also obliged to establish a separate transparent account for each election. Information on the transparent account should be actively published and available for the public. They must also maintain accounting on their election campaign expenses and present an interim report on election financing. This has to be presented at least 21 days before Election Day. The final report on election financing then has to be presented no longer than 30 days after Election Day. Furthermore, all political parties are obliged to publish an annual report on their financing including the election campaign according to Laws 85/2005 and 181/2014. The new legislation imposes stricter rules and evidence for private funding (gifts as well as non-financial support) and broadens the sanctions for their breach.

In Estonia, even though single candidates and election coalitions can run in various elections, they are not eligible for direct public funding. The public funding in Estonia is thus only available to political parties. There has recently been an amendment to the law that should promote more equality to parties that have fulfilled the threshold (at least 2 % but less than 5 %) for contribution, but not the threshold for parliament. The amount of the contribution is now more progressive.

Private funding includes membership fees, transactions with party property, and loans. Donations to political parties are regulated, and it is illegal to receive anonymous donations and donations from legal persons. It is also not allowed to provide parties with free and/or unreasonably discounted services, goods, or legal rights if those would not be free under normal circumstances. There are no limits for donations in Estonia from natural persons. Furthermore, there is also no limit on the amount of money parties can receive from donations in total or for elections. There was even no limit on cash donations before the amendment to the law in April 2014. Nowadays the limit of cash donations is EUR 1,200 per donor per year, which is still considerably higher when compared to other states. All donations made in cash are to be immediately registered.

INSTITUTIONAL OVERSIGHT, MONITORING AND AUDITING

By law Czech political parties and movements have an obligation to submit an annual financial report every year by 1 April to the Chamber of Deputies. Besides annual accounting statements, an auditor's report, and overview of the total income, the party has to present an overview of gifts and donors, together with members whose total annual membership fees exceeded CZK 50 000 (ca. EUR 1,820). The Controlling Committee of the Chamber of Deputies checks errors or inconsistencies in such annual reports. The committee consists of 15MPs, a secretary and two assistants, and it is supposed to inform the corresponding tax office of any violations of the provision on receiving gifts. No such case has yet been recorded according to the GRECO reports and findings from the Central Financial office. The committee should also act on information from the public or the media that points out errors in the submitted data, but this is also yet to happen. The control power of the committee is therefore questionable and likely only formal. The annual financial report is then submitted to the Ministry of Finance. It is important to mention that separate statements for election campaigns and other party expen-

ses are not required. There are also issues with the auditor's statement in the annual report, as it is the political parties or movements who select their own private auditor (i.e. there is no external control). There are also no rules regarding auditors' conduct. This means that it is private auditors and not the Controlling Committee who have access to the financial records of the political party or movement. Tax authorities and police get involved when carrying out tax inspections or when a crime is suspected. According to GRECO, no political party was subject to a tax inspection in the last five years. Mandatory audits only apply to accounting statements and have turned out to be an inadequate control mechanism as they are not performed in detail and do not verify factual accuracy.
It is thus the media and the non-profit sector that mostly carry out control of the financial management of political parties and movements. The analysis concludes that institutional oversight is not fulfilling its role and even though the government's anti-corruption strategy recognizes the financial control of political parties and movements as problematic, very little has been done so far to overcome the current unfavourable state of affairs.

Private auditors do not carry out an external audit of political parties in Hungary, as it is the case in the Czech Republic. The State Audit Office (SAO) performs auditing of political parties finances instead. The SAO's responsibility is to check that political parties' annual financial reports are in order and that the political parties have adhered to laws regarding bookkeeping and financial management. In its reports, the SAO criticizes that the laws regarding political party financial management do not provide clear guidance, and the political parties thus handle the annual reports according to their internal accounting policies, which prevents effective comparison and overview. The SAO regularly points out numerous irregularities in the financial management. These irregularities might be serious but they cannot really be properly sanctioned, as the instruments of the SAO are limited. The SAO for example cannot launch an investigation of excessive campaign expenditures based on assumptions, news or rumours. The SAO can only audit the documents submitted by the political entities. Since there are no real incentives for the political parties to declare their campaign expenditures, it is not surprising that with the limited amount of data the SAO usually concludes that all political entities remain within the allowed legal limit. There have however been changes in the legislature regarding campaign finance in 2014 which sets more realistic caps on expenditures per candidate. However, many of the critical issues such as the limited authority of the SAO remain unchanged.

An independent State Electoral Commission (SEC) regulates the Polish political party financing. This control body is established under the Election Code and consists of three Constitutional Court judges, three Supreme Court judges and three Supreme Administrative Court judges. The President of the Republic appoints all these judges. In addition to the SEC, the Election Code sets up the National Election Office – an auxiliary institution providing administrative support.
The SEC generally enjoys a good reputation and has been recognized as an independent institution, albeit with limited human resources concerning the level of responsibility. However, this positive recognition has been undermined after the last local elections in 2014 due to some mistakes in the SEC operation and serious attempts at aiming to undermine its position taken up by part of the Polish political scene. Political parties submit their financial statements to the National Electoral Commission by 31 March of each year. Such statements shall be submitted with an attached auditor's opinion and report. The auditor is selected by the SEC. The costs of the auditor's opinion and report are covered by the National Election Office. The SEC then publishes the statements in the Official Journal of Poland. The parties' financial statements can either be accepted without reservations, the SEC might point out irregularities or reject the statement altogether. If the SEC rejects the party's report and the Supreme Court upholds its decision, the political party in question might lose state subsidies for up to 3 years. The Polish analysis concludes that the political parties generally comply with these laws and regulations. Although there are some significant examples of cases where parties in Poland have lost, or were in serious danger of losing, their public subsidies due to the court's judgments.

The Slovakian system lacks a centralized oversight body and the institutional oversight is thus split among four institutions. Similar to the Czech state of affairs the Slovakian parliament has a Controlling Committee, which is responsible for monitoring parties' annual reports and accounting. Conflict of interest stemming from the fact that the politicians are supposed to control their own financial reports is unfortunately apparent. Act No. 180/ 2014 establishes an independent oversight body, the State Commission for the Elections and Control of Political Party Funding, and the Office of State Commission at the Ministry of the Interior. The State Commission should overview elections, the electoral campaigns, and financing of political parties[73]. The auditing of political parties however is external, and the auditors of the Slovak Chamber of Auditors are drawn from a ballot (i.e. the political parties cannot influence who will be their auditor). Act No. 181/2014 also introduces a deposit of audit, which should solve the problem of political parties being unable to pay the costs of the audit, and strengthening the independence of the auditors. Furthermore, the Financial Control Administration deals with misconduct of public funds by the political parties either in case of suspicion or when asked by the Ministry of Finance. The Supreme Audit Office then controls whether the Ministry of Finance provides contributions to the political parties according to the law.

Similarly to Poland, one oversight body oversees the financing of political parties and election campaigns in Estonia. The Supervisory Committee on Party Financing (the Committee) is financed from the state budget. The Committee consists of 7 members, 3 of whom are from the Chancellor of Justice, National Audit Office, and Electoral Management Body. The other 4 members are MPs (one member per party, the number can change depending on the number of the parties in parliament). The Estonian analysis does however question the complete independence of the Committee, since the majority of the members consist of representatives of the ruling parties. The Committee requires a majority vote to pass resolutions, and therefore it is questionable whether the obligation to conduct a thorough oversight is always respected. Another Committee-related issue is its rather low administrative capacity. The Committee has limited personnel (one adviser and one consultant) and therefore can´t always scrutinize the reports thoroughly or conduct background checks on the validity of information presented to them. The analysis further points out the fact that there is no control over the origin of the money used in donations. The Committee also does not control if the donation is in accordance with the income of the donor.
However, from April 2014 the political parties are obliged to regularly report the donations and to make the information available online, which provides opportunities for public oversight. Estonian parties are further obliged to thoroughly report their expenses online through the Committee, including the election campaign expenditures. This further strengthens both institutional and public oversight and control.

SANCTIONS

If the Czech control mechanisms deem the financial reports unsatisfactory, it is possible to suspend the activities of a political party or movement and subsequently disband it completely. It is also possible to suspend the payment of state contributions, or to fine the political party if it fails to return gifts or donations that violate the law. Parties and movements may also be fined if they violate the Accounting Act. However, there is no publicly available record on these fines ever being imposed, and therefore there is reason to believe that no political party or movement has ever been sanctioned by the tax authorities or because of their violations of provisions on accounting related to the funding of political parties or election campaigns. Czech sanctions and institutional oversight therefore do not fulfil their roles in an ideal manner. The control over political party financing in the Czech Republic is therefore unsatisfactory.

The Hungarian sanctions are similar to the Czech ones; they are mild and rarely, if ever, used. Sanctions can theoretically be imposed or initiated in cases of criminal offence or when the political party accepts donations from unauthorized sources. The party then, upon the notification of the SAO, has to pay the amount of the unauthorized contribution into the state budget in 15 days. The same amount is then deduced from the

[73] Transparency International Slovakia will closely observe the establishment and the work of the State Commission.

political party's state contribution. According to the law, the SAO has the right to initiate proceedings in court if the political party does not comply. However, the law does not specify what the SAO could request, nor the authorities of the court with regard to the potential decision (i.e. obliging the political party to act in accordance with the petition/notification, annulment of unlawful internal rules, imposing fine, etc.).

In Poland it is the SEC that is responsible for sanctioning political parties if they fail to report their annual financial reports in time in their entirety or if the party breaks the law on private funding. Depending on the severity of the misconduct, the political party in question may lose its right to receive subsidies for the period of up to 3 years or even face deregistration. Those are very severe sanctions, and they have already been utilized as demonstrated in the case of the Polish Peasant Party, which has lost its rights to subsidies and the Palikot's Support Movement, which was deregistered in 2011. Currently the social democratic party is also in danger of losing its public subsidies.

In Slovakia it is the Ministry of Finance that may impose a fine up to EUR 3,319 according to the Act No. 85/2005 if the political party fails to provide the ministry an interim or final report on election campaign funding, the parliament with an annual report on political party financing (PPF), or does not eliminate deficiencies in the annual report within a given period. Act No. 181/2014 establishes new administration sanctions. If a political party will fail to submit annual accounts (annual report) on time, a fine of EUR 3,500 will be imposed. More important amendments have been adopted in respect of election campaigns. For example, a political party that continues campaigning beyond the timeframe stipulated in the law may be subject to a fine of between EUR 30 000 and EUR 300 000 and may risk a fine of between EUR 10 000 and EUR 100 000 if it exceeds the permissible amount for campaign spending in national elections. The Slovakian analysis however mentions the fact that Slovak legislation does not provide criminal liability of legal persons. Political parties can therefore not be held criminally liable for offenses committed in the context of party funding. The deterrence effect of such sanction is therefore insufficient. According to the analysis, thirty-four non-parliamentary parties and political movements were fined in 2007, but there were no other sanctions than those for failure to submit reports.

The Estonian sanctions are contained in the Political Parties Act, and it is the Supervisory Committee that can make precepts if a political party has not abided by the law. The committee can thus sanction the parties if they fail to submit campaign reports, document donations, and/or return prohibited donations. There are a variety of fines that can be issued, depending on the severity of the misconduct. The Estonian analysis points out that from April 2014 a person who has made an illegal donation may be exempted from sanctions if the donor notifies the committee of such action within 30 days in writing. Similar procedure has been used to minimalize misconduct in other fields, and the Estonian analysis considers it a positive development with possible preventive effects.

GUIDANCE

In the Czech Republic, there is no body or institution providing education or methodological guidance in the field of political party funding, election campaigns, or citizenship education in general. Legislative obligations, the purpose of which should be to support the transparency of the financial management of political parties as well as the responsibility of public officials, are very vague, and their application fully relies on interpretation by the members of the political parties themselves. There are insufficient levels of consultancy or methodologies of political party funding and election campaigns. This lack of knowledge leads to often-dubious interpretations of the election law as illustrated by the latest presidential election.

The Hungarian analysis mentions guidelines on the obligations of the law on electoral procedures issued by the SAO during the 1998 election that are used to this day. However the SAO itself has repeatedly stressed that the applicable election laws do not give clear guidance for the political parties, and that this leads to inconsistencies in financial reporting. The guidance of elected representatives thus exists, but it is not sufficient.

The Polish National Electoral Commission has an obligation for leading educational activities according to the Electoral Code. But these activities concern more or less the organizational part of the elections (they inform citizens how, when, and where they can vote, which includes also the preparation of the educational materials for citizens – however the quality is debated) and provide support for the election committees, e.g. information on how to organise the electoral campaign from a formal perspective or explaining particular issues that are currently being discussed during the election campaign (i.e. how the website should be set up by the electoral committees, and what parts it shall include). The educational activities do not cover direct guidance for candidates, but their special electoral committees are handed materials about the legal obligations after the registration by the Electoral Commission or local electoral commissionaire.

In Slovakia, The parliamentary Committee for Finance, Budget and Currency published, on its own initiative, guidelines for the submission of annual reports on political party financing. The newly established State Commission for the Elections and Control of Political Party Funding should provide political parties and candidates with methodological assistance and advice on the rules for the financing of political parties and election campaign financing. Until now, there were no guidelines for the submission of election campaign funding. However, these guidelines have not led to the unification of report formatting, which makes it harder to compare political party financing (PPF) of individual parties. There are no trainings or methodological seminars on PPF provided by public authority.

The Estonian guidelines are not yet completely developed. Albeit technical guidelines for compiling and presenting the electoral report exist, there are still some missing. There are also new rules from April 1, 2014, which have not yet taken full effect. According to these rules the Committee's responsibility is to give guidance to political parties which have faced serious financial difficulties for 3 years. The Estonian analysis however pointed out that these advisory responsibilities should be appointed to an auditor instead. Finally, the Committee has a goal of organizing prevention and educational work. The Committee's correspondence (including memos) and the Committee's decisions on different party financing cases are found on the website and have important informational value.

TRANSPARENCY AND PUBLIC INVOLVEMENT

The availability and transparency of Czech PPF documents is limited. Even though the annual financial reports are public by law, they are only accessible in person at the Parliament Library. Because the financial reports are only available on paper and there is only one copy of each, processing data for further verification is complicated. The scope is thus severely limited. There is a project called politickefinance.cz, which processes all public data at least once a year. Basically, the data from annual reports are rewritten and published online. The limitation is that the data only include the initials of donors and not their full names. Even though it is a valiant effort, it is still not enough as it is not possible to monitor and verify data during elections. As time passes, any verification becomes increasingly difficult to confirm or refute suspicions of hidden financing of election campaigns. However, there are some political parties that deliberately publish information on their financial management in a larger scope than required by the limited legislation.

The election campaign financing is the most critical point of the whole issue of PPF in Hungary. The system is not working, and it is a public secret that political parties spend more than they are officially allowed to and don't declare all assets spent during the campaigns. Even though the SAO performs audits of campaign financing, these happen after the election, thus loosing its effectiveness. One of the issues that seriously undermine the transparency of the campaign funding in Hungary is the expenditures under the title "other contributions." Third parties in favour of a certain candidate pay these. They don't constitute part of the campaign expenditures and the third parties are not obliged to disclose their spending.

Poland has arguably the most independent oversight of all analysed countries, and as such it should have a transparent system of PPF and election campaign funds. Unfortunately the Polish analysis summarized

a variety of activities which are not transparent. Campaigns are for example often conducted by unauthorized entities. This applies to preliminary campaigns (similarly to Hungary – before the formal announcement of the election campaign). The law does not effectively regulate the preliminary campaigns and any entity can engage in the promotion of a still not formally proposed candidate before the announcement of the election campaign. The SEC cannot inspect such actions and impose penalties, which is a situation very similar to the Hungarian SAO.

There is also a lack of transparency during the campaigns, where it is difficult to identify hidden campaign financing by unauthorized entities. The analysis identifies the scope of the SEC's control mechanisms as the source of the problems. The Commission is limited primarily to auditing documents that are provided to it three months after the end of the campaign. The SEC is therefore unable to effectively compare the reality of the campaign with the image emerging from the financial statements. Public overview is also very limited. It is difficult for citizens to get detailed information on how political parties are spending public money, and there are not really any mechanisms to support the development of non-governmental organizations that would engage in election campaign financing. This, combined with the fact that the SEC focuses primarily on accounting controls and not on substantive assessments, establishes a situation that is not satisfactory. In addition, the activities of the law enforcement authorities (police and prosecutor's office) are not sufficient. Even though the law imposes on them an obligation to deal with the cases related to violation of the electoral law, they are reluctant to deal with such cases (ca. 80% of the already initiated proceedings are being suspended without a clear solution). One of the reasons for such behaviour of these bodies is the fact they are afraid of being accused of interfering with the political process.

Slovakian political parties pursuant to Act No. 85/2005, and Act No. 181/2014 must publish reports both about their donors and their election expenditures. Both types of reports must be accessible through the parliaments´ website and in hard copy. Furthermore, the parties or candidates are also obliged to establish separate transparent payment account for each election. Information on the special account is to be continuously accessible to the public and must show an overview of payment transactions, including data concerning the amounts, posting date, name of the payer, and other information (payment transactions overview). The political party is required to notify the Ministry of the Interior with the website address on which these data are to be displayed. The Slovakian analysis has checked the documents and albeit some are not in machine-readable format, they are accessible even after the legal period passes. In addition, NGOs have missed proper mechanisms for the announcement of breaches. It has been possible to file a motion to the Financial Control Administration, Ministry of Finance, or any oversight body, but it is often unclear how exactly and where to file the motion. While the new legislation imposes more detailed rules for reporting, the Slovak analysis concludes that the financial control in Slovakia has been usually formalistic, and it did not consider the poor quality of the documents provided. The State Commission represents a single institution that can have a special capacity to monitor financial flows in politics. However, the Slovakian State Commission faces the same issue as the Czech one. The majority of the State Commission´s members are MPs, who in principle are to control their own annual reports. Once again, there is a risk for potential conflict of interest.

Political parties in Estonia are obliged to publish their financial reports quarterly rather than annually, and they have to do so online on the website of the Committee. Anyone can view these reports and there are no limitations of access, which is a substantially better than in the rest of the analysed countries. Public oversight is taken into account, since anyone can notify the police, media, and even the oversight body, which has the right to demand more documentation from the political party in question. Despite the fact that donation and campaign reports have to be publicly available, there are still many issues in Estonia, e.g. circumventing the ban on donations from legal persons.

GENERAL RECOMMENDATIONS FOR STRENGTHENING THE ENFORCEABILITY OF RULES OF POLITICAL PARTY FINANCING

1) GUARANTEEING TRANSPARENT FINANCING OF POLITICALLY ACTIVE ENTITIES TO ENSURE FAIR POLITICAL COMPETITION AND PREVENT CORRUPTING INFLUENCES

The basic requirement for the regulation of political party financing is the need to establish adequate conditions for free spreading of ideas and a fair competition of political forces, providing legitimacy to the delegation of power. The listed recommendations should apply not only to political parties as such, but also to the entities and bodies that they usually establish – political foundations, think-tanks, educational institutions etc. This requires a clear concept of regulation that would involve not only revising the method of public financing of political parties and establishing clear rules for financing political parties and their economic management, but also monitoring compliance with these rules. Due to all the above, we recommend the following:

- Distinguishing between sponsoring and contributions (direct or indirect) and clarifying the expenses of third parties
- Defining election and pre-election spending and regular spending of political parties
- Differentiating between various types of entities and types of elections
- Finding the balance between types of income (public / private, financial / in kind) including a definition of approved and forbidden sources and activities
- Banning contributions in cash and contributions from anonymous donors
- Supporting control over the sources of political party funding
- Separate and centralised accounting records of political party expenses, particularly for election campaigns in parliamentary or presidential elections
- Strengthening personal responsibility for submitting declarations and reports on the state of finances of a political party or candidate

A recommended solution is to regulate the flow of money in politics with a single act that would define clear and unified rules for reporting and mandatory disclosure as well as powers of the monitoring body. Full disclosure of information, regular reporting, independent oversight and effective enforcement of the rules are crucial parts of a transparent system of political party financing.

Rationale:

In all the monitored states, political parties receive funding from mixed sources. The degree to which they are financed from public money can be considered relatively high. The threshold for receiving public contributions is typically crossed only by large or parliamentary parties and not smaller or regional groups. It is debatable whether the current systems of public support ensure sufficient levels of independence of political entities on special interests (of private sponsors) and if they support the plurality of opinion or public participation in decision-making. For this reasons, the current systems should be revised particularly in this respect. In some countries, financing of election campaigns is not limited at all (for example in the Czech Republic, with the exception of a flawed system applied to presidential campaigns); in others, the limits are very unrealistic and therefore frequently circumvented (Hungary) or donations from legal persons are banned entirely (Estonia), also leading to circumvention of the rules. The rules are often different for various types of elections, applying to some but not to others. This leads to confusion and is also a source of inequality of candidates running in different elections. And in all the countries, the rules, if any, only apply to political parties but not to other entities, i.e. individual candidates, ad hoc coalitions and similar groups.

2) INSTITUTIONAL OVERSIGHT

Compliance with the rules of the financing of political parties and campaigns must be monitored. It is necessary to support the existence of an oversight body that would be performing this essential function. The body must have sufficient capacities and be independent in terms of its source of funding and decisions on appointing people; it must also have strict limits on time that can be spent in its management positions. The body must have corresponding powers both in monitoring and investigation, as well as the power to submit requests for investigation to the police.

The body should be accepting reports from citizens pointing out violations of legal duties or suspicious behaviour. The enforcing body should also be able to regulate the auditing of political party finances. The body must be subject to independent supervision of another body, and a system for resolving complaints and handling appeals must be established. The monitoring body should provide (publish) information about political party financing and about its own decisions made during its activities without undue delay and in a publicly accessible manner (ideally on the body's website). The body should have the power to impose sanctions for violations of the law.

As part of its methodology duties, the enforcing body should be compiling and publishing statistical data and analyses comparing political party financing. The body should also be providing training to financial managers of political parties, educating them about the applicable rules and providing methodological guidance, including through individual consultations. Its powers should also include methodological activities in interpreting and implementing the law. Based on the performance of the functions listed above, methodology also includes submitting proposals for improving or unifying the wording or interpretation of current laws. As part of this function, the body should at the same time also provide information to the public, offering consultations and publishing independent opinion statements. These activities should also include submitting recommendations to applicable and draft laws, coordinating the activities of other bodies to ensure a unified approach and collaborating on the international level.

Rationale:
None of the analysed countries has established a system of institutional control with sufficient capacities. The monitoring body existing in Poland is an inspiring example with its independent management, but its limited capacity is often criticised. Its control activities only focus on public contributions and pay less attention to private donations. The worst situation can be found in the Czech Republic where all controls are purely formal and not at all independent. The country also has no rules for campaign financing with the exception of presidential campaigns. The independence of monitoring bodies found in other countries is debatable, as their members are representatives of political parties (Slovakia, Estonia). Besides an independent institutional oversight body with adequate capacities, the other main prerequisite for functional control are clear rules for the financing of political parties and campaigns as well as internal control mechanisms and transparency. Without functional control, the system is prone to corruption.
None of the mentioned countries is providing direct consultations to representatives of political parties who are responsible for their financial management. The system also doesn't support individual responsibility unlike for example in Ireland where the financial manager of a party is personally responsible for compliance with all rules and regulations.

3) MAKING SANCTIONS MORE EFFECTIVE

Compliance with the rules of the financing of political parties and campaigns must be enforced through effective sanctions. There should be a system of different levels of sanctions corresponding to the severity and type of the violation. It is also recommended to clearly specify the distribution of sanction and appellate powers, i.e. define the competencies of the monitoring body and appellate courts. It is necessary to set up an adequate procedure for resolving cases of illegally obtained funding.

When formulating and implementing a system of sanctions, it is necessary to follow the principles of proportionality and equal treatment. Equal treatment should be a preventive element for ensuring fair political competition. Following these principles, sanctions should have several levels, from fines for formal violations of the rules that do not have any major impact on the democratic principles of the political competition, to suspending the activities of the political party for very serious violations of legal duties. The sanctions should correspond to the severity of the situation and all involved parties should be well aware of what will be classified as a violation. In order for sanctions to be effective, they should also be imposed as early as possible.

Experience from many countries shows that financial sanctions (including the withdrawal of public funding) have a stronger impact on effective enforcement than criminal sanctions[74].

Rationale:
Sanctions are the most important tool for improving compliance. They must be applied equally regardless of which political party has violated the rules. Each of the analysed countries defines some sanctions, but the lack of a central monitoring body prevents their effective application, particularly because the control over potential violations is very limited. The Polish National Election Commission is an example of a relatively successful body. In recent years, it imposed strict sanctions for violations of the law, including disbanding the party in question. While the other countries also define sanctions, they use them only very rarely, if at all (examples include the Czech Republic and Hungary), or only against non-parliamentary parties, as used to be the case in Slovakia.

The oversight body monitoring political party financing has significant powers and must therefore itself be subject to independent control. There must be an option to review its decisions.

4) STRENGTHENING TRANSPARENCY AND PUBLIC OVERSIGHT

Political parties are the fundamental building blocks of democracy. Their rule is based on power delegated by the citizens. For this reason, political parties must be prepared to answer to the citizens. They must enable the public to verify compliance with the rules of their financial management in a suitable and user-friendly manner. Public discussion should then lead to a more careful selection of donors and a more responsible use of finances.

We recommend introducing a system for submitting and publishing regular financial reports of political parties, both regarding their financial management and the management of election campaigns and transparent bank accounts. The information should be available not only for political parties (including all their branches) and ad hoc groups, but also individual candidates, in a way that makes it possible to categorise the published information and run searches. The enforcement body should also publish information about its procedures.

Rationale:
Transparency and public involvement may be another tool for preventing undesirable links between group interests and politicians as public officials (decision makers), but also for supporting public participation and interest in public life. Citizens should have the option to look into the financing of political parties and determine if their management is responsible and if they can be influenced by outside interests.

All of the analysed countries have a system for publishing financial reports or reports on the financing and property of political parties. These rules, however, are often very broad and insufficient for real-life application (e.g. not differentiating between types of expenses, not publishing on-line, publishing in a format that is difficult to process etc.). Estonia is the exception, publishing financial reports of political parties quarterly, in a machine-readable format and online.

[74] IFES TIDE Manual or the International IDEA Handbook on Funding of Political Parties in Walecki 2007: 87.


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